

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 6th January 1971

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, JP
 THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
 MR GRAHAM RUPERT SNEATH, QC, JP
 THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
 MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
 THE HONOURABLE THE FINANCIAL SECRETARY
 SIR JOHN JAMES COWPERTHWAITTE, KBE, CMG, JP
 THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
 COMMISSIONER OF LABOUR
 THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
 DIRECTOR OF URBAN SERVICES
 THE HONOURABLE JAMES JEAVONS ROBSON, JP
 DIRECTOR OF PUBLIC WORKS
 THE HONOURABLE DONALD COLLIN CUMYNN LUDDINGTON, JP
 DISTRICT COMMISSIONER, NEW TERRITORIES
 THE HONOURABLE JOHN CANNING, JP
 DIRECTOR OF EDUCATION
 DR THE HONOURABLE GERALD HUGH CHOA, JP
 DIRECTOR OF MEDICAL AND HEALTH SERVICES
 THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
 COMMISSIONER FOR RESETTLEMENT
 THE HONOURABLE JACK CATER, MBE, JP
 DIRECTOR OF COMMERCE AND INDUSTRY
 THE HONOURABLE KAN YUET-KEUNG, CBE, JP
 THE HONOURABLE WOO PAK-CHUEN, OBE, JP
 THE HONOURABLE SZETO WAI, OBE, JP
 THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
 THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
 DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
 THE HONOURABLE LEE QUO-WEI, OBE, JP
 THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
 THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP
 THE HONOURABLE ANN TSE-KAI, OBE, JP
 THE HONOURABLE LO KWEE-SEONG, JP

ABSENT

THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
 THE HONOURABLE WILSON WANG TZE-SAM, OBE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
 MR RODERICK JOHN FRAMPTON

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:—	
District Court (Civil Jurisdiction and Procedure) Ordinance.	
District Court Civil Procedure (General) (Amendment) (No 2) Rules 1970	182
District Court (Civil Jurisdiction and Procedure) Ordinance.	
District Court Civil Procedure (Forms) (Amendment) (No 2) Rules 1970	183
District Court (Civil Jurisdiction and Procedure) Ordinance.	
District Court Civil Procedure (Fees) (Amendment) (No 2) Rules 1970..	184
District Court (Civil Jurisdiction and Procedure) Ordinance.	
District Court Civil Procedure (Costs) (Amendment) Rules 1970	185
Public Order Ordinance.	
Military Installations Closed Areas (Amendment) Order 1970	186
Marriage Reform Ordinance 1970.	
Marriage Reform Ordinance 1970 (Appointed Day) Notice	187
Hawker Control Force Ordinance.	
Hawker Control Force (Discipline) Regulations 1970	188
Royal Hong Kong Auxiliary Air Force Ordinance 1970.	
Royal Hong Kong Auxiliary Air Force Regulations 1970.....	189
Royal Hong Kong Regiment Ordinance 1970.	
Royal Hong Kong Regiment Regulations 1970	190
Widows and Orphans Pension Ordinance.	
Widows and Orphans Pension (Application) (Amendment) Regulations 1970	191

<i>Subject</i>	<i>LN No</i>
Census Ordinance.	
Census (No 4) Order 1970	192
Fugitive Offenders Act 1967.	
Fugitive Offenders (Designated Commonwealth Countries) (Amendment) (No 2) Order 1970	193
Births and Deaths Registration Ordinance.	
Births and Deaths Registration (Amendment of First Schedule) Order 1970	194
Trustee Ordinance.	
Notification of Alteration of First Schedule	195
District Court (Civil Jurisdiction and Procedure) (Amendment) Ordinance 1970.	
District Court (Civil Jurisdiction and Procedure) (Amendment) Ordinance 1970 (Commencement) Notice 1970	196
Merchant Shipping (Hong Kong—Macau Ferry Terminals) Regulations 1970.	
Merchant Shipping (Hong Kong—Macau Ferry Terminals) Regulations 1970 (Commencement) Notice 1970	197
Merchant Shipping (Fees) (Amendment) Regulations 1970.	
Merchant Shipping (Fees) (Amendment) Regulations 1970 (Commencement of Part X of the First Schedule) Notice 1970	198
Merchant Shipping (Hong Kong—Macau Ferry Terminals) Regulations 1970.	
Merchant Shipping (Hong Kong—Macau Ferry Terminals) Regulations 1970 (Hong Kong—Macau Ferry Terminal Boundaries) Notice 1970	199

Sessional Papers 1970-71:—

- No 32—Annual Report by the Director of Fire Services for the year 1969-70 (published on 6.1.71).
- No 33—Annual Report by the Commissioner of Police for the year 1969-70 (published on 6.1.71).
- No 34—Annual Report by the Commissioner of Rating and Valuation for the year 1969-70 (published on 6.1.71).

Papers*Subject*

No 35—Report of the University Grants Committee of Hong Kong from July 1968 to June 1970 (published on 6.1.71).

No 36—Annual Report and Accounts of the Hong Kong Trade Development Council for the year 1969-70 (published on 6.1.71).

Oral answers to questions**Immigration Department**

1. MR T. K. ANN asked:—

Is Government aware of the need to provide more accommodation and staff for the Chinese section of the Immigration Department? If so, what steps are being taken to cope with this need?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Yes, Sir. Government is aware of the need to provide more accommodation and staff for the Chinese section of the Immigration Department.

The Director of Immigration has asked for certain additional staff, and proposals will be put to the Finance Committee of this Council for consideration later this afternoon.

The Commissioner for Rating and Valuation has been asked to look for suitable sites for additional Immigration sub-offices in Mong Kok and Kwun Tong, and the approval of the Finance Committee for these additional sub-offices will be sought when sites are found.

"Hermitage" flats

2. MR Y. K. KAN asked:—

Will the Government table the full report of the investigation into the complaints by a resident of the "Hermitage" flats?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—No Sir. The Government has already published a statement concerning the inquiry into the three complaints which were drawn specifically to the Government's attention by Dr LAM. The most important fact is that

having fully investigated Dr LAM's complaints, the Government is satisfied that there are no grounds for either disciplinary or criminal action against any of the individual officers concerned, and that the offence given to Dr LAM on the two identifiable occasions in March and April last year was caused quite unwittingly. In these circumstances, I do not consider that it would be either in the public interest or fair to any individual officer to publish more details of this inquiry which the Government now regards as closed as, so I believe, does the complainant.

