OFFICIAL REPORT OF PROCEEDINGS

THE LEGISLATIVE COUNCIL

Hong Kong, Wednesday, 4th June 1969

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID (CLIVE CROSBIE) TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH (SELBY) NORMAN-WALKER, KCMG, OBE
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, OBE, QC
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DAVID RONALD HOLMES, CBE, MC, ED
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN (JAMES) COWPERTHWAITE, KBE, CMG
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 DAVID RICHARD WATSON ALEXANDER, MBE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DAVID HAROLD JORDAN, MBE
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE ARTHUR PATRICK RICHARDSON
COMMISSIONER OF LABOUR
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE SZETO WAI, OBE
THE HONOURABLE WILFRED WONG SIEN-BING, OBE
THE HONOURABLE ELLEN LI SHU-PUI, OBE
THE HONOURABLE WILSON WANG TZE-SAM
THE HONOURABLE HERBERT JOHN CHARLES BROWNE
DR THE HONOURABLE CHUNG SZE-YUEN, OBE
THE HONOURABLE MICHAEL ALEXANDER ROBERT HERRIES, OBE, MC
THE HONOURABLE LEE QUO-WEI
THE HONOURABLE ANN TSE-KAI
THE HONOURABLE OSWALD VICTOR CHEUNG, QC

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

PAPERS

The following papers were laid pursuant to Standing Order No 14(2): —

Subject	*LN No*

Subsidiary Legislation: —

Pharmacy and Poisons Ordinance.
Poisons (Amendment) Regulations 1969 68

Pharmacy and Poisons Ordinance.
Poisons List (Amendment) Regulations 1969 69

Public Health and Urban Services Ordinance.
Swimming Pools (New Territories) Regulations 1969 71

Public Health and Urban Services Ordinance.
Public Health and Urban Services Ordinance (Amendment of Fourth Schedule) (No 2) Order 1969 72

ORAL ANSWERS TO QUESTIONS

Industrial land in the New Territories

1. DR S. Y. CHUNG asked: —

> In order to simplify procedures for investors to acquire land for industrial development in the New Territories, will Government consider allocating an appropriate proportion of available industrial land in the New Territories, particularly Kwai Chung and Tsuen Wan, for sales by auction instead of through land exchange agreement?

MR D. C. C. LUDDINGTON: —Sir, at the last meeting of this Council my honourable Friend the Director of Public Works emphasized that there was a limit to the area of industrial land which could be made available in future within the Urban areas of Hong Kong and Kowloon[*]. It is, therefore, important that the public should be aware of the manner in which future supplies of industrial land in the New Territories will become available to developers.

Perhaps I should start to answer my honourable Friend's disarmingly simple question by explaining briefly the manner in which Government has acquired the large areas of private land necessary to enable our engineers to provide in the New Territories the essential Urban infra-structure necessary for modern industry. I am sure that no one will question that the more sophisticated industries on which

[*] Pages 285-6.

Hong Kong's economy depends today must be established in planned areas provided with essential services such as electrical power, water supplies, communications, drainage and so on, to say nothing of proper housing for the workers and their families. For all these purposes large areas are required and these cannot be economically provided entirely from the comparatively mountainous areas of Crown land available nor by reclamation from the sea, although both sources are used as much as possible. Inevitably, large areas of private agricultural land must be acquired.

The usual way of acquiring private land for a Public purpose is by resumption under the Crown Lands Resumption Ordinance, which provides for cash compensation only. When plans for the large scale development of areas such as New Kowloon and Tsuen Wan were being drawn up, it was recognized that many villagers would be being deprived of their entire holdings of ancestral land and that it would not be an acceptable proposition to accompany this deprivation merely by the award of cash compensation without affording the villagers the opportunity to acquire an interest in the new development which was to replace their agricultural economy. In order to get over this problem in the New Territories a system was devised whereby landowners were given an opportunity to surrender any of their land required by Government for development in planned layout areas and, if they did so within a specified time, they were provided with a letter entitling them to an exchange for the land surrendered. Offers of new land in exchange were to be made when the engineering works had been completed and the new land was formed ready for modem development.

Under this system holders of these exchange letters are given the opportunity to acquire the new land in accordance with certain ratios and after payment of a premium to cover the difference in value between the land surrendered and the new land granted. It was intended that a limited quantity of the newly formed land would be auctioned to check on the valuations used but it was accepted that most of the newly developed land at Tsuen Wan and Kwai Chung would be acquired by grants to applicants holding exchange letters. I might add that the exchange letter being an assignable document, it was anticipated that the applicant for new building land would by no means always be the owner who surrendered his private land to Government.

This system was generally accepted by New Territories landowners as fair and by and large they co-operated by surrendering their land as and when required. I am afraid that I have not got figures for the total amount of land so surrendered over the years but, as an indication of the size of the problem in the New Territories as a whole, over the last ten years nearly 39 million square feet of private land, or 895 acres, have been acquired by Government by surrender or resumption for various public purposes.

[MR LUDDINGTON] **Oral Answers**

Originally, it was intended that building land within layouts would be made available only in exchange for land which had been surrendered within the same administrative district. But, due to the general reduction in the demand for land for development in 1965 and the inability of Government to provide within a reasonable time new land for exchanges in each district of the New Territories taken individually, it was decided to allow holders of exchange letters to apply for any available building land in any district. It was hoped that the development of the large areas of land available in Kwai Chung would be encouraged by thus widening the range of exchange entitlements available for the purpose of acquiring land there.

By the end of 1968 despite the many exchanges which had been taken up between 1963 and 1965 there were still outstanding exchange letters which entitled their holders to a total of over 4½ million square feet of building land or somewhat over one hundred acres. This debt must be cleared before any significant programme of auction sales of industrial land can be contemplated. It was after all the original private owners who played a major part in making the development possible and reasonably economic.

I am glad to say that present negotiations in Tsuen Wan and Kwai Chung suggest that over 1.3 million square feet of industrial land will be granted by way of exchange over the next few months. I have every expectation that the industrial land which is becoming available at Castle Peak will be taken up in the light of the low exchange premia set by Government.

My honourable Friend's question implies that the system of exchange is unduly complicated and that sale by auction could be simpler for developers. To some extent I agree with him. However, I would point out that a bidder at an auction can never be sure that he is going to be successful. In contrast the holders of appropriate exchange letters can apply for a site in a suitable location and, if it is available and he is prepared to pay the premium, he can be sure of obtaining the site provided he takes up his option within a limited time.

It is true that the acquisition of exchange letters can present a problem for some developers. However, there are, of course, real estate agents and land brokers who can assist them. In addition a developer can advertise his requirements in the Press as a means of notifying his interest to holders of exchange entitlements willing to assign them. The price to be paid is a matter for negotiation similar to that required if one wished to acquire a privately owned industrial lot or building. Indications are that many developers have preferred proceeding by way of such negotiations in relation to land at Tsuen Wan/Kwai

Chung to taking the chances of a public auction in respect of land in the urban area.

I am considering the establishment of a central record of the names and addresses of holders of exchange letters to which a prospective developer may refer. This may assist developers to contact a wider range of holders of exchange entitlements.

I would be happy to consider any other ways and means of simplifying the problem of making industrial land available to those who want it. However, experience of the last few months suggests that many industrialists are quite capable of negotiating exchanges. My staff are there to help any who find the procedures difficult to understand. What they cannot do is recommend particular holders of exchange letters or have anything to do with the negotiations for the acquisition of such exchange entitlements.

Perhaps I should end with a note of warning. The acquisition and disposal of land is inevitably a complicated business, especially where private ownership is involved, unless resort is had to arbitrary measures. Many interests have to be balanced before a particular system is adopted. It is all too easy to cause confusion by "tinkering" with established procedures. I would therefore wish to be firmly convinced that the present system is not in the general interest of Hong Kong before recommending a new one.

Former Naval Dockyard land

2. MR M. A. R. HERRIES asked: —

> Will Government advise this Council what plans it currently has for the utilization of the former Naval Dockyard land and also when these plans will be published?

MR J. J. ROBSON: —Sir, honourable Members will recall that in 1965 when tenders were called for the development of old Dockyard area in accordance with the somewhat complex scheme then envisaged, no satisfactory offers were received. The original statutory plan which embraced this area was therefore referred back to the Town Planning Board for reconsideration with a view to producing a less ambitious scheme.

The Board exhibited its revised Draft Plan on 22nd November 1968, and, having heard various objections, the plan which the Board now considers suitable for approval will shortly be submitted to the Governor in Council.

This plan envisages the use of the old Dockyard land south of Harcourt Road largely for commercial, residential and open space purposes. An area of some 4 acres west of Cotton Tree Drive is zoned for commercial use; and an area of 9 acres east of Cotton Tree Drive is zoned for commercial/residential uses. The commercial and commercial/residential zones may include government, institutional, community and public utility facilities. The most easterly section of the old Dockyard, comprising about 5 acres, is zoned for open space.

Once this plan is approved it will still not be possible to go ahead with much development until a final decision has been reached on the Mass Transit Consultants' underground railway proposals. These affect the old Dockyard area in a number of ways. If the underground railway system is approved, it appears probable that the terminal station for the Tsuen Wan and Kwun Tong lines will be located here and the Island line may possibly run through the area. Whilst these railway lines will not of course prevent development in the future, it is not possible to proceed with large scale development until the final alignments have been agreed.

However, it has been possible to select one site on Murray Road at the western end of the Dockyard area which will not be affected by the underground railway system. It is intended to use this site for a further multi-storey car park which may possibly include certain other facilities. Although this car park is as yet only in Category C of the Public Works Programme, it is hoped to have it completed and available for use by the time the Cross Harbour Vehicular Tunnel is built.

It is hoped that in a year or so, when the more detailed views of the Mass Transit Consultants are to hand, it will be possible to go ahead with the disposal and development of land in the remainder of the Dockyard area. In the meantime should applications for specific sites be received from the public, consideration will be given to how these can be fitted in with the planning without prejudice to the final underground railway scheme.

Goodman Corporation

3. MR FUNG HON-CHU asked: —

> Will Government let us know whether any urgent Government projects are still held up through the failure of Goodman Corporation to fulfill its obligations, if so, what these projects are and what steps have been taken to remedy the situation?

MR ROBSON: —The Government projects which are being delayed because of the failure of the Goodman Corporation are 5 domestic blocks and 3 estate schools at Stage II of the Sau Mau Ping Resettlement Estate; 3 domestic blocks and 2 estate schools at the Tze Wan Shan Resettlement Estate; 3 domestic blocks and 1 estate school at Ko Chui Road Low Cost Housing Estate at Yau Tong; 8 domestic blocks and 2 estate schools at Wong Chuk Hang Low Cost Housing Estate, together with a swimming pool at Li Cheng Uk and a swimming pool at Kwun Tong.