MR KAN:—Sir, in view of the wide publicity given to this matter—regrettably, I might say—would it not be in the interest of Government and, indeed, to all parties concerned, if the report were to be made public?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—That is not the view that the Government takes. It is not Government's normal practice to publish details of investigations which might lead, or might have led, to disciplinary action in any case. In the present case, however, the publicity—which I share the view of my honourable Friend in deploring—accorded to the original complaint and its unusual nature did seem to justify an exception being made to the normal rule. Thus, as the original complaint was published, so was the Government's reply.

MR KAN:—Sir, would Government be prepared to make available the full report to Members of this Council?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—The full text of the published statement can be provided on request to any Member of the Legislative Council who so desires.

MR KAN:—I regret to say I was referring to the detailed report—the full report—Sir, not to the statement which all of us have read from the newspapers.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—I am sorry, Sir, but the full report is a very considerable file. It concerns an investigation which took many months to do. I cannot see that any advantage would be served by further publicizing or continuing this matter.

Towing away of cars by Police

3. MR KAN asked:—

Will the Government inform this Council what is the policy of the Police in regard to the towing away of cars?

Oral Answers

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Sir, briefly, vehicles are towed away by the Police force under two sets of circumstances. First, and I imagine this is not the subject of the honourable Member's question, when a car has been abandoned and the owner has been notified and has taken no action or cannot be traced. Secondly, and this I imagine is the gravamen of the question, it is the policy of the Commissioner of Police to remove any vehicle which constitutes an obstruction or danger to other road users.

In carrying out this policy, special attention is paid to certain zones where traffic movement and the movement of other road users constitute particularly difficult problems. There has to be a degree of flexibility in the application of this policy, in that special problems arise in connexion with sporting events, processions, festivals, visits by foreign dignitaries and do forth.

In determining such areas of operation the Police have regard to localities which have been the subject of repeated complaints by members of the public or pinpointed by a study of existing statistics.

Despoilation of the New Territories

4. MR K. S. LO asked:—

What legislative and other practical measures does Government propose to take in order to save the New Territories from:—

- (a) industrial and other general wastes being dumped into its streams and fields indiscriminately;
- (b) week-end tourists littering the roads and hills with empty cans, plastic wrappers and other wastes, etc; and
- (c) the general desolation of the entire country side?

MR D. C. C. LUDDINGTON:—Sir, my honourable Friend has posed a question which implies a criticism of Government in the New Territories which, in a way, I am happy to accept as a counter to the constant demands I receive to change my land policy and to allow the indiscriminate conversion of agricultural land for domestic accommodation and industry.

Heads of other Departments share my concern about the extent to which industrial and other wastes are dumped in the hope that either Government or the wet weather will carry them away. I too deplore

the inconsiderate behaviour of those weekend visitors, the vast majority of them citizens of Hong Kong, who leave their litter around the spots they have visited. I do not however agree with my honourable Friend that the words "the general desolation of the entire countryside" are fully justified, although I am aware that there are those who regard the preservation of the countryside in the form with which they are familiar as a desirable objective regardless of the consequences to those who live there. We must face the fact that under today's economic conditions in Hong Kong with its population of some four million and only some fifty square miles of arable land, nearly all in private ownership, the face of the countryside must change. Such changes should not be regarded as "desolation" although if they were totally uncontrolled they might well merit that description and in certain areas the description is already merited.

Is it, for instance, appropriate to describe the urbanization of Kowloon and New Kowloon as a "desolation of the countryside" that once existed there? There are those who regard the new town of Tsuen Wan as a "disaster area" but I am not one of them. These are towns which have had to be built up rapidly to cater for a population which, since 1945, has grown at a phenomenal rate as a result of both immigration and natural increase. Hong Kong would certainly not have managed to house and find jobs for this population had it gone in for elaborate town and country planning based on European standards and revenues. But I accept that the time has come when we must re-examine the effects of these rapid changes and consider stricter control, particularly of industrial effluents and waste material.

In regard to the establishment of new factories in the rural areas. I have continued my predecessor's policy of refusing applications for the conversion of agricultural land to industrial use except in particularly suitable areas and for particular industries which are not likely to produce drainage problems. Where new buildings are erected illegally, they are demolished under the provisions of the Resettlement Ordinance. In a few cases the land concerned has been re-entered but this is necessarily a long and meticulous process. There are however many existing minor industries which were established without proper permission some time ago and which have been tolerated because they play a part in the local economy. These vary in their state of hygiene and the nuisances they give rise to but my District Officers receive few complaints on that account. They receive far more on account of the restrictions we impose.

There is no doubt, however, that the build-up of minor industries in the rural areas and towns has added to the problem of waste—as do piggeries, chicken farms and such like operating on private land or on permit. Also, the better standard of living in the New Territories

[MR LUDDINGTON] **Oral Answers**

and the greater leisure and appreciation of the pleasures of the New Territories countryside by the population of the urban areas with its increasing mobility have all resulted in greater quantities of refuse and waste materials.

The sanitation authority in the New Territories has, since 1960, been the Director of Urban Services who is assisted in the more rural areas by the Principal Medical Officer of Health, New Territories, and the Rural Health Scheme. The Director has powers under the Public Health and Urban Services Ordinance and Summary Offences Ordinance to prosecute persons who dump refuse and during the past three months, 8 people were summonsed. In addition, 19 statutory notices were served during the same period on land owners to abate nuisances and remove refuse from their property, and 15 people were summonsed for obstruction caused by trade waste. Greater resort will have to be made in future to such prosecutions. When a catchment area is involved the Water Works Ordinance can be applied. Section 25 provides for heavy and continuing penalties for polluting waterworks.

It will be obvious, however, that no matter how large a supervisory staff is provided it cannot be at hand all over the New Territories all the time to bring to book those who dump illegally. There must also be a major public effort by industrialists and inhabitants in the New Territories to adhere to the law and to keep their environment clean. Similarly, urban visitors to the New Territories should either dump their refuse in the containers provided or bring it back to their urban dustbins.