I think all these projects can be considered as urgent and, because of this, authority was obtained from Government's Central Tender Board to accept an offer from a group of financiers to form a new company which would take over the contracts, re-employ the subcontractors and complete the projects without delay.

It may not be appreciated that the full process of calling for public tenders for the completion of a contract which has been re-entered is a long drawn out process. All the equipment and material on the site, together with the work completed under the contract, has to be accurately measured up and recorded, bills of quantities taken off for the work left undone, and new contract documents prepared. This takes at least three to four months and the calling for tenders and subsequent award of the contract takes a further month. When many contracts are involved, there is the added complication that to protect Government's financial interests monies due to the original contractor under one contract may have to be held to offset any additional expenditure incurred by Government for the completion of the others.

While it was hoped that calling for new tenders could be avoided in the case of Goodman's contracts, it soon became evident that the promoters of the new company were having difficulty not only in completing their financial arrangements on time but also in agreeing terms with the sub-contractors. In parallel with these negotiations, therefore, private Quantity Surveyors were appointed to five of the six projects to measure up the completed and outstanding works and to prepare bills of quantities for new contracts in case these were required. PWD staff were similarly employed on the sixth contract.

The deadline for completion of satisfactory financial arrangements for the new company expired at noon on 23rd May, but following receipt letters from the Goodman sub-contractors and the financiers involved, I said that if they completed their financial and other arrangements these would not be turned down by me simply because they had not been completed on time.

This morning I had a meeting with the principal financier and representatives of the sub-contractors at the various sites. It is now hoped that the new company can soon be formed and, if these hopes

are fulfilled, the sub-contractors have affirmed that work can commence at some sites within 7 to 14 days of formation of the new company.

MR FUNG: —Sir, can my honourable Friend advise us whether the swimming pool project was supposed to be completed for this summer and when can it be ready for use?

MR ROBSON: —I think it is correct to say that the original time-table was for the swimming pool to be completed before this Summer's swimming season. When it can now be completed will to some extent depend upon whether this company is formed. If the new company is formed and we can start work quickly then I hope perhaps that the swimming pool will be ready for the next swimming season but it will certainly not be completed for this swimming season.

MR FUNG: —Sir, in view of the urgent need of swimming facilities is it not possible that this completion date be advanced even at an increased cost?

MR ROBSON: —I think it physically impossible, Sir, to get on any more quickly. I said, that parallel with the negotiations with the possible new contractor, we are measuring up so that we can call for new tenders if this is necessary. But this, as I said, is a long drawn out process. It will take at least two to three months before we can even call for new tenders.

Recreational facilities in Western District

4. MR WILSON T. S. WANG asked: —

> In view of the serious shortage of recreational facilities in the Western District, can Government expedite the clearance of the site formerly occupied by the slaughterhouse at Kennedy Town and the quarantine depot annexed to it, so as to enable the early construction of the projected swimming pool complex in this area?

MR D. R. W. ALEXANDER: —Sir, the position with regard to the construction of the swimming pools at Kennedy Town is as follows: —

firstly, the site allocated for the swimming pools is that part of the old Kennedy Town slaughterhouse-complex occupied by the cattle quarantine depot run by the Agriculture & Fisheries Department;

secondly, until an alternative cattle quarantine depot can be provided, the site cannot be released for development.

With regard to the question of an alternative depot, two proposals are at present under consideration—one that the site of the present Ma Tau Kok slaughterhouse might be converted into a temporary depot when the new Cheung Sha Wan abattoir comes into service later this year, so releasing the old slaughterhouse site at Ma Tau Kok: the other, that the construction of a permanent depot should proceed as a matter of urgency on a site at Kwai Chung.

A site near Pillar Island, Kwai Chung, has been reserved for this permanent depot, but even then, the matter is not straightforward as part of the site is on what is now the Urban Services Department's refuse dump and in view of the nature of the ground, it will be necessary to carry out a feasibility study before any construction work can be started.

It is hoped that a decision on which of these two proposals should be adopted will be taken in the near future.

I should like to add that in the meantime the Architectural Office of the Public Works Department is carrying out the necessary planning of the swimming pool complex so that when the site is eventually available, there should be no unnecessary delay in constructing the pools.

Secondary School Entrance Examinations

5. MR WANG asked: —

> From the date of completion of the Secondary School Entrance Examination, how many days does it take for the results to be published? In view of the anxiety of parents of all primary school leavers over such results for having to make alternative plan if their children are not successful in this examination, can a greater effort be made to effect earlier notification of the results?

MR W. D. GREGG: —Sir, it is expected that the results of this examination will be published in the third or fourth week of July, that is about eleven weeks after the completion of the Examination. Every effort is made to get the results out as quickly as possible and it is worth noting that from the introduction of the examination in 1962 up to the present there has been no great change in the time taken to produce the results in spite of an increase of 50% in the number of candidates (from 26,000 in 1962 up to 40,000 this year). A substantial reduction in time would only be possible this year by sacrificing the numerous checking procedures which are designed to ensure accurate results or by abandoning the highly sophisticated allocation methods which at present ensure that candidates, as far as possible, go to schools preferred by their parents.

With the introduction of more advanced computer techniques this year and the use of a proportion of machine marking it is anticipated that by next year when the full benefits of these improvements are realized, an appreciable speeding up of the whole process will be possible.

STATEMENT

Swimming Pools (New Territories) Regulations 1969

MR D. R. W. ALEXANDER: —Sir, the Swimming Pools (New Territories) Regulations 1969*, tabled earlier this afternoon, correspond, with the Swimming Pool By-laws in force in the urban areas and provide for the licensing of swimming-pools in the New Territories. Their principal object is to prevent the construction of unsatisfactory pools and so avoid the expense and difficulty of remedying any defects after work has been completed.

At present, there are only two existing swimming pools in the New Territories which will be affected by these regulations in which the most important feature is that which requires the provision of filtration or purifying plant or other means of purifying the water used in any pool.

In order to give the owners concerned time to remedy any defects in the existing pools, provision has been made so that these Regulations shall not apply to any swimming pool the construction of which was completed before the commencement of these regulations, until 1st April 1970.

POLICE FORCES (CHANGE OF TITLE) BILL 1969

EVIDENCE (AMENDMENT) BILL 1969

CROSS-HARBOUR TUNNEL BILL 1969

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

POLICE FORCES (CHANGE OF TITLE) BILL 1969

THE COLONIAL SECRETARY moved the second reading of: —"A bill to provide that references in any Ordinance to the Hong Kong Police Force and the Hong Kong Auxiliary Police Force shall be read as references to the Royal Hong Kong Police Force and the Royal Hong Kong Auxiliary Police Force respectively."

* Page 306.

He said: —You Sir and indeed all honourable Members of this Council are well aware of the twin honours recently conferred by Her Majesty The Queen on the Hong Kong Police Force and the Hong Kong Auxiliary Police Force—that is to say, the bestowal of the title Royal on both Forces and the acceptance of the position of Commandant General by Her Royal Highness Princess Alexandra[*]. This recognition of the valuable services of the Police Forces needs no elaboration from me and indeed speaks for itself.

But it is necessary to provide that in every enactment the phrase Hong Kong Police Force and Hong Kong Auxiliary Police Force should be read and construed as references to the Royal Hong Kong Police Force and the Royal Hong Kong Auxiliary Police Force. That provision is made by the bill now before you.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

This Bill provides that references to the Hong Kong Police Force or the Hong Kong Auxiliary Police Force in any Ordinance, shall be read as references to the Royal Hong Kong Police Force or the Royal Hong Kong Auxiliary Police Force as the case may be. The amendments which will be effected by this Bill are consequential on the conferring of the title "Royal" by Her Majesty the Queen on the said two Police Forces.

EVIDENCE (AMENDMENT) BILL 1969

THE ATTORNEY GENERAL moved the second reading of: —"A bill to amend further the Evidence Ordinance."

He said: —Sir, the law of evidence which applies in Hong Kong courts has always closely followed English law on the subject, both in criminal and in civil proceedings, and the purpose of this bill is to maintain this position by introducing into our Evidence Ordinance, Chapter 8, the provisions of the English Civil Evidence Act 1968.

The most important feature of the English Act is its removal, in civil proceedings only, of most of the restrictions on the admissibility of first hand hearsay evidence.

[*] (GN(E) 12 of 1969).

[THE ATTORNEY GENERAL] **Evidence (Amendment) Bill—second reading**

The present rule against the admission of hearsay evidence can perhaps be summarized by saying that it prohibits assertions by persons other than the witness who is testifying, or assertions of a second-hand nature in documents produced to the court, from being admitted as evidence of the truth of those assertions. There are certain exceptions to this rule. Linked to this principle is what is often called the rule against narrative, by which, except for certain limited purposes, previous statements which are made out of court by a witness are not admissible to show the consistency of his evidence.

The English hearsay rules were developed mainly during a period when juries sat in most civil and criminal cases and it was thought that they were likely to be unduly influenced by the second-hand evidence of persons who were not called as witnesses and so were untested by cross-examination. In civil proceedings, in which juries are now employed only infrequently, this consideration is of very much less weight.

Another main reason for the exclusion of hearsay has been the argument that only the best evidence, which can be probed and tested by questioning, should be admitted. The new approach is to admit any evidence which is logically probative, though the weight which will be given to it will depend upon its source.

Clause 1 of the bill, prescribes on the 1st October 1969, as the date on which clauses 2, 3, 7 and 8 of the bill shall come into force. These clauses deal with the proposed new Part IIB of the Ordinance which is in clause 7, and matters connected with it.

The rest of the bill, which contains the new hearsay rules, will not come into force until a date to be appointed by the Governor by notice in the *Gazette*. This is to enable the necessary rules to be made, under the new Part IIA which is introduced by clause 6 of the bill, before that Part is brought into effect. Those sections of the English 1968 Act which are reproduced in the new Part IIA have been similarly held in abeyance pending the making of rules. It is intended to await the publication of the English rules, and to follow them closely in ours, and for this reason there may be an interval of some months before the new Part IIA is actually brought into force.

Clause 2 of the bill abolishes the privilege whereby a spouse could decline to disclose in evidence any statements which were made during marriage by the other spouse.

Clause 3 abrogates the previous rule whereby a witness could not be forced to answer any question which tended to show that he had been guilty of adultery.

Clause 4 repeals sections 33 and 34 of the Evidence Ordinance, which are concerned with matters which will be covered in the new Part IIA.

Clause 6 adds the new Part IIA, which follows very closely sections 1 to 10 of the English Act, and it is in this Part that the important changes to the hearsay rules are to be found.

Section 38A sets out the general principle that hearsay evidence will be admissible in civil proceedings if the Ordinance allows it or if the parties agree, but not otherwise.