In order to bring cleansing standards in the New Territories up to a satisfactory level, the Director of Urban Services in connexion with next year's estimates has sought additional staff over and above those approved in previous years. I understand that his staff requirements are now receiving sympathetic consideration and if they are approved and with some tightening up on conditions of permits, *etc.*, a considerable improvement in the state of New Territories affairs could be effected, although in some instances the problem will be solved only when drainage and sewage facilities are provided.

Government has been reviewing overall development plans to cover the next twenty years during which time our population should have increased by some 1.6 million; whereas the land available for its accommodation, employment and recreation will, if anything diminish as further areas are taken over as water catchments. Investigations into pollution in the north-west New Territories have been recommended in this connexion. A hydrological survey of Tolo Harbour related to sewage disposal has recently been completed and a pilot

sewage treatment plant is being built at Shek Wu Hui. These are necessary preliminaries to the drainage work which will have to be undertaken in the future,

But, of course, unless the public is willing to co-operate the object of this work will not be achieved. Additional education in this connexion is evidently necessary. My colleague the Director of Agriculture and Fisheries, who is also much concerned about the problem of refuse and in particular the devastation caused by fires, has done much to publicize the citizens debt and duty to the countryside. I have discussed this problem with the Heung Yee Kuk, Rural Committees and other regional organizations and sought to get their assistance in publicizing the citizens duty both to protect his own environment and not to ruin that of others further down the stream.

There are particularly flagrant industries which appear to give no thought to their effects on their environment. The tannery industry is one and I have said that in my view this industry must be evicted from its present location and forced either to purchase land and build proper plant in a special industrial area or go out of business. I am simply not able to find land suitable for the industry to carry on under its present low standards. Work on this problem is being undertaken on an interdepartmental basis. It would of course be unreasonable to close down such an industry without due warning on the one hand and without a plan for the better utilization of the areas which it has devastated, and I use this word deliberately.

I am grateful to my honourable Friend for raising this important matter in this Council and to those newspapers which have shown concern about the sanitary state and general appearance of parts of the New Territories. I hope that this publicity will serve to bring home to the public the cumulative results of numerous thoughtless actions in the disposal of waste and litter. At present Government is countering this with ten Urban Services gangs engaged in the cleansing of picnic spots and remote villages. In addition the Scouts Association has recently undertaken voluntarily to clear up some of the worst littered picnic spots in the hope that their example may be followed by other young people. The staff of a factory in Hung Hom have undertaken a similar task. Every youth organization, club and school which enjoys a holiday in the fresh air of the New Territories could play a part by ensuring that every place they visit is cleaner when they leave it than when they arrived.

I will take this opportunity to discuss further with my official colleagues the problems of industrial wastes and, what I might term, recreational refuse. But in regard to the latter I must emphasize that, in addition to Government, every citizen of Hong Kong has a part to play in keeping its countryside both clean and green.

Oral Answers

MR H. J. C. BROWNE:—Sir, may I ask a supplementary? May I ask whether any action has been taken against the tanneries who are apparently discharging some sort of chemical into the Indus River system?

MR LUDDINGTON:—No actual prosecution action is being taken at the moment. As I said, Sir, there is an inter-departmental committee considering how we are to get rid of the tanneries. We have looked into the question of the danger of pollution and a report has been made to the Water Authority on this; but when the water flow is low and there is no dissipation of this effluent, there is no water pumped into our reservoirs from the River Indus flood pumping station.

MR LO:—Sir, I am grateful to my honourable Friend for his very lengthy reply and also for his assurance that everything will be done to keep the New Territories clean. In his answer he referred to the responsibility for cleaning up the litter of the Urban Services Department. May I ask whether the Director of Urban Services is satisfied that all that is necessary is being done to clean up the New Territories and has he got the necessary manpower to carry out the job?

HIS EXCELLENCY THE PRESIDENT:—I am not sure that the District Commissioner can answer that question, but if he can . . .

MR LUDDINGTON:—Well, I can say, Sir, that I am sure that the Director of Urban Services is not satisfied with the staff he has got because he has put in for a large number for this coming financial year's estimates.

New car parks

5. MR G. M. B. SALMON asked:—

Will Government state what new car parks will be available on both sides of the harbour prior to the tunnel being opened in 1972?

MR J. J. ROBSON:—Sir, it is hoped that the cross-harbour tunnel may be opened to traffic by mid-1972 and, by that time, three more multi-storeyed car parks should have been built in the urban areas of Hong Kong and Kowloon—one by Government and two by private operators.

The Government car park will provide 913 spaces on a site at the corner of Murray and Queen's Roads at present used for open air parking of about 200 cars. Thus the net gain at this locality will be 713 car park spaces.

One of the privately operated car parks will be at San Po Kong which will accommodate 450 cars and the other at Fortress Hill Road, North Point, which will provide space for 180 cars.

However these figures by themselves are misleading as they do not represent the net gain in—or loss of—parking spaces in the Hong Kong central area. Later this year 180 open air spaces will be lost when the second stage of the widening of Connaught Road is put in hand and a further 532 spaces will be lost if sites in the old Naval Dockyard fronting Harcourt Road between Murray Road and Cotton Tree Drive are sold. It should however be possible to provide an extra 300 temporary open air spaces later this year or early next in the old Dockyard land east of Cotton Tree Drive and a further 350 spaces in the same area shortly after the tunnel is opened.

In short, Sir, it seems that there will be little change in the present parking provision on Hong Kong Island by the time the cross-harbour tunnel becomes effective but at the present moment there is an over provision of spaces and I am making inquiries to see whether it is possible for the present occupants of the remaining Dockyard buildings to release further areas of land for parking.

New industrial undertakings

6. DR S. Y. CHUNG asked:—

Will Government provide figures for

- (a) the number of initial applications received for the setting up of industrial undertakings in 1969 and 1970 (given separately for each year);
- (b) the number of those applications which have since resulted in a factory licence being issued;
- (c) in respect of the successful applications, the average number of days which elapsed between the initial application being received and the issue of a factory licence;

and in the light of the figures will Government explain the reasons where there have been undue delays in the issue of licences?

Oral Answers

MR R. M. HETHERINGTON:—Sir, before I provide the specific information which my honourable Friend seeks in his question, I must make some preliminary remarks to clarify the position.

My honourable Friend refers to a factory licence. No such document is mentioned in the Factories and Industrial Undertakings Ordinance. I have taken his reference to a licence to mean a certificate of registration and the information is given on that presumption.

There are two types of certificate, a certificate of registration and a certificate of provisional registration. In either case, a proprietor is required, by section 9(2)(a) of the Factories and Industrial Undertakings Ordinance, to apply for a certificate before the first occasion on which any industrial process is commenced or any industrial operation is carried on. In practice, section 9(2)(a) is not generally observed and most registrable workplaces are in operation before they apply for a certificate. Indeed, they often fail to apply for certificates until an officer of the factory inspectorate discovers them.

Turning to the first three questions asked, the statistical information is as follows:—

- (a) The numbers of initial applications for certificates of registration or of provisional registration are as follows:—
- | | |
|---------|-------|
| in 1969 | 3,098 |
| in 1970 | 3,170 |
- (b) The number of certificates of registration or of provisional registration issued in respect of initial applications made since 1st January 1969 is 1,974. In addition, a further 623 applications were either withdrawn subsequently or refused.
- (c) Because of the immense amount of work involved in searching over 6,000 departmental files in order to answer the questions, I hope that my honourable Friend will excuse me if I use the dates of the application which were more readily available rather than the dates of receipt of the application by the factory inspectorate. On this basis, the average number of days which have elapsed between the date of the initial applications made since 1st January 1969 and the subsequent date of issue of certificates of registration or provisional registration was 218.

Turning to my honourable Friend's fourth question, it is a matter of opinion as to what might be regarded as constituting an undue delay in the issue of a certificate. The basic purposes of the Factories and Industrial Undertakings Ordinance and subsidiary legislation are

to protect the safety, health, and welfare of employees in registrable workplaces. It is extremely rare to find that the proprietor of a factory has satisfied the basic requirements which are considered necessary before a certificate can be issued. Generally, proprietors of factories accommodated in premises designed for industrial use can satisfy the requirements quickly and they are usually persons who are willing to accept advice and guidance from the factory inspectorate. The interval of time between an application and the issue of a certificate of registration is normally not long and can be as short as one month. On the other hand, proprietors of undertakings, particularly small ones, which are accommodated in domestic premises cause the greatest amount of difficulties. They are often reluctant to make the modifications necessary to satisfy the requirements conditional on the issue of a certificate of provisional registration. In some cases, they are not prepared to comply with the requirements. It is the policy of the factory inspectorate to advise and to persuade proprietors to provide for the safety, health, and welfare of their employees and I am reluctant to authorize prosecutions unless unacceptable hazards remain unabated or the safety or convenience of other users of neighbouring premises are jeopardized. As a result, many undertakings are in operation which are in the process of complying with requirements of the department but which have not yet reached the stage when a certificate of provisional registration can be issued. Bearing in mind the large number of industrial undertakings which are on record in the department—there were 16,619 in September 1970—there are inevitably some administrative delays in dealing with them but I believe that these are negligible compared with the time taken by proprietors to comply with our standards for the safety, health, and welfare of employees working in the undertakings.

DR CHUNG:—Sir, it is difficult for me to follow all the figures and I wonder whether my honourable Friend can check my quick calculation. In 1969 the total number of applications for registration was 3,098 and the number of certificates issued was 1,974; there were 623 withdrawn or refused, thus leaving a total of about 500 factories which applied for registration in 1969 and which have not yet obtained their certificates in 1971. Is that correct, Sir?

MR HETHERINGTON:—No, Sir, that is not correct. The figure I gave was in reply to the first question (a). The number of applications in 1969 was 3,098 but the number of factories which have been issued certificates—that is, 1,974 plus the 623 applications which were withdrawn or refused—applies to the two years.

Oral Answers

DR CHUNG:—Sir, in other words there will be more than 500 factories which applied in 1969 and which have not yet received certificates in 1971.

MR HETHERINGTON:—Yes, Sir, that is probably correct.

New industry involving foreign participation

7. DR CHUNG asked:—

In view of the fact that only 12 out of the 228 firm enquiries dealt by the Department of Commerce and Industry during the past five years eventually resulted in the setting up of manufacturing operations in Hong Kong, will Government explain the reasons for such a low percentage of success and take steps to improve the rate of success in the future?

MR J. CATER:—Sir, I do not consider that the success or otherwise of my department's work in the field of industrial investment promotion can be assessed only from the figures quoted by my honourable Friend. In all promotion work of this nature, there is inevitably a great deal of work done which is not immediately productive. Past experience has shown, however, that even in those cases where the foreign company has decided against setting up an industrial undertaking in Hong Kong, there is often some other advantage for us: for example, a large American electronics company, which eventually decided not to set up a factory here, has instead opened a regional office for its Asian purchasing. In other cases, the foreign companies have entered into arrangements to buy Hong Kong products instead of making them.

The fact that over 50 foreign companies have entered into joint ventures or established solely owned undertakings in Hong Kong during 1969 and 1970 is surely an indication of Hong Kong's continuing attraction for foreign industrial investment. Most of these companies did not seek assistance from my department: indeed the very fact that they were not required to register with the department or to obtain its approval to start operations, in itself, explains one of the reasons for Hong Kong's continuing attraction—the ease with which foreign firms can get into business here with the minimum of governmental interference.

It is, I think, true to say however that Hong Kong, with relatively full employment and on expanding economy, is no longer as attractive as it was to foreign firms seeking to establish industrial operations

which would require many hundreds of workers initially. Many of the foreign companies setting up industrial plants nowadays appear to be more interested in relatively small scale operations, at least initially, producing goods which require a higher proportionate investment in plant and equipment than was the case some years ago; in short, more capital intensive rather than labour intensive industries. This seems to me to be a predictable and not unwelcome development.