The effect of the proposed new section 38B is to allow a witness to testify as to what X told him about an incident and for such evidence to be received as establishing the truth of what X said, so long as X himself saw the incident. But, by subsection (3) of section 38B second-hand hearsay is excluded, so that a witness cannot give evidence of what X told him that Y said to X. Obviously, a line has to be drawn and evidence becomes less reliable with repetition.

Under section 38C, a previous statement made out of court by a witness will be admissible not only to attack his credit, as at present, but also as evidence of the facts contained in the previous statement. This abolishes the rule against narrative, to which I referred earlier, because it is of considerable value to a court, when deciding on the accuracy of a witness' evidence, to be able to take into account what he said at an earlier time, when the events which he is describing were for fresher in his memory.

Section 38D provides for the admission of documentary records compiled by a person from information supplied to him by others who had personal knowledge of the facts. To this limited extent, therefore, second-hand hearsay can be received by a court.

Section 38E will enable statements in documents produced by computers to be admitted, subject to certain conditions which are set out in that section.

By section 38F, statements contained in documents can be proved by the production of copies.

Section 38G would allow evidence to be adduced to support or contradict the hearsay evidence of a person who is not called as a witness, but whose statement is admitted under section 38B or 38D, about which I have already spoken.

[THE ATTORNEY GENERAL] **Evidence (Amendment) Bill—second reading**

Under section 38H rules can be made providing for the procedure to be followed in connexion with the admission of hearsay statements under sections 38B. D, E and G. These rules are to provide for notice to be given of an intention to rely on such evidence, so that the other party may require the maker of the statement to be called as a witness if he is available. Rules may also empower the court to admit even if the requisite notice has not been given.

Section 38I gives statutory force to a number of common law exceptions to the hearsay rule, whereby admissions, publications, public documents and records and certain kinds of second-hand hearsay dealing with reputation and pedigree, were admitted.

The new Part IIB, which is added by clause 7 of the bill, deals with a number of different matters.

Section 38K provides that the conviction of a person of a criminal offence by a court in Hong Kong may, in later civil cases, be proved so as to raise a presumption that he committed the offence and at present this is not so. Linked with this section is section 38M, which makes a previous conviction conclusive in any defamation action. By clause 38L a finding of adultery in matrimonial proceedings will raise a presumption, in any later proceedings, that adultery was committed.

Section 38N deals with the right of a person to refuse to answer questions which might expose him to prosecution, which is generally known as the privilege against self-incrimination. This right is extended so as to entitle a witness to refuse also to answer any questions which might be likely to incriminate his or her spouse.

Section 38O abolishes a number of obsolete privileges relating to such matters as forfeiture, title deeds, documents supporting a party's own case and questions tending to establish adultery.

This bill is, I believe, of some importance in that it attempts to simplify the law of evidence, which is, in many respects, both complicated and restrictive. It extends only to civil proceedings at present, so that unfortunately, the old learning on the subject cannot be forgotten.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY.

Question put and agreed to.

Explanatory Memorandum

This Bill seeks to amend the Evidence Ordinance so as to introduce into the law of Hong Kong the provisions of the U.K. Civil Evidence Act 1968, which gives effect, with some modifications, to the recommendations in the Thirteenth, Fifteenth and Sixteenth Reports of the U.K. Law Reform Committee.

Clause 1 is based on section 20(4) of the U.K. Act and takes account of the Civil Evidence Act (Commencement No. 1) Order 1968. Subsection (2) provides that clauses 2, 3, 7 and 8 (which correspond to Part II of the U.K. Act) will come into operation three months after the enactment of the Bill. Subsection (3) deals with the commencement of the rest of the Ordinance which cannot be brought into force until the necessary rules are made under new section 38H.

Clause 2 abolishes, in relation to civil proceedings, the privilege under which a spouse can decline to disclose a communication made by the other spouse during the marriage.

Clause 3 abolishes, in relation to civil proceedings, the existing privilege against self-incrimination in respect of a charge of adultery.

Clause 4 repeals sections 33 and 34 of the principal Ordinance, which make documentary hearsay generally admissible, and provides for the weight to be given to such evidence. They are replaced by new sections 38B, 38D, 38E and 38F(3). Clause 5 repeals interpretation provisions in section 38 of the principal Ordinance which are replaced by different provisions in new sections 38J(1) and 38Q(1) and (2).

Clause 6 adds a new Part to the principal Ordinance, based on Part I of the U.K. Act.

The new sections 38A to 38J deal with hearsay evidence. Under the new section 38A such evidence will in future be admissible only by virtue of a statutory provision or by agreement. The new section 38B makes "first-hand" oral or documentary hearsay generally admissible, subject to rules made under the new section 38H, but the leave of the court will be required to the admission in evidence of a statement made by a person called as a witness by the party who seeks to rely on the statement. Subsection (3) prevents "second-hand" oral hearsay being admissible under the new section. Under the new section 38C, a witness's previous statement will be admissible not only to support or impugn his credit (as at present) but also as evidence of the facts stated in it: the same will apply to a document used by a witness to refresh his memory and put in evidence under the present law.

Evidence (Amendment) Bill—second reading

[*Explanatory Memorandum*]

The new section 38D provides for the admissibility of statements contained in documentary records, compiled in pursuance of a duty, from information derived, directly or indirectly, from a person with first-hand knowledge of the relevant facts. The new section 38E makes admissible a statement contained in a document produced by a computer used for the purpose of regular activities, subject to the conditions specified in subsection (2). The new section 38F will enable statements contained in documents to be proved by production of copies and provides for the inferences to be drawn from, and the weight to be attributed to, specified matters affecting such documents, including the incentive of any person concerned to conceal or misrepresent relevant facts; subsection (4) makes it clear that hearsay cannot be relied on to corroborate other evidence in those cases in which corroboration is required; subsection (5) provides criminal penalties for wilfully or recklessly giving a false certificate in civil proceedings in respect of the proper use of a computer.

The new section 38G provides for the admissibility of evidence as to the credit of the maker of a statement admitted under new section 38B or 38D where the maker is not called as a witness.

The new section 38H enables rules to be made by the Chief Justice for the purposes of the new Parts introduced by the Bill. It also requires such rules to be made to provide for notice being given of a party's intention to rely on a hearsay statement and enabling his opponent to require the maker of the statement to be called as witness if he is available. Subsection (3) enables such rules to confer on the court a discretion to admit a hearsay statement notwithstanding any failure to give the requisite notice, and also enables the rules to provide for the admission of statements made in the course of giving evidence in other proceedings.

The new section 38I gives statutory force to certain common law exceptions to the hearsay rule whereby admissions, records, and certain classes of "second-hand" hearsay are admissible. The new section 38J contains the necessary definitions and provides for the procedure to be adopted in arbitrations and proceedings before the tribunals to which, by virtue of the new section 38Q, the new sections 38A to 38I apply.

Clause 7 adds a Part IIB to the principal Ordinance and follows Part II of the U.K. Act.

The new section 38K makes a conviction by a court in the Colony but not a court-martial, admissible, in subsequent civil proceedings, as evidence that the person convicted committed the offence. The new section 38L makes similar provision for a finding of adultery in matrimonial proceedings. The new section 38M makes a previous conviction conclusive evidence, in an action for libel or slander, that the person convicted committed the offence of which he was convicted.

The new section 38N extends the privilege against self-incrimination in proceedings other than criminal proceedings so as to cover incrimination of a spouse. The new section 38O abolishes a number of obsolete privileges, including the right of a witness in certain proceedings to refuse to answer a question tending to show that he has committed adultery. The new section 38P makes consequential amendments in certain enactments relating to privilege.

The new section 38Q is the interpretation clause.

The new section 38R is the rule-making clause.

Clause 8 makes consequential amendments to the Matrimonial Causes Ordinance.

CROSS-HARBOUR TUNNEL BILL 1969

THE FINANCIAL SECRETARY moved the second reading of: —"A bill to provide for the grant of a franchise to construct and operate a tunnel across the harbour, the regulation of the construction, operation and maintenance of such tunnel and for matters ancillary thereto or connected therewith."

He said: —Sir, a Resolution granting a franchise to construct and operate a tunnel across the harbour was passed by this Council on 11th August 1965*. The basic conditions in accordance with which the grant of the franchise was to be made were included as a Schedule to this Resolution.

The Resolution and the Schedule to it were the subject of an extensive debate at that time and I do not now propose to go over the same ground in introducing this bill. I shall, therefore, confine my remarks to those points in the bill which depart from the terms included in the Schedule to the original Resolution.

In the first place, the period within which the franchise holder is required to complete the tunnel, which was set down in paragraph

* 1965 Hansard, pages 451-65, 487-520.

18 of the previous Resolution as five years from the date on which the offer of the franchise was accepted by the Company—*ie* 17th August 1965—is being extended. I do not wish here to do more than make reference to the delays and difficulties which the Cross-Harbour Tunnel Company has experienced in arranging acceptable terms for the financing of the project—or I should like to make it clear that this Government was in no way responsible for these. It is sufficient to say that negotiations have now reached a final stage and it is hoped that it will be possible for the Company to sign a construction contract with the contractors' consortium before the end of this month, and that actual work may commence before the end of the summer. Under the terms of the proposed contract the estimated completion date of the tunnel is three years from the start of work. So as to allow for any unavoidable delays and to leave the Company a reasonable leeway, the date by which the tunnel construction is required to be completed is now set in clause 28 of the bill as 18th August 1973.

There are next three financial matters to which I should like to make reference. The first concerns the conditions of the contribution of $12 million by the Company to the cost of construction of additional roads and other engineering works. It is now proposed that these payments should not be made until after the main loan from the United Kingdom has been paid off, that is, about eight years after completion. It is, therefore, proposed to convert the $12 million into a loan on terms to be negotiated.

The second financial point of our proposal is that Government should take up its option of 25% of the shares of the Tunnel Company up to a maximum of $27½ million. The maximum is likely to be required.

The third point concerns counter-guarantees to the Unite Kingdom Export Credit Guarantee Department in respect of its guarantee of the commercial bank loan of up to £ 14¾ million. Each shareholder is required to give a guarantee of this loan in proportion to his shareholding in the Company, so that Government's liability for guarantee will amount to just under £ 3.7 million.

It is proposed to request Council's formal approval of these three financial commitments by way of a separate Resolution; they have already been accepted by Finance Committee in principle.

A number of other points which were included in the Schedule to the original Resolution in particular those relating to the grant of land, are also unsuitable for incorporation in the bill, and will be

covered by a supplementary agreement to be entered into between Government and the Company. This supplementary agreement also sets out that the initial tolls, in line with paragraph 14 of the Schedule to the original Resolution, should not be less than $2.50 for a private car, $5 for a double-decker bus and $7.50 for a lorry. The actual fixing of the tolls will be subject to compliance with the requirements of clause 40 of the bill which require that all tolls should be subject to agreement between Company and the Government.