But I have no wish to sound complacent: I am conscious of the increasing competition from Asian countries for foreign investment in their industries; and of the need to ensure that our promotional apparatus is adapted to meet changing circumstances. In this regard, I am glad to say that I have been in discussion with the Executive Director of the Trade Development Council in the hope that the Council will feel able to establish a liaison arrangement which will permit an extension of our promotion activities to those countries in which the Council has offices. The proposed scheme envisages the appointment of a specialist officer to the Trade Development Council office in New York and later, perhaps, another in Europe with back up services being provided by my department. This proposed arrangement may answer, in part at least, the second question from my honourable Friend.

Government business

Motion (in Committee)

SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED 30TH SEPTEMBER 1970

Council went into committee, *pursuant to Standing Order No 58(2)*, to consider the motion standing in the name of the Financial Secretary (SIR JOHN COWPERTHWAITTE).

The Governor's recommendation signified by the Financial Secretary *pursuant to Standing Order No 23(1)*.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE) moved the following resolution:—

That this Council approves the supplementary provisions for the quarter ended 30th September 1970, as set out in Paper No 2 of 1970-71.

He said:—Sir, the schedule for the second quarter of the 1970-71 financial year covers supplementary provision totalling \$49.8 million. Of this amount \$10.3 million was required to meet the once-and-for-all *ex-gratia* solatium awarded to certain sections of the Public Service

[THE FINANCIAL SECRETARY] **Motion**

in 1970; Public Works Non-Recurrent accounted for a further \$30 million, of which \$1.3 million represented revotes of funds unexpended in the last financial year; \$13.7 million was required as a result of faster progress on existing projects and \$8.1 million to meet the cost of new projects. \$1.9 million was for the establishment of the new Legal Aid Department.

Finance Committee has approved all the items in the schedule. The covering approval of this Council is now sought.

Question put and agreed to.

Council then resumed.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) reported that the motion had been agreed to in committee without amendment.

Question agreed pursuant to Standing Order No 58(4).

First reading

JURY (AMENDMENT) BILL 1971

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

Second reading

JURY (AMENDMENT) BILL 1971

THE ATTORNEY GENERAL (ACTING) (MR G. R. SNEATH) moved the second reading of:—"A bill to amend the Jury Ordinance."

He said:—Sir, this bill proposes a number of changes, and I will mention the more important of them which are four in number.

First, the bill proposes to add one more class of person exempt from jury service to the long list already contained in section 5. Unofficial Members of this Council and of the Executive Council are at present exempt, and it is intended that ordinary members of the Urban Council should enjoy a similar immunity. It is considered, Sir, that their duties as members of that Council should take precedence over their duty to render jury service.

Next, the bill is concerned with the right of a person on trial for a criminal offence to object to prospective jurors. At present he must give reasons for every objection—showing cause as it is called. Clause 6 will replace section 29, and will give the additional right of objecting to as many as five prospective jurors without having to give any reason. This change will bring us more into line with the law in England on this aspect of procedure in criminal trials, where an accused is allowed such peremptory objections.

If a person is not exempted from jury service, and is not objected to when he is called, then he must give up his time to the very important and responsible task of deciding upon the guilt of a person accused of serious crime. It seems only right that this should receive recognition in the form of an allowance. At present jurors in civil cases are entitled to such an allowance. Section 31 which makes provision for this is to be replaced by clause 7 with a provision entitling all jurors to be paid an allowance at such rate as the Governor may prescribe. In addition the trial judge is to be empowered to award an additional sum if he sees fit. It is likely, Sir, that the sums to be recommended to the Governor will be \$25 per day as the standard allowance and a further \$25 as the top limit of the additional allowance which a judge may award.

In addition to payment for his services a juror should be entitled to protection against any employer who should seek to dismiss him, or to threaten dismissal, on account of his performance of his jury service. Consequently clause 8 seeks to introduce a new section 32A which would make it an offence for an employer to terminate, or to threaten to terminate, the employment of any person on the grounds that he has been summoned or has already served as a juror. In addition, Sir, to threats or actual dismissal the same section would make it an offence for the employer to discriminate in any way against an employee for the same reason.

MR KAN:—May I ask that the second reading be postponed, Sir, as I may wish to speak on this.

HIS EXCELLENCY THE PRESIDENT:—Do you wish to move the adjournment of the debate?

MR KAN:—I wish to move the adjournment.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—I raise no objection.

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

Question put and agreed to.

Jury (Amendment) Bill—second reading*Explanatory Memorandum*

This Bill makes several amendments to the Jury Ordinance.

2. Clause 2 amends section 5 of the Jury Ordinance so as to exempt ordinary members of the Urban Council from jury service.

3. As a result of the Urban Council (Amendment) Ordinance 1966 and the Urban Council Elections (Registration) Regulations 1966 the list of common jurors and the register of electors, which previously were compiled in one register, are compiled separately. Clauses 3 and 4 accordingly make consequential amendments to sections 7 and 9 of the principal Ordinance.

4. Clause 5 amends section 15(1) of the principal Ordinance to enable the court or a judge to extend the time within which the party who has applied for an order that a cause shall be heard before a jury shall deposit with the Registrar a sum to cover the expenses of the jury.

5. Clause 6, which repeals and replaces section 29, provides that a person arraigned on indictment shall have a right to challenge not more than five jurors without cause and any juror for cause.

6. Clause 7 repeals and replaces section 31. The new provision empowers the Governor to prescribe rates of allowance to be paid to jurors in all proceedings and the Chief Justice to order an additional allowance to be paid in particular cases.

7. Clause 8 is designed to give employees, who are required to serve as jurors, protection against the termination of their employment or against any discrimination by reason of such service.

INTESTATES' ESTATES BILL 1971**Resumption of debate on second reading (16th December 1970)**

Question again proposed.

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).

INLAND REVENUE (AMENDMENT) BILL 1971**Resumption of debate on second reading (2nd December 1970)**

Question again proposed.

MR BROWNE:—Sir, many of the clauses in this bill are sensible tidying up and clarification of existing practice. However, there are some points on which I would like to comment:—

Clause 4. I would like to ask the honourable Financial Secretary whether provision can be made for the exemption to extend to more than one residence for a man's relatives?

Clause 5. It is not altogether clear how the rules are to be applied to seamen and aircrew who spend a large part of their time outside Hong Kong and I should be grateful if the honourable Financial Secretary could give us some examples.