I should also make reference to paragraph 13 of the Schedule to the Resolution which required the Company to furnish to Government before any contract was let, a complete statement of its financing arrangements. The Company has now met this requirement. The full cost of the tunnel, is now estimated at $340 million.

For the rest, Sir, the Cross-Harbour Tunnel Bill, follows closely the provisions set out in the Schedule to the Resolution passed by this Council on 11th August 1965.

MR SZETO WAI: —Sir, it is most gratifying to see this bill before Council to-day as after having been debated for over a decade, a cross-harbour road link will finally take shape, and in a few years more, Hong Kong's transportation system will emerge from its antiquated structure into a modern form compatible with its large population and fast expanding economy.

Close to 4 years have elapsed since the tunnel franchise was approved by this Council. On that occasion, I said

> "…. I believe the tunnel crossing will be a long-term benefit to the economic and social development of the Colony. Its construction will be a momentus step with far reaching effects and a manifestation of private enterprise's great confidence in the economy and destiny of Hong Kong."[*]

Sir, these remarks were true in 1965. They equally hold true today. The delay in the realization of the project has given rise to considerable speculation as to its fate. On one hand critics have doubts about its commercial viability; on the other hand fears have been expressed that it would not cope with our future cross-harbour traffic. Whilst it is easy to project future traffic growth, it is difficult to predict accurate the amount of induced traffic which a convenient crossing will attract. However, no one will query the importance of having a road link to integrate our transportation on both sides of the harbour.

[*] 1965 Hansard, page 506.

[MR SZETO] **Cross-Harbour Tunnel Bill—second reading**

Sir, I applaud the bill before Council as a very comprehensive piece of legislation covering all aspects of the tunnel franchise including its construction, operation, royalty, toll charges, the rights of Government and the rights and obligations of the operator, etc. However, I wish to submit for this Council's consideration my observations on a number of clauses comprised therein:

(*a*) Clause 14 provides that the Company shall pay to the Government a royalty of 12 per cent of the operating receipts. In view of the problems encountered by the Kowloon Motor Bus Company whose royalty is assessed on gross receipts, I am of the opinion that a royalty based on net profit would be more equitable and in line with other forms of public utilities.

(*b*) Clauses 23 and 39 enables the Director of Public Works and Commissioner for Transport to enter the tunnel area without payment of tolls or other charges for reasons specified therein. No reference is, however, made to conditions governing the passage through the tunnel of Government vehicles such as ambulances, police vehicles, fire appliances, etc in the execution of their duties particularly on emergency missions.

(*c*) Clauses 40 and 41 provide the Governor in Council with the power to approve and vary the toll charges. I hope such charges, especially those fixed prior to the operating date, will be calculated on a reasonable return on capital assets appropriate to a public transport concern and not arbitrarily as resolved by Council in 1965. Clause 42(2), for inexplicable reasons, requires the Company to have printed copies of a list of toll charges for sale at a charge to every person applying for same. Since the tunnel area and approach roads are defined under clause 36(2) as a public place for the purposes of any law, the public should have the right to know its toll charges without having to pay for the information.

(*d*) Clause 46 subclause (1) permits the installation of advertisements in the tunnel structure provided prior approval is obtained from the Commissioner for Transport. Whilst appreciating the fact that the Commissioner will exercise his discretion with the greatest care in granting his approval, I feel nevertheless advertisements may become a source of danger to the safety of motorists, and few road tunnels in the world provide for advertising.

(*e*) Clause 57 enables a minimum of one thousand ratepayers or local motor vehicle owners to appeal collectively by petition to the Governor in Council if they consider that the Company

has failed to provide or to maintain adequate, efficient or safe facilities for the passage of motor vehicles through the tunnel. While I fully support in principle any formal recognition of public opinion on matters relating to the operation of the tunnel, such rights may also lead to abuse by all the irresponsible individuals. On the other hand, a person or a small group of individuals wishing to submit a genuine complaint may find the task of having to seek so many others to support their appeal somewhat of a deterrent. Under the circumstances, I would suggest that appeals of this nature be processed through one of our many local civic bodies who will naturally ensure the genuineness of the appeal before submitting it.

One of the popular arguments against the tunnel is that it will stimulate and induce extraneous traffic which will in turn increase road congestion and aggravate parking problems on both sides of the harbour. Now that its construction is imminent, I trust Government will redouble its efforts in improving our road system and parking provision to prepare ourselves for its opening.

Sir, with these observations, I support the motion.

THE FINANCIAL SECRETARY: —I wonder, Sir, if I might attempt to answer some of my honourable Friend's observations. The first point he makes concerns royalty—the gross nature of the royalty. I would like to say first that I have never accepted that the gross royalty provisions of the Kowloon Motor Bus Company have caused any difficulties whatsoever. Rather I think they have made easier the adjustment of the Company's affairs. But, in any case, we have a particular reason for wishing to impose a gross royalty on the Tunnel Company. That is, that the object of the royalty is to secure payment for certain facilities given to the Company by way of land and so on, and also to provide for any necessary compensation to the Ferry Companies. It is necessary therefore that we should be sure of receiving these royalties and they should not be determined by the profitability or not of the Company.

The second point was the contrast between the fact that the Director of Public Works and the Commissioner for Transport can enter the tunnel area without payment whereas there is no provision for ambulances, police vehicles and so on to pass through. This is not quite a fair comparison. The Director of Public Works and the Commissioner for Transport have a right to *enter* the tunnel, not to pass through the tunnel, and we have not thought it necessary to make provision for free transit of Government vehicles going about their business.

My honourable Friend's next point was on toll charges. The question whether they will be calculated on a reasonable basis for a reasonable return of capital assets, or arbitrarily as resolved by this Council in 1965. I think we are committed to what my honourable Friend called the arbitrary fixing by the Council in 1965 as a starting point. But, how any variation in future may be determined will be a matter, I think, for the Governor in Council who must agree with the Company; or for an arbitrator in the event of disagreement; and I can therefore give no assurances on that point although I think the terms of clause 41 do imply a reasonable return on the Company's operations.

My honourable Friend also commented on clause 57 which gives a minimum 1,000 ratepayers the right to appeal if they consider the provision of the services inadequate. I think it is right and proper we should have this formal right of appeal granted to the public and I think it would be difficult to legislate for the routing of such appeals through one of our many civic bodies. But of course one would expect that there would be no bar whatsoever on our local civic bodies processing appeals of this nature if anybody wished them to do so or if they themselves felt it necessary to do so.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

On the 11th August 1965, the Legislative Council passed a resolution whereby the Council approved the grant of a franchise to construct and operate a tunnel across the harbour between Wan Chai and Hung Hom. That grant was offered by the Government to the Victoria City Development Company Limited and was accepted by that Company on the 18th day of August 1965. On the 14th January 1967 the said Company assigned all its rights and obligations under the said grant to the Cross-Harbour Tunnel Company Limited. The purpose of this Bill is to give legislative effect to the grant of the franchise to construct and operate a tunnel across the harbour and to enact provisions relating to the construction, operation and maintenance of the tunnel and other connected matters.

2. *Clause 2* contains definitions.

3. *Clause 3.* A plan of the tunnel area has been agreed between the Director of Public Works (hereinafter referred to as the Director) and the Tunnel Company (hereinafter referred to as the Company). This plan will be signed by the Director and deposited in the Land Office. This clause enables the Director with the agreement of the Company to vary the boundaries of the tunnel area or the area made available to the Company during the course of the construction namely, the works area. Whenever the original plan is varied a new plan is required to be deposited in the Land Office and by subclause (4) the Director is required to notify the deposit in the *Gazette*.

4. *Clause 4* gives legislative effect to the grant of the franchise for the construction and operation of the tunnel across the harbour between Wanchai and Hung Hom. This grant will be subject to the provisions of the Bill and to any agreements which may be concluded between the Government and the Company which are not in conflict with the Bill. It is intended that the grant should continue for 30 years from the start of the construction of the tunnel.

5. *Clause 5.* The Company may not assign, charge, mortgage or otherwise dispose of its rights and obligations under the Bill, except with the prior consent of the Governor in Council or for the purpose of financing the building of the tunnel. The Governor in Council, in consenting to an assignment, charge or mortgage, may impose such conditions as he may consider necessary.

6. *Clause 6.* The majority of the directors of the Company are to be British subjects. The Governor is given power to appoint two directors of the Company whenever the Government holds 10 per cent or more of the fully paid up share capital of the Company or such greater number of directors as is proportionate to the share capital held by the Government in the Company.

7. *Clause 7* obliges the Company to have not less than eighty million dollars fully paid up share capital on the date on which the tunnel is open to the use of the public.

8. *Clause 8.* The Company shall ensure that the shares of the Company are quoted on the Hong Kong Stock Exchange within two years from the date upon which the tunnel is open to the use of the public, or such later date as may be agreed by the Governor in Council.

9. *Clause 9* grants to the Company, from the date upon which the construction works commence, a wayleave through the

Cross-Harbour Tunnel Bill—second reading

[*Explanatory Memorandum*]

tunnel area, for which an annual rent of seventy-five thousand dollars a year is payable by the Company.

10. *Clause 10* preserves to the Government the rights of ownership in the land comprised in the tunnel area and the works area.

11. *Clause 11* charges the Company an annual rent at the rate of five thousand dollars per acre in respect of land within the tunnel area upon which stands any toll structure, as from the date when the Director approves the commencement of the construction works.

12. *Clause 12*. The works area shall be made available to the Company while the construction works are in progress on such conditions as may be agreed upon between the Government and the Company.

13. *Clause 13*. The Company is to pay to the Government the sum of twelve million dollars, as a contribution to the expenses incurred by the Government in the construction of roads and other engineering works required for use in connexion with the tunnel.

14. *Clause 14* imposes a royalty of 12½% of the operating receipts during the continuance of the grant of the franchise. However, during the first ten years after the tunnel opens to the public a reduced royalty of not less than 7½% of the operating receipts in respect of any financial year may be authorized by the Governor. The Company would, however, be required in subsequent years to pay the difference between the amount paid at the reduced percentage and the amount which would have been payable at 12½% and the interest accrued on any such difference at the rate of 1¾% per quarter.

15. *Clause 15*. The Company must permit the Financial Secretary, and any person authorized by him in writing, to inspect the books of the Company for the purpose of ascertaining the amount of royalty payable by the Company.

16. *Clause 16* requires the Company to construct the tunnel at its expense.

17. *Clause 17* prohibits the Company from commencing the works before a date agreed upon between the Director and the Company. By subclause (2), the Director is required to publish a notice in the *Gazette* specifying the date upon which the construction works are to be commenced.