Clause 9. While I am aware that the Commissioner has power to "deem" things elsewhere in the Ordinance, I do not like, in principle, the assumption that certain businesses have always made a profit. What about the firm that makes a loss, which can often happen in this hard competitive world.

Can provision not be made for an appeal from the "deemed profit" if it can be shown that there actually was a loss?

Also I dislike the tax on technical knowhow that is proposed in 15(1)(b) just when knowhow from overseas is what Hong Kong must have for our economic development.

In 15(2) the word "released" will, I suspect, deal with situations that will hardly ever occur in practice. Would it be possible to find a more practical form of words to cover the purpose of this clause?

Clause 14. I am unhappy about the implications of the new section 21B. I can quite see what the honourable Financial Secretary is aiming at, but the section as drafted seems impractical. How can one define the "true market value" in Hong Kong of special and often highly technical goods that are produced only for export, and for which there is no local market. However, I understand that it is proposed to withdraw this section at this time but, if Government intends to return to the charge later on, I hope time will be allowed for proper consultation with commercial interests so that any new provision is workable and easily understood.

[MR BROWNE] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

Clause 22. This does not make provision for finance houses to obtain exemption, in the same way as licensed banks, from the requirement to obtain a certificate from the Inland Revenue Department each time interest is paid. However I understand that there is a proposal to introduce an amendment to section 29 which will give the Commissioner power to exempt any other corporations by notice in the *gazette*. I am sure this change will be generally welcomed.

Clause 35. This seeks to tighten up the registration procedures for corporations, but no good reasons appear to have been given for this proposed change. The existing arrangement, whereby limited companies may be incorporated in Hong Kong without regard to the residence of their Directors or share-holders, has stood us in good stead for many years. Only a registered office has to be maintained in Hong Kong and this has encouraged the growth of a substantial offshore business which benefits the economy of Hong Kong in various ways. The new section 57 will, I think, tend to discourage overseas interests in using Hong Kong as a base and I hope the honourable Financial Secretary will reconsider the necessity for introducing this additional bit of red tape. But if he has some good reason for the new rules, perhaps the word "individual" might be changed to "a person", and at least a year be allowed before the new arrangement is introduced.

Finally, Sir, I hope Government will bring out a new edition of the Inland Revenue Ordinance which will consolidate all the various amendments that have been made from time to time.

DR CHUNG:—Your Excellency, I am sure we all agree that at present the important export-oriented industry in Hong Kong is externally under the threat of unfavourable trading conditions and internally suffering from fast rising costs. To maintain our competitive position in the world markets, it is inevitable that our manufacturing industry will have to climb up the technological ladder and to attain greater sophistication in its production. We will hence need the greater use in industry of foreign patents, designs, secret processes or formulae or other properties of a similar nature.

It is therefore very unfortunate that Government is choosing this very moment of anxiety to implement that particular recommendation of the Inland Revenue Ordinance Review Committee to charge tax on sums received by or accrued to a foreign company or a non-resident

outside Hong Kong for the use or right to use in Hong Kong a patent, design, secret process or formula, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use in Hong Kong of such patent, design, secret process or formula. Although the tax is chargeable to the licensor, it is most likely that the tax will be paid and borne by the licensee which is the local manufacturer in our export-oriented industry. The result is, undoubtedly, another cost inflation in production and price increase for our exports.

Whilst the trade and industrial associations are trying hard at this juncture to encourage industry to produce products of higher technology and greater sophistication, it is rather a pity to see such inconsiderate and unsympathetic attitude taken by Government in this respect. Industry is expecting assistance and encouragement from Government to maintain its export growth for the benefit not only of those directly connected with industry but of all the people of Hong Kong. Honourable Members, no doubt, can imagine the grave consequences if we fail to maintain a reasonable growth in our exports.

The adverse situation is further aggravated by the absence in Hong Kong of double taxation agreement with a number of industrially-advanced countries where local industry is looking for advanced technological know-how. If such double taxation agreement exists, certain classes of income received by or accrued to a foreign corporation or non-resident would be exempted from Hong Kong taxation, even though arising in Hong Kong.

Industry, whilst hoping for some positive assistance from Government in a period of difficulty to alleviate its hardship, is instead receiving such a discouragement on its efforts for diversification and sophistication. I certainly consider it very untimely to introduce such a taxation in Hong Kong. For these reasons, Sir, I regret that I cannot lend my support to the new section 15(1)(b) under clause 9.

I now turn to another clause of the bill. Whilst I welcome the addition of a new section 35B under clause 27 to enable the grant of an initial allowance to the purchaser of an industrial building if he is the first user, I do not think the amendment has gone far enough in two aspects.

First, it concerns with the value on which the initial allowance is computed. According to the new section 35B subsection (b), the value would be either the original cost of construction (that is, the contractor's price for constructing the building) or the net price paid by the purchaser for such a building whichever is less. If the purchaser paid a price higher than the original cost of construction, which is fair and proper under normal conditions, the initial allowance which is granted to the purchaser and first user under this new section must be calculated on the original cost and not on the purchase price.

[DR CHUNG] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

I think this restriction is a discrimination against the small businessmen. The large scale industries can and will construct their own buildings. However, a small-scale factory due to its small size and limited finance usually buys its premises from a developer of flatted factory building. Since land cost is already not included in the value on which the initial and annual allowances are calculated and if the profit component of the purchase price is also excluded, the initial and annual allowances may well be calculated on about one-third of the purchase price. This principle for depreciation allowance is incomprehensible to me and I would like to know which countries are now using this peculiar method of depreciation.

The second point is about the premium paid for acquiring a leasehold property. At present, both the initial and annual allowances are restricted to the building itself excluding the land where the building is situate.

As honourable Members know, most of our industrial buildings are situated on Kowloon and in particular on the north of Boundary Street. Honourable Members are also aware that all land in Hong Kong is owned by the Crown and that all Crown leases for land north of Boundary Street will expire in 27 years. However, there is no provision for both initial and annual allowances for the leasehold land. Since a large premium, which at times is as much as the cost of the building itself, is always paid for the leasehold land and since the lease is only good for 27 years now and for a lesser period as time goes on, it is therefore only fair that the lessee be permitted to write off the premium over the period of the lease at a fixed annual rate.