18. *Clause 18*. The Company is to submit to the Director plans, structural details and calculations relating to the tunnel construction works. These plans, structural details and calculations may relate to the complete construction works or to a division of the works.

19. *Clause 19* requires the plans, etc. referred to in clause 18 to be accompanied by information as to the method of construction and the conditions of contract relating thereto.

20. *Clause 20* precludes the Company from commencing any part of the construction works until the plans, structural details, calculations, the method and programme of construction and the conditions of contract have been approved by the Director.

21. *Clause 21*. The tunnel is to be constructed in accordance with the plans unless the Director gives his approval for their modification. The Director may, if he is of opinion that there is a departure from the plans or that the method of construction is unsafe, direct the Company to discontinue the construction work until he is satisfied that the construction works will comply with the plans or that the method of construction will be safe.

22. *Clause 22*. The Company must keep open and clear of obstruction such channels as the Director of Marine may require for the passage of shipping. Power is conferred on the Director, after consultation with the Director of Marine, to direct the Company to discontinue construction works if he is of opinion that any part of these works or the plan associated with them is obstructing a shipping channel.

23. *Clause 23*. The Director is given power to enter the tunnel area or the works area for the purpose of ascertaining whether the tunnel structure or the construction works are dangerous. The Director is also empowered to inspect and test machinery and to ascertain whether the Company is complying with the provisions of the Bill in the construction and maintenance of the tunnel.

24. *Clause 24*. Any spoil dredged from the sea bed for the purpose of the construction works will be disposed of by the Company in such manner as the Director may direct.

25. *Clause 25*. The Company may require the owner of electric power cables, telephone and other cables, pipes used in the supply of water, gas or oil or for drainage or sewerage to divert such cables or pipes to an extent necessary to permit the construction works to proceed. If an owner fails to comply with such a requirement the Company is empowered to effect the diversion. The expense incurred in effecting a diversion under this

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[*Explanatory Memorandum*]

clause is to be borne by the Company and the Company is required as far as practicable to carry out the diversion without interrupting the service carried in the cables or pipes concerned.

26. *Clause 26* exempts the tunnel structure and construction works from the Buildings Ordinance (Cap. 123).

27. *Clause 27*. Section 13 of the Summary Offences Ordinance (Cap. 228) prohibits the making of noise likely to disturb public tranquility between 11 p.m. and 6 a.m. This clause provides that this section will not apply to the tunnel structure or construction works, until the date upon which the tunnel is opened to the use of the public or such later date as may be approved by the Governor in Council.

28. *Clause 28* requires the Company to complete the tunnel structure before the l8th August 1973, or such later date as may be approved by the Governor in Council. If the Governor in Council is considering approving a later date of completion he shall take into account whether the failure was caused by circumstances beyond the control of the Company.

29. *Clause 29*. The Company, on completion of the works relating to the construction of the tunnel structure, must restore the sea bed and the works area to the satisfaction of the Director. If the Company fails to effect the necessary restoration the Director may do so.

30. *Clause 30*. Any expense incurred by the Director in effecting the restoration referred to in clause 29 shall be recoverable by the Director from the Company.

31. *Clause 31*. The Company is prohibited from opening any part of the tunnel to the use of the public until the Director has issued a certificate that in his opinion the part of the tunnel intended to be opened for use is in a fit condition.

32. *Clause 32*. The tunnel will be opened to the use of the public on a date to be agreed between the Commissioner for Transport (hereinafter referred to as the Commissioner) and the Company, which date is referred to throughout the Bill as the operating date.

33. *Clause 33*. From the date on which the tunnel is opened to the use of the public till the grant of the franchise expires, the Company is obliged to provide, to the satisfaction of the Commissioner, adequate, efficient and safe facilities for the passage of motor vehicles through the tunnel.

34. *Clause 34*. The tunnel is to be used for passage of motor vehicles upon payment of the appropriate tolls. The Company is prohibited, except on reasonable grounds, from refusing the use of the tunnel for the passage of motor vehicles.

35. *Clause 35* requires the Company to provide, at its expense, personnel and facilities for the control and safety of motor vehicles and persons in the tunnel.

36. *Clause 36*. The Road Traffic Ordinance (Cap. 220) shall apply to the tunnel area and the approach roads thereto as if they were roads within the meaning of that Ordinance. Under subclause (2), the tunnel area and the approach roads will be public places for the purposes of any law.

37. *Clause 37* enables the Company to close the tunnel totally or partially for safety reasons and empowers the Commissioner to require the Company so to close the tunnel. If the Company closes the tunnel otherwise than when required to do so by the Commissioner it must notify the Commissioner forthwith.

38. *Clause 38* empowers the Government to take over the operation of the tunnel in the interest of public security. The Government is required to pay the Company any loss or damage suffered by the Company by reason of the takeover. If the Government and the Company cannot agree on the amount of damages, the amount will be determined by arbitration under the Arbitration Ordinance (Cap. 341).

39. *Clause 39*. The Commissioner, without payment of tolls, may enter the tunnel at any time, after it is opened to the use of the public, for the purpose of carrying out inspections. The Company is required to afford him such facilities as he requires for the purpose of his task.

40. *Clause 40*. The Company shall demand and collect tolls in respect of the passage of motor vehicles through the tunnel. These tolls are to be fixed prior to the operating date by the Company and approved by the Governor in Council, or to be agreed or decided under clause 41, after that date. The Commissioner is required to publish in the *Gazette* the list of tolls so fixed and approved before the tunnel is opened to the use of the public.

41. *Clause 41*. This clause contains provisions relating to the variation of the tolls after the tunnel is opened to the public. The Governor in Council and the Company may agree to such variation. In default of such agreement the Company or the Governor in Council may submit the question of the variation to arbitration under the Arbitration Ordinance (Cap. 341). Under

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[*Explanatory Memorandum*]

subclause (5) the Commissioner is required to publish in the *Gazette* the list of tolls as varied by agreement or by arbitration.

42. *Clause 42*. The Company must display, to the satisfaction of the Commissioner, at both ends of the tunnel in conspicuous places copies of the list of tolls currently chargeable by the Company. The Company must also keep copies of the list of tolls available at its registered office for sale at a reasonable charge.

43. *Clause 43* prohibits the Company from charging a toll greater than that fixed and approved under clause 40 or varied under clause 41.

44. *Clause 44*. The Company, subject to certain limitations, may erect toll gates, toll houses and other structures.

45. *Clause 45*. The Company, with the approval of the Commissioner, may permit the installation of electric power supply cables, and telephone cables and other cables to be used for communication within the tunnel structure. Such cables will be installed on such conditions as to charges as the Company may impose with the approval of the Commissioner.

46. *Clause 46*. The Company, with the approval of the Commissioner, may use or permit the use of any part of the tunnel and ancillary buildings for advertising purposes.

Subclause (2) provides that Part IX of the Public Health and Urban Services Ordinance, which contains provisions under which regulations may be made relating to advertisements, shall not apply to the use of any part of the tunnel and ancillary buildings for advertising purposes.

47. *Clause 47* prohibits the Commissioner from giving his approval to any cable installation under section 45 or to any advertising under section 46 unless he is satisfied that the installation or advertising will not endanger the safety of persons using or employed in the tunnel or prejudice the passage of motor vehicles through the tunnel.

48. *Clause 48*. The Company shall maintain the tunnel structure in a state of repair to the satisfaction of the Director. The Director is empowered to require the Company, by notice in writing, to effect such repairs to the tunnel structure as he considers necessary for its proper maintenance and to obviate fire and other hazards. If the Company fails to comply with the

Director's requirement, the Director may effect the necessary repairs or alterations. The Director is empowered in certain circumstances to effect repairs or alterations without notice to the Company. The expense of repairs or alterations carried out under this clause are to be borne by the Company.

49. *Clause 49.* The effect of clauses 20 to 26 (which in short impose obligations on the Company) have already been explained. Clause 66 exempts the Government and public officers from certain liabilities. These clauses are to be applicable to repairs or alterations effected to the tunnel structure under clause 48 as if such repairs or alterations were construction works.

50. *Clause 50*. The Company may close, or close partially, the tunnel to enable repairs or alterations to be effected. The Director may require the Company to close, or partially to close, the tunnel and whenever the Director requires the tunnel to be closed for the purpose mentioned either partially or totally, the part or the whole of the tunnel so closed, shall not be reopened to the use of the public without the prior consent of the Director. The Company may not close the tunnel under this clause without prior notification to the Commissioner.

51. *Clause 51* enables the Governor in Council, if he is of opinion that the Company has failed in the construction of the tunnel, or in the provision and maintenance of tunnel facilities or has substantially failed to comply with any of the provisions of the Bill, to require the Company to show cause why the grant of the franchise should not be revoked. If the Company fails to show cause, the Governor in Council may by order revoke the grant from a date specified in the order.

52. *Clause 52*. On the happening of certain events (namely, the winding up of the Company, the revocation of the grant or on the expiration of the grant) the rights and obligations which the Bill proposes to confer or impose on the Company and the assets of the Company as defined in clause 56 will vest in the Government.

53. *Clause 53*. Subclause (1) sets out the amounts which the Company will be liable to pay to the Government in the event of the Company being wound up or the grant being revoked. Subclause (2) provides that the Government shall pay to the Company an agreed amount in respect of the assets as defined in clause 56. In default of agreement the amount is to be determined by arbitration. Provision is included which enables an amount deemed appropriate by the Governor in Council to be deducted by way of penalty from any amount awarded to the Company by arbitration. No amount will be payable to the Company under

Cross-Harbour Tunnel Bill—second reading

[*Explanatory Memorandum*]

this clause if the Company fails to complete the tunnel structure by the 18th August 1973 or such later date as the Governor in Council may allow.

54. *Clause 54*. No compensation is payable by the Government to the Company on the expiration of the grant of the franchise, but the Government will pay to the Company the depreciated value of machinery, equipment or plant bought by the Company, with the agreement of the Financial Secretary, within five years before the expiration of the grant and which the Company owns when the grant expires. The value of such machinery, equipment or plant will be calculated in accordance with Part VI of the Inland Revenue Ordinance (Cap. 112).

55. *Clause 55*. The vesting of assets of the Company (as defined in clause 56) in the Government will not render the Government liable for the debts of the Company.

56. *Clause 57* enables one thousand or more rate-payers or owners of motor vehicles, who are resident in the Colony, to appeal by petition to the Governor in Council if they are of opinion that the Company is failing to provide adequate and safe facilities for the passage of motor vehicles through the tunnel. Such a petition is required to be served on the Company before it is considered by the Governor in Council. Before coming to any decision on the petition the Governor in Council is required to receive and consider any representations thereon from the Company. The Governor in Council is empowered to appoint a person or committee to inquire into the matter and to report thereon. The Governor in Council may order the Company to remedy the failure, the subject matter of the petition. The decision of the Governor in Council is final.

57. *Clause 58*. The Company is given a right of appeal by petition to the Governor in Council against a direction, requirement or other decision of the Director or Commissioner. A requirement or direction is not to be enforced where an appeal has been made except in the case where the Commissioner requires the tunnel to be closed under clause 37 or in the case where the Director requires it to be closed under clause 50. The decision of the Governor in Council is final.

58. *Clause 59*. The Company shall maintain the records specified in subclause (1). Under subclause (2) the Company is required to permit the Commissioner to inspect and examine the records, toll tickets and accounts and to afford him facilities to do so.

59. *Clause 60* requires the Company to furnish to the Director or Commissioner information requested by either of them as to the construction, operation or maintenance of the tunnel.

60. *Clause 61* enables the Governor in Council to make regulations relating to the matters listed in the clause.

61. *Clause 62*. The Company may make by-laws relating to the tunnel, which may include penalties not exceeding one thousand dollars. They will be subject to the approval of the Legislative Council. The Company is required to have copies of the by-laws printed and available at its registered office for sale at a reasonable charge.

62. *Clause 63*. The Public Reclamations and Works Ordinance (Cap. 113) will not apply to the construction of the tunnel and connected works, save that section 7 (which deals with procedure) of the said Ordinance will apply.

63. *Clause 64*. A person may claim compensation for loss suffered as a result of interference with a private right arising from the construction of the tunnel.

64. *Clause 65*. The Director and the Commissioner may authorize any person to exercise any power or perform any duty conferred or imposed on either of them by the Bill.

65. *Clause 66* exempts the Government and public officers from liability in respect of acts done in connexion with the construction of the tunnel.

66. *Clause 67* contains provisions saving the rights of the Crown and is inserted to comply with Clause XXVII of the Royal Instructions.

INLAND REVENUE (AMENDMENT) BILL 1969

Resumption of debate on second reading (21st May 1969)

Question again proposed.

DR S. Y. CHUNG: —Your Excellency, one of the basic elements contributing to the economic success of Hong Kong is the comparatively low level and simple system of taxation. The 12¾% profits and earnings tax has been maintained for over one decade before changing to the present level of 15%. Therefore it is important for us to maintain this 15% level and the simple system of taxation as long as possible before making any further change.

[DR CHUNG] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (21.5.69)**

On the other hand, there is continual demand for more and better social services in Hong Kong and this will impose increasing burden on the expenditure of the Government. It is therefore essential that those people in Hong Kong who are liable to pay taxation should be made to pay their appropriate share. Hence there should not be any dispute with the official view that Government has a moral obligation to honest tax-payers in the community to ensure that they should not be called upon to bear an unfair burden of tax because of the evasion perpetuated by others deriving profits which are chargeable to tax in Hong Kong.

It is therefore a lesser evil, as my honourable Friend the Financial Secretary put it, to give the Commissioner of Inland Revenue sufficient power to require a tax-payer who is believed to be evading tax to furnish statements of assets and liabilities in Hong Kong so that a fair collection of taxation can be made. However, there is a genuine fear by some members of the public on the abusive usage of such additional power given to the Commissioner and I therefore feel it is a good compromise at this stage that the additional power be only granted for a trial period of three years after which this Council will make a review of the situation.

Coming to the details of the proposed bill I would like to make two observations. The first one is on clause 14 dealing with section 16 of the principal Ordinance. I am glad that expenditures made on patent registration, whether incurred locally or abroad, can now be deducted from profits. In view of the increasing sophistication of Hong Kong industries I welcome this particular amendment. Nevertheless I believe that we should go one step further to include expenditures relating to the registration of a design. At this stage of development of industries in Hong Kong the registration of a design is more common than that of a letters patent. I therefore suggest that the word "design" should be included in paragraph (*g*) under subsection (1) of section 16 of the principal Ordinance.

Sir, my other observation concerns with the power granted to the Commissioner and his authorized officers as contained in paragraph (iv) under subsection (1) of section 51B to retain any books, records, accounts or documents for as long as they may be reasonably required. Whilst I recognize the need in some exceptional cases to retain such books, records, accounts or documents, Government should also realize the possible hardship imposed on the person if his books, records, accounts or documents are retained by the Commissioner.

The entitlement under subsection (3) of section 51B for the person involved to examine and make extracts from the books, records, accounts or documents at such times and under such conditions as the Commissioner

may determine may not be sufficient for him to carry on his business, particularly when these books, records, accounts or documents are related to current and recent dates.

The question now is what would be regarded as a reasonable period of retention so that it would not disrupt the business of the person involved. I would consider this, in the light of business experience, to be in the region of 14 days.

In view of the development and popularity of office copying equipment nowadays, I see no reason why the Commissioner or his authorized officers cannot make copies of any books, records, accounts or documents for retention for more than 14 days. Alternatively if they want to retain for more than 14 days the original papers, although I do not think it is necessary any more for legal proceedings in the light of the proposed section 38F in the Evidence (Amendment) Bill introduced early this afternoon, they can nevertheless do so provided the person involved is given a full set of photocopies of all the papers being held. This will enable the person involved to carry on his business whilst his books, records, accounts or documents are being held by the Commissioner for more than 14 days. I therefore submit that section 51B be suitably amended to give tax-payers the necessary protection against disruption of their business operations.

MR WILSON T. S. WANG: —Sir, we all agree that the Commissioner of Inland Revenue should be adequately empowered to grapple with evasion by the employment of all reasonable measures. We all recognize the existence of substantial evasion of tax and fully appreciate that the effectiveness of our tax system depends on our being able to keep tax evasion within limited bounds.

For these reasons, we all support the intention of the proposed bill. There can be no question about that. I would however invite honourable Members to consider seriously whether after all the inclusion of the new section 51B is absolutely necessary. As I see it, the crux of the matter lies in the question: are not the Commissioner's other extended powers provided in this bill; adequate to meet the needs of the case without the additional power to obtain a search warrant?

My honourable Friend, the Financial Secretary, in introducing this bill, dwelt at some length on the additional power provided in section 51A as it appeared that in his mind there would be a strong feeling among some Hong Kong residents against an inquisitorial tax system which seeks information on more than the bare elements which go towards the assessment of taxable income.

Strangely enough, I have not heard of much adverse criticism of this part of the bill. It is evident that it will receive public support.

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In fact, the department has been able to use this method to uncover some of the "horrifying cases" in recent years, even on a voluntary basis. But, it is that section 51B which has caused most alarm. Of course, as was rightly pointed out in an English editorial, most of these adverse comments originated with the Chinese residents.

Theoretically the more power the Commissioner is accorded, the more effectively will he be able to combat tax evasion and indeed it may also be said that only those who are guilty of evasion need to fear. But, is it not possible too that the price will be too costly, not in terms of monetary expenditure, but it is an adverse effect psychologically and politically and in the possibility of abuse.

Rightly or wrongly, the fear arises from the lack of confidence that this power, once given, will be administered strictly to prevent any hint of capriciousness, vindictiveness, abuse or corruption.

Although, we were told, that this is a normal power in the case of excise taxes, I know of no such power in UK nor have I heard of any country in which similar law operates without trouble or grievance. Short of a good example in countries around us, the unease is not entirely groundless about Government's taking on too strong an authority in our unique system of administration.

The purpose of this power is to enable rapid action to be taken before evidence of evasion is destroyed or concealed. There is some doubt, however, whether this would be effective except in dealing with very amateurish offenders, nor can we rule out the possibility that someone will be tipped off to destroy or conceal the required evidence in good time.

Certain safeguards against abuses are provided in that the power is not to be exercisable unless an officer of the Department not below the rank of chief assessor has satisfied a magistrate that there are reasonable grounds for believing that certain offences have been committed and has obtained a warrant from him. While one can reasonably expect a high ranking officer to discharge his duty honestly, the fact remains that he will have to rely on his junior member of staff to be of equal integrity to feed him with the fact and information, otherwise it is possible that in the course of preliminary investigation, the matter might be dealt with in the form of negotiation.

It is most unfortunate that our local citizens have a peculiar tendency to prejudge a case before a court sentence. News spreads fast in this community and very often adversely too. When a search is

made, damage is done beyond remedy irrespective of the result of the search. It is very often for fear of this uneducated public opinion that an innocent citizen may be tempted to resort to corruption.

I am afraid I am one of the many Chinese residents who respond very sensitively to the very mention of "Prying and Searching". The words just make me shiver. But then can anyone cast off that shadow of fear, experienced in the early days of the occupation, when each tapping on the door, to "open or not to open" became the question of the moment. In the face of the humiliation of a search, how brave could one be? When one's privacy was invaded, was honesty then the best policy? Then again to take refuge, on the way one had to pass through a number of searches and prying before finally one could breathe the first breath of freedom.

There are, of course, many others who have come to Hong Kong in more recent years to escape from similar threats. Only a person who has undergone such experience understands this kind of fear. For instance, it is difficult sometimes to explain those things to the younger generation who have never known a time when one could not look upon one's home as one's castle.

There does seem to be a tendency at the present time in Hong Kong to advocate stern repressive measures. As a remedy for crime, for instance, hanging or deportation is frequently suggested. "Do this," some say, "and we shall have a peaceful town to live in."

The problem of tax evasion is one of no small importance. And it is only natural for the honest tax-payer to feel that the punishment should fit the crime. The big stick seems to them the only answer. But let us pause to consider. Is this really the right and best remedy? Even supposing it is, is this or that stick the right stick? Can it not happen to be the wrong stick for the wrong people? Could not a far better result be achieved by means of wise enquiry, discussion, and the use of ordinary common sense or any other less negative approach? Certainly the law must be enforced, but surely there is more than one way to enforce it. More might, perhaps, be achieved by appealing to the goodwill of those who possibly may not have understood the gravity of acting against the law. I would not be surprised if quite a number of tax-dodgers did not fully realize the effect of their evasion on the economy of our community. Have sufficient efforts been made to ensure that they do?

I should like to stress the undesirability of introducing legislation that bears the stamp of emergency unless it is proved absolutely necessary. This kind of legislation does not breed confidence, either nationally or internationally. It is inclined to give a false picture of the state of our affairs both to our people as a whole and to the world

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at large, and to irritate rather than to consolidate our own business and social life. If our linen is dirty, it must be washed, but might not good old soap and water, applied more diligently, be far more effective and less abrasive than a very harsh detergent?

Moreover, we should not blind ourselves to the damaging effect from this type of legislation could have on our image among certain less sympathetic sections of our community.

As we consider the whole matter in a spirit of sober reflection, does it not seem that this section of the bill, introduced at this moment, may not be psychologically opportune? Might it not be better for Government to attempt to use its existing powers and the other additional powers provided by the rest of the bill, with greater effort and zeal before resorting to extremes? The question is clear and challenging: is this harsh law absolutely necessary? Unless we can be convinced beyond doubt that it is, I would plead that we defer, for future consideration, the inclusion of section 51B, since it concerns, after all, a matter which is so very crucial.