Some years ago the Federation of Hong Kong Industries made a similar appeal to Government but it was not accepted. The Inland Revenue Ordinance Review Committee has also considered this matter and commented in its full report as follows:—

"We agreed that it seemed logical and equitable to allow an annual deduction for a proportionate part of the premium paid to acquire a lessee.... The arguments in favour of granting some relief in this matter appeared stronger....on a comparatively short-term lease."

I recognize that the Review Committee eventually resolved not to support the granting of amortization allowances for capital expenditure incurred in acquiring a lease or sub-lease of land. However, in view of the fact that my present proposal is confined to land on an increasingly short-term lease and to the need for encouraging the development of

industry away from urban area, I request that Government give further consideration to granting amortization allowances for leasehold land situate north of Boundary Street.

MR OSWALD CHEUNG:—Sir, there are 2 provisions in the existing Ordinance that I hope I might be able to persuade this Council to amend.

First, the time limit of one month in section 64 imposed on a taxpayer who wishes to object to an assessment by giving notice of objection to the Commissioner. With the growing complexity of some cases, I consider that this time limit is unreasonably short, and should be amended to two months. It is true that the Commissioner has a discretion to extend the time, if the taxpayer was *prevented* by reasonable cause from giving notice in time; but the Commissioner has no discretion where it has been *difficult* for the taxpayer to give notice in time; and in complex matters, involving law, accountancy or even unresolved questions of fact, it is my belief that the administration of the law will gain if there be time to consider quietly and thoroughly all aspects of the dispute, rather than have a notice of objection lodged hastily, and perhaps half-cocked. After all, in weighty and complex matters, Government too takes time before it reaches a decision—in some cases more than one month. There is also a belief in certain quarters that it is extremely difficult for a taxpayer to get the Commissioner to extend the time, and that he puts too restricted a meaning on the words "or other reasonable cause" in the section, construing it *ejusdem generis* with the preceding words before which are "absence from the Colony or through illness". He confines the cases to which he would grant an extension to "reasonable cause" similar to "absence from the Colony or illness". If this belief is to be contradicted, perhaps my honourable Friend, the Financial Secretary, might inform us in what percentage of cases, where time has been sought in the last ten years, it has been granted by the Commissioner.

The second proposal I have is that the Board of Review should be given a discretion to award costs, either to the Commissioner or to the taxpayer up to a limit of \$5,000, depending on the result of the appeal before the Board of Review and depending on their view of the merits of the case. Costs, and sometimes quite heavy costs, can be incurred in a hearing before the Board, where it requires work by accountants, assessors, and lawyers, including Crown Counsel. In one case, in my recollection, the matter could only be resolved after hearing at great length a leading stockbroker. This very bill includes a provision whereby the Attorney General may authorize the reporting of decisions of the Board of Review, a proposal that is widely acclaimed and which, if passed, would result in a collection of cases (with the identity of the taxpayer not disclosed of course) that will be useful to all persons

[MR CHEUNG] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

concerned with Inland Revenue, and which, because of their human and legal interest, might well deserve the fame won by the collection of A. P. HERBERT'S cases. The truth is, some exceedingly complex and nice points of law have cropped up for decision. Honourable Members will have read in the papers of the case which went to Full Court recently where the dispute was whether a travel allowance given to a civil servant was taxable. Conversely, of course, is the director of a company taxable on the use of a chauffeur-driven car provided by the company for his private purpose? Or, is the officer of a foreign corporation who spends only 6 months in the year in Hong Kong, who is permanently provided with a flat, taxable on the notional rental value of the flat for the whole year, or only on half of it just as he is taxed on only half of his salary? Is a taxpayer liable to pay tax on profits on a real estate transaction which he would have made had there been no bank crisis, but which he did not make because the deal fell through after the bank crisis? Lastly, as an example, are school fees paid direct by an employer to a child rather than to the taxpayer by way of an education allowance taxable? I may observe that most tax cases end in the Board of Review. Surely, it would not be incorrect to give power to the Board to award costs up to \$5,000 against the party who has been wrong? And I may say that as I am at the receiving end of the arguments that I find I would not have been able to do justice, as best I can anyway, without the help of accountants and lawyers. All parties benefit from having professional presentation. I am not under any misapprehension about the functions or the character of the Board of Review. It is a fact finding body but more and more it is becoming a forum where the most complex issues of law are being resolved. It is to be observed that if a case goes further to the Supreme Court, costs may be awarded against one party or the other. In my submission, the real need is for the power to award costs in hearings before the Board which to my mind is the most important tribunal dealing with tax matters in Hong Kong.

Both these proposals were made by the Bar Association sometime ago. I may add, in case there is any misunderstanding that barristers get paid whatever the results of their cases. A reasoned reply was received from the Legal Department but I must admit that I have not been persuaded that those reasons are correct. I have discussed these proposals and Government's reasons for not acceding to them with my Unofficial colleagues, and apart from one or two of them not present during those discussions or present today, I can say that these proposals enjoy their support, and I can only hope that, in the light of my plea today, Government may also consider that they are right and would support amendments which I propose to make in the Committee stage.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—Sir, I think that there is probably one underlying thought behind what the various speakers today have said with which I agree, that is, that all taxes are in principle bad things. No-one will dispute, however, that we have to have them but their general unpleasantness means that there are likely to be wide divergences of opinion about the wisdom or equity of particular tax provisions.

I shall try to deal with the points raised by order of the clauses in the bill, rather than order of speaker, except where matters have been raised which are not covered by the bill.

My honourable Friend, Mr BROWNE, has asked whether the exemption from Property Tax of owner-occupied property could not be extended to more than one residence for a man's relatives. The original exemption in 1961 was designed largely to encourage home ownership by the man in the street, rather than multiple ownership which must generally be the prerogative of the well-to-do. The proposed proviso in clause 4(b) does include more than one separate "tenement" in one building to cover cases where a large family overflows from a small flat into an adjacent one. But to take the exemption any further would open it up to abuse; and, furthermore, would certainly necessitate inquisitions into family circumstances—possibly embarrassing inquisitions. We are clearly having considerable difficulty with dependents' allowances introduced last year. I think we have stretched the concession as far as is reasonable.