MR OSWALD CHEUNG: —Sir, for my part I would agree that Council should provide the taxing authority with all reasonable powers to pursue evasion of taxes, including a power to enter premises and to take possession of books and documents, which may be material in assessing the liability of a person who has evaded tax. I should have thought, however, that to invoke the powers contemplated by the new section 51B, in the case where a person has merely failed to make a return for tax—and failure can arise from a number of causes with no taint of fraud—is unnecessarily harsh. This is a matter to which I propose to return in a later part of my speech, but even in considering the proposals in respect of suspected tax evasion, where fraud is present and justifies the use of extraordinary powers, I would suggest to honourable Members that the new section 51B gives wider powers than are necessary, and that it is drafted in a way that might possibly lead to abuse.

Subsection (1) of section 51B provides that if the Commissioner, or an officer of his Department above a certain rank, satisfies a magistrate that there are reasonable grounds for suspecting that a person, has made a false or incorrect return for tax, or has failed to make any return at all, the magistrate might by warrant authorize the Commissioner to exercise a number of powers.

As at present drafted, these powers include a right to enter and have access to *any* premises whatsoever, and to search for and examine the books, records, accounts and documents of any person whatsoever.

For example, if one person, A, is suspected of making a false tax return, the magistrate is given power to authorize the Commissioner to enter the premises of B, another person altogether, and seize B's books and documents.

It probably is no more than an oversight. It would be proper, I submit, to authorize entry into the premises of a person who is actually suspected of being the principal offender or as agent or, even of an accessory, and to examine his documents, but I cannot conceive that it would be proper to violate the rights of a person wholly unconnected with the offence. I hope this view would commend itself to honourable Members, and that they would support amendments which I propose to introduce in Committee which would confine the operation of this new section to search and examination of the documents of persons who are actually suspected of having committed an offence of the kind postulated in the new section 51B.

The same observations may be made of paragraph (iii) of subsection (1). The Commissioner is to be authorized to search for and actually seize any documents which in his opinion might be material for assessing the liability of *any* person to tax; thus B's documents might be seized if in the opinion of the Commissioner they might be material in assessing the tax liability of A. I cannot see any justification for granting such wide powers. If B, a person wholly unconnected with tax evasion and not privy to any tax evasion on A's part has documents which might be material, it would be sufficient, I hope honourable Members may be pursuaded, to use the powers already given by subsection (4) of the existing section 51 by requiring that person to produce to the Commissioner such documents for examination: and I may add the range of persons who can be so called upon is already very wide, as honourable Members can see by referring to subsection (4) of the existing section 51. On reading the Report of the Inland Revenue Ordinance Review Committee, I find that that Committee was very much concerned with the problem of how to give the power of entry and search and at the same time to guard against its abuse. I have spoken to my honourable Friend Mr P. C. Woo, a Member of that Committee, and he assures me it was that Committee's intention to limit the right of entry into the premises of the particular person involved, or the premises where his documents might be kept, and to examination seizure and retention of that particular person's documents. I cannot believe Government wishes to violate the rights of wholly innocent and law abiding citizens, who might, in the course of ordinary dealings, have come into possession of documents relevant to another person's tax liability. It would be desirable, in my submission, when honourable Members go into Committee, to consider appropriate amendments which would properly confine the operation of the new subsection to those cases where it is strictly necessary.

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There is one other provision of this new section which gives me concern. That is paragraph (iv) of the powers under subsection (1), already referred to by my honourable Friend Dr S. Y. CHUNG. It is proposed that books, records, accounts or documents seized under a magistrate's warrant might be retained by the Commissioner for so long as they might be "reasonably required for any assessment to be made or for any proceedings under the Ordinance to be completed'. As drafted, it gives the Commissioner a practically unfettered discretion as to the length of time during which he might retain the documents seized. I am concerned that such an unfettered discretion might lead to abuse. The more documents that are seized (and it is the Commissioner's officers who are to judge what documents should be seized) the longer, it might be pleaded, to examine them; meanwhile, the business operations of the person whose documents are seized might come to a complete standstill; worse, cheques, bills of exchange, letters of credit might be seized and retained when the survival of the business might depend on their being presented in time. The Honourable S. Y. CHUNG has already drawn attention to this aspect of the matter, and has suggested a remedy. Alternatively, there might be room here to give the subject an effective method for challenging the Commissioner's discretion by summary proceedings in the Supreme Court. There is perhaps more than one way by which control of the discretion might be achieved, and honourable Members might consider the alternatives between today and the Committee stage of this bill.

I return to a matter I referred to briefly earlier on: the proposal to invoke these special powers when there are reasonable grounds for suspecting that a person has failed to make a return when required to do so. I should have thought that a person has either made a return or he has not, and I fear that it does not quite make sense to me to say he is suspected of failing to make a return. I suspect that behind this curious wording there is a substratum of ideas imperfectly expressed, and that what honourable Members are really being asked to do is to give these special powers, not in those cases where the failure to make a return is due to accident, illness, genuine difficulty in getting together the information necessary for preparing the return or other reasonable cause, but only in those cases which are wilful and where intent to evade tax is genuinely suspected. I am strengthened in the view I take on referring to the Report of the Committee who made the recommendation which inspired the proposed enactment. This recommendation came in that part of their Report which dealt with tax evasion; it was for dealing with a failure to make a return with intent to evade tax, not a failure to make a return for reasonable cause, without fraud. Unless, therefore, I have totally miscomprehended the

Committee's recommendation, I would suggest it would be proper to define the occasions and the circumstances in which a failure to make a return justifies the use of these special powers, quite apart from the consideration that the bill, in this particular, is, juristically, somewhat inelegant.

At the risk of further trespassing upon honourable Members' time and patience, I cannot but help observing the difference in the safeguards provided in section 51A with the safeguards at present contained in section 51B. I have the greatest respect for our learned magistrates, but few of them are ever called upon to deal with tax matters and fewer would claim to be well acquainted with the provisions of this Ordinance. As the principle of judicial control is accepted and regarded as necessary, I should have thought, seeing that the Committee contemplated that the occasions on which these powers would be used would be very rare, that there is a good case to vest the judicial control in that part of the judiciary most familiar with the operation of this Ordinance, namely, the bench of the Supreme Court.

I would welcome an assurance from Government, Sir, that powers no wider than are absolutely necessary are being sought, and that Government is as anxious as myself to see that there will be no room for abuse of the proposed powers.

MR H. J. C. BROWNE: —Sir, I have two small points to make on the proposed amendment to the Ordinance.

The first is in paragraph 25(*c*) and I would like to suggest that a slight amendment be made to allow an individual to add together his life insurance premia when working on the proposed limit, instead as I understand it from the wording of the clause, in working on the limit of 7% on each policy. This would, I believe, achieve the broad object of the clauses drafted, while at the same time allowing an individual to get reasonable relief in respect of insurances taken out at different times of his working life.

Second, paragraph 29(7). It seems to me that the requirement that an employer should withhold money due to an employee for a month from the date of notice being given of his departure from Hong Kong might be justified on termination of employment, but surely it is not in step with modern business mobility or for short annual leaves. Under the amendment as now drafted, a man who has earned six weeks' leave pay might not get it for a month, and this seems to me an unnecessary and unjustified restriction.

Like my Friend, Dr CHUNG, I very much favour an efficient system of tax collection, but we must never lose sight of the fact that it is our low rate of tax and the lack of red tape and unnecessary restrictions that helped place Hong Kong in a unique commercial position.

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Finally, I think I would like to say that the Inland Revenue Department have and I think ought to be congratulated on having a good reputation for being free of allegations of corruption and this is, I feel, another argument in favour of keeping our tax laws simple.

Sir, I support the bill and hope that these second lot of points that I mentioned will be borne in mind when the next lot of amendments to the Part II of the recommendation of the Committee is being drafted.

MR P. C. WOO: —As a member of the Inland Revenue Ordinance Review Committee, I feel I have to make certain observations on the remarks of my Unofficial Colleagues. In the opinion of the Inland Revenue Ordinance Review Committee, the additional power given to the Commissioner of Inland Revenue as contained in clauses 51A and 51B are necessary in order to enable him to make a proper assessment if the taxpayer wilfully neglects to make a tax return or evades payment of tax. As far as clause 51A is concerned, the safeguards contained are sufficient to protect honest and innocent taxpayers. But I hope the Commissioner will exercise this power sparingly and with utmost caution so that there will be no hardshop or oppression caused to innocent and honest taxpayers. With regard to clause 51B, I see that there are differences of opinion. Mr Wilson WANG pressed for the exclusion of this clause. However, I can assure him that all his arguments which he advanced have been fully considered by the Committee and we are of the opinion that only the guilty will be fearful of this provision and I think it is not in the public interests to exclude this clause.

Mr CHEUNG, however, criticized the wide power given to the Commissioner but I would like to quote the exact recommendation of the Committee which will answer his queries.

> "It should be expressly provided that the right of free access and the power to take possession of books may only be exercised after the Commissioner has made a declaration before a magistrate that there is reasonable cause to believe that the particular premises to which access is required contained books, documents or other records which are required for the purposes of determining the assessable profits of any person whom the Commissioner has reason to believe has understated his income or profits or who has failed to comply with a notice from the Department calling on him to make a return of income or profits."

That of course answers his question about the entry into any premises or to take possession of any other people's books, and I hope

that my honourable Friend, the Financial Secretary will amend this particular clause to comply with the recommendation of the Committee.

Dr CHUNG has made a very valid point in his second proposal with regard to sub-paragraph (iv) of clause 51B(*b*). May I make the suggestion—although my Friend Mr CHEUNG has a very poor opinion of our magistrates (*Laughter*) (Mr CHEUNG: —"I made no such imputation")—that, in making his application to the magistrate, the Commissioner should state the time required for the retention of these books and documents, and any persons who are aggrieved by such retention should have a right to apply to magistrates for the release of these documents. Furthermore, the Commissioner may also apply for any further extention of time. If my Friend fears that a magistrate is not competent to deal with this matter, perhaps my honourable Friend, the Financial Secretary may consider to giving this power to the Board of Review constituted under the Inland Revenue Ordinance.

Finally, may I deal with Mr BROWNE's point about clause 29 which proposes to add a subclause 7 to section 52 of the Ordinance. Sir, in the report of the Committee, we are using these words quitting the Colony" which we mean definitely quitting or leaving the Colony for good. I do agree that there is some misunderstanding in this clause. May I suggest that, in the Committee stage, my honourable Friend may consider the amendment of confining this sub-paragraph 7 to persons leaving the Colony for good and determining their contract of employment.

MR WANG: —Sir, on a point of order, may I seek clarification from Mr WOO when he says that only those guilty need to fear. Does it mean that all those who fear are guilty? (*Laughter*).

MR WOO: —I don't think it is in order for me to answer.

HIS EXCELLENCY THE PRESIDENT: —Scarcely a point of order, Mr WANG, but we'll bear it in mind.

MR CHEUNG: —On a point of order—I disclaim at having expressed any low opinion of our magistrates . . . . (*Laughter*).

HIS EXCELLENCY THE PERSIDENT: —Also scarcely a point of order, Mr CHEUNG.

THE FINANCIAL SECRETARY: —Sir, may I first of all express my thanks to all honourable Members who have spoken today for their general support of the grant of additional powers to the Commissioner of Inland Revenue for the combatting of tax evasion. The most important provision in the bill which has come under comment and attack today has been the new proposed subsection 51(B)(1) which is in clause

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28 of the bill. This is the power to enter premises and seize documents on a magistrate's warrant. It seems to me first of all that the general criticisms of Mr Wilson WANG are rather excessively emotional and melodramatic, as there are particularly powers which we hope will be used only on the rare occasion. He mentioned my having spoken of this being a normal power in laws dealing with excise. I intended to make a distinction between excise and Inland Revenue in this context; and, if my honourable Friend would refer to the Dutiable Commodities Ordinance, Chapter 109 he will in fact find there in section 14 powers given to the Director of Commerce and Industry and the Preventive Service which are very much wider than those we are asking for the Commissioner of Inland Revenue. For example, much more junior officers may exercise the powers and they may be exercised at any time—not, as in the present case, only at any reasonable time during the day. Furthermore so far as his income tax is concerned, this power of entering premises and seizing documents exists, in fact, in many countries, for example, in Malaysia, Canada, Australia, New Zealand and South Africa; although I must confess I don't know whether or not they are exercised without trouble or greviance. Very few tax law do not cause greviances of some kind. It is true that some countries do not have this power, including the United Kingdom, but there is very often the much less desirable alternative of using police powers; for offences against the Inland Revenue Ordinance are criminal matters like other offences, even if there is some tendency to regard offences under the Inland Revenue Ordinance as rather more gentlemanly crimes than others. But I think it would be naive in the extreme to put any hope whatsoever in the goodwill of deliberate evaders of tax. We can have no confidence that they will have a change of heart.

May I proceed now to the more particular points made, in particular by my honourable Friends, Dr CHUNG and Mr CHEUNG. They are, I think, points in most cases of some validity. I agree in particular that as drafted, subsection 51(B)(1) does go rather further than it should in relation, in particular, to third parties and I would accept amendments which are designed to limit them to my honourable Friend, Mr P. C. WOO's recollection of the intention of the Review Committee; although I think it would be important to include accessories, as well as principals, as suggested by my honourable Friend, Mr CHEUNG. So far as the suggestion goes that the warrants should be issued by a judge rather than by a magistrate, that takes me rather outside my own sphere of knowledge, and I shall have to consult with my honourable Friend, the Attorney General on this suggestion.

The next point I might mention is the rather curious, as my honourable Friend Mr CHEUNG has called it, clause about failing to furnish returns. I agree entirely that the clause is very oddly drafted and that we must amend it so as to make more precise the circumstances in which failure to amend returns brings into force powers of entry and seizure of documents. The next point is that relating to the retention by the Commissioner of documents seized under subsection 51(B)(1). We certainly recognize the inconvenience and difficulty which may be caused by seizure of documents and the unsatisfactiness of relying on phrases like "for as long as they may be reasonably required for an assessment of proceedings". But I do not think that any hard and fast time can be stated for the retention of documents. Nor do I think it possible for the Commissioner, when applying for the magistrate's warrant, to know enough about the contents of documents to be able to specify a time by which he is prepared to return them. It is in recognition of these difficulties, of course, that we have included the taxpayer's right to examine them and to extract from them (which I think will include copying) at any time convenient. Also, of course, the Inland Revenue is generally concerned with past transactions, not with present transactions, so that retention may not inhibit the continued operation of a business. But I am attracted by the proposal that there should be some form of appeal or right of application by a tax-payer to recover documents which are being retained; and I have been anticipated by my honourable Friend, Mr WOO with the suggestion I had intended to make, that such an appeal should lie before the Board of Review of Inland Revenue. The Board is, I think, a particularily appropriate appeal body for two reasons. One is that the board is composed of businessmen, accountants and lawyers and would appear to be an expert body to decide matters of this sort. And secondly, perhaps more important, the Board of Review's proceedings are conducted in confidence and not in public. So I would propose to introduce an amendment to this effect at the Committee stage.

I return now to rather less contentious matters. My honourable Friend, Dr CHUNG has suggested that clause 14, which permits the deduction of patent registration costs in the assessment of profits, be extended to cover design registration costs. I am happy to accept that proposal and will introduce an amendment at the Committee stage.

Secondly the question of the limitation of deductibility of insurance premium to 7% of the sum assured, which is in clause 25C. My honourable Friend Mr BROWNE has suggested that insurance policies should be bulked for the purpose of this limiting percentage. I am afraid that this is a rather more technical question that I can deal with today, but we will look into it. But I should add that there have been some representations that the figure of 7% is too small as a limitation on deductibility of insurance premia and that the Commissioner has

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himself come to the independent conclusion that the figure of 10% would be more appropriate in Hong Kong and I would propose to introduce an amendment to that effect at the Committee stage.

Finally my honourable Friend, Mr BROWNE has referred to clause 29 on the withholding of salaries by employers from employees leaving the Colony. That there should be some provision to this effect is, I think, necessary because of increasing loss of tax due to tax payers leaving the jurisdiction, and some employers, I understand, are happy to withhold but at present have no legal right to do so. But I would agree that the linking of this proposal with the wide range of circumstances under which, in section 52(6), employers are required to notify the Commissioner that their employees are leaving the Colony, whether on leave or for some other reason, is unreasonably wide. There have been representations from the Hong Kong General Chamber of Commerce to this effect and also, I may say, from the Accountant General. I propose therefore to do as my honourable Friend has suggested and introduce an amendment at the Committee stage limiting the withholding of salaries from employees to those who are leaving the Colony on termination of employment, although it is possible that this limited provision may give some loophole for collusion between employer and employee.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43.

BANKING (AMENDMENT) BILL 1969

Resumption of debate on second reading (21st May 1969)

Question again proposed.

MR O. W. LEE: —Sir, clause 2(*c*) of the amendment bill seeks to amend section 23 of the principal Ordinance by adding thereto a new subsection 2(*b*) that " a person shall not be deemed to be able to control or influence a group of companies by reason only that he is a director of any other company in the group". This is certainly an appropriate amendment. But there is still no clear definition as to how a person is deemed to be able to "influence" the company. For the purpose of this Ordinance, therefore I suggest my honourable Friend, the Financial

Secretary would consider that the relevant subsection should be suitably amended to define that persons who are in an executive or administrative positions such as managing partner, chairman, managing director or secretary or executive secretary are deemed to be able to influence a firm, corporation, or company or group of companies. In the absence of such definition, it would be difficult, if not impossible, for banks to comply, beyond doubt, with the requirements of section 23.

THE FINANCIAL SECRETARY: —Sir, I agree with my honourable Friend that the word "influence" is a word which is rather difficult to interpret in the context of the Ordinance and I agree that it is desirable if we can define the word more expressly. But I suggest that it would be more appropriate to do so in the context of a further amendment bill rather than hold up this bill in order to achieve this.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43.

BUILDINGS (AMENDMENT) BILL 1969

Committee stage

Council went into committee to consider the bill clause by clause.

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 to 3 were agreed to.

Clause 4.

MR SZETO WAI: —Sir, I move that clause 4 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

4 (*a*) That the following be added after “wherever it occurs,” —

“a comma and”.

(*b*) That the words "or street" be deleted and the following substituted—

“street or land”.

The amendments were agreed to.

Clause 4, as amended, was agreed to.

Buildings (Amendment) Bill—committee stage

Clauses 5 to 11 were agreed to.

Council then resumed.

Third reading

MR J. J. ROBSON reported that the Buildings (Amendment) Bill 1969 had passed through committee with some amendments and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

PORTUGUESE COMMUNITY SCHOOLS INCORPORATION (AMENDMENT) BILL 1969

Committee stage

Council went into committee to consider the bill clause by clause.

Clauses 1 to 4 were agreed to.

Council then resumed.

Third reading

MR P. C. WOO reported that the Portuguese Community Schools Incorporation (Amendment) Bill 1969 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

ADJOURNMENT

Motion made, and question proposed. That this Council do now adjourn—THE COLONIAL SECRETARY.

4.10 p.m.

HIS EXCELLENCY THE PRESIDENT: —Honourable Members, today is the last sitting for Mr GREGG who has been a Member of this Council for just over 5 years*.

Mr GREGG came to us from the Seychelles, Uganda and Kenya before coming here as Director in 1964. His 5½ years here have seen not only a very great expansion in the size of our school system, but

* 1964 Hansard, page 26.

a very considerable widening of its scope and its complexity. Education is a subject which arouses the very greatest interest here and, in consequence, it is one on which there are a great many different opinions, freely expressed. It is not easy to steer a steady course between all these views: but I am sure honourable Members will agree with me that we are all most grateful to you, Mr GREGG, for the patient and understanding wisdom with which you have guided our school system through these last 5 years of very remarkable progress. May I, on behalf of Council, wish you and Mrs GREGG a very happy future and a very happy retirement.

MR FUNG HON-CHU: —Your Excellency, on behalf of the Unofficial Members I wish to associate ourselves with the remarks you have made about Mr GREGG.

The whole subject of education bristles with controversies and is one that has been exercising the minds of experts all over the world. In Hong Kong, as elsewhere, there has been no dearth of views as to the most suitable educational system and content of courses for our school, and to say that Mr GREGG's task has been a most unenviable one is to put it very mildly.

Through the efforts of Mr GREGG and his department, much progress has been achieved in the field of education over the years. Among other things, we shall be able to see before long an aided primary education readily available to all who want it. Although Mr GREGG will not be in Hong Kong to personally see this particular fruit of his labour he will no doubt derive a measure of satisfaction from the knowledge that he has played a leading part in bringing this to pass.

Our best wishes go to Mr GREGG and his family for a very happy retirement.

Sir, I would like to take this opportunity to also offer Mr HAMILTON, who will be leaving Hong Kong tomorrow on retirement and has been a Member of this Council in his capacity as acting Colonial Secretary on several occasions, our very best wishes for a happy retirement. Our good wishes also go to his family.

MEMBERS: —Hear! Hear!

Question put and agreed to.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 18th June 1969.

Adjourned accordingly at fifteen minutes past Four o'clock.

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