My honourable Friend, Mr BROWNE, went on to say that it is not altogether clear how clause 5 is intended to apply to seamen and aircrews and to ask for examples. I think I shall have to go into the basic concepts behind our salary tax. Liability to tax may arise from two separate factors—

- (a) from a Hong Kong contract of employment, wherever services are performed (the so-called *situs* of employment);
- (b) from the performance of services in Hong Kong.

I said, when I introduced the bill, that we intended to maintain the first of these as the main general criterion but to give general exemption in the case of both (a) and (b) where a person otherwise chargeable renders services in the Colony for not more than 60 days in a year of assessment. This applies whether or not there is a Hong Kong contract of employment.

In the case of crew members of ships and aircraft, those based in Hong Kong are at present liable under the *situs* of employment criterion on their whole salaries, whereas others are liable only if, and to the extent that, they render services while in Hong Kong. The intention

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

of the clause is to exempt both of these categories, like those in other employment, if they are in the Colony on not more than 60 days in a year of assessment.

But it is our view that crews based on Hong Kong and with a Hong Kong contract should not escape liability if they are in Hong Kong for more than a minimum period of 60 days, even if they do not render services while in Hong Kong. This is because of the special way of life resulting from the nature of their employment. To make this distinction clear it is intended to propose at the Committee stage an amendment which would exclude crews from the operation of the general exemption and apply to them more explicitly only the special, more limited, exemption in proposed new section 8(2)(j).

I should add that it has been represented by the aircrews that, because of the greater frequency with which aircrews find themselves in the Colony compared with ships' crews, the qualifying period for liability should be longer in their cases. I think, however, that we have to put some limit on the refinements we introduce into our tax system, and I do not think that any significant inequity will arise from our present proposals.

Both my honourable Friends, Mr BROWNE and Dr CHUNG, have voiced objections to the so-called "deeming" powers in clause 9, although it seems to me that the former's objections are rather to clause 14 which stipulates that profits are to be taken at 10% of certain deemed receipts.

There is, I think, some misunderstanding about the intention and effect of these proposals. Profits are taxable if they arise in or are derived from the Colony from a trade or business carried on in the Colony. There are some kinds of receipts which commonsense tells us generally give rise to business profits which may properly be regarded as basically arising in or derived from the Colony; but where there may be, in some cases, a difficulty in showing conclusively (and taxing statutes are construed strictly) that a trade or business is carried on in the Colony. The deeming provisions in clause 9 are designed to remove doubt in such cases and treat all such receipts as generating taxable profits. The deeming method of dealing with the problem was adopted by the Review Committee rather than either of two rather more radical suggestions by the Commissioner. There is an account of these in paragraph 79 of Part II of the Report.

Furthermore, in the case of some receipts from such sources, it is virtually impossible to determine with any precision exactly what part

of the receipts in Hong Kong are profits arising in or derived from the Colony. This is obvious, for example, in the case of trade-marks owned abroad. It is, therefore, necessary and desirable to have recourse to an arbitrary but reasonable proportion.

The first objection of my honourable Friends to this clause is the alleged taxation of "technical knowhow" when these provisions are applied to such things as patents and secret processes.

The first thing I would say about this is that profits so derived are already taxable and are, in many cases, taxed, particularly when the seller has a place of business in Hong Kong. It is not a new tax. It would seem unreasonable to tax some of these profits and not others, simply because of almost accidental circumstances (*i.e.* the difficulty in showing in some cases that a trade or business is carried on in the Colony). But it would seem equally unreasonable to distinguish between one source of profits and another simply on the basis of a view of the contribution the recipient may make to the development of Hong Kong (not that all patents, secret processes, *etc.* can be assumed to do that; for example, secret processes for the manufacture of soft drinks). I don't like to imagine where that road would lead us—perhaps the exemption from tax of all profits made on the sale by booksellers of technical books; or exemption of University staff from salaries tax?

I may add two other points. First, such payments by Hong Kong businesses are deductible in assessing *their* profits. Second, as to double taxation, I think my honourable Friend, Dr CHUNG, is not wholly correct. It is a general convention that the country where profits arise or from which they are derived enjoys priority in taxing these profits; and in general this is recognized in double taxation agreements, although it is true that there are exceptions to this (particularly in the case of shipping and air services) and exception is often made in respect of receipts from patent rights, royalties, *etc.* where, but only where, there is no permanent establishment in the country where the receipts arise. Even, however, in the absence of double taxation agreements, the country which is taxing on a residence basis, not a source basis, will usually give unilateral relief.

The second objection is my honourable Friend, Mr BROWNE'S—that is, his objection to assuming an arbitrary profit figure as a percentage of gross receipts with no provision for appeal if an actual loss can be shown. But the basic reason for assuming a fixed proportion is that neither profit nor loss can be precisely assessed; and in any event, we could hardly accept my honourable Friend's suggestion unless we also reserved the right to raise the assessment where there was evidence of higher profits. In practice, the sources subjected to this treatment are ones where a loss would rarely arise and I understand that the cinematograph industry at least is not unhappy with the figures of 10%,

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

which at present would amount to $1\frac{1}{2}$ % of gross receipts. This is very modest compared with other countries, such as Australia and South Africa, which employ the same system—which we ourselves already employ with life insurance companies when they want to save the high cost of frequent valuations.

Furthermore, in the case of proposed new sections 15(1)(a) and (b) the deeming provisions only apply to sums not otherwise chargeable to tax; our domestic film industry, for example, is taxed on an agreed formula for determining chargeable profits.

As to the word "release" in proposed new section 15(2) about which my honourable Friend, Mr BROWNE, has doubts, the phrase occurs in United Kingdom legislation with the same intent as in this bill; it is not defined there, presumably for lack of ambiguity. I understand that it has been frequently recognized judicially in United Kingdom courts and I can see no difficulty with it. No other phrase has been suggested.

My honourable Friend, Mr BROWNE, is correct in his understanding that we intend to propose the omission at the Committee stage of proposed new section 21B about manufacture for sale abroad. The General Chamber of Commerce has pointed out some defects in it and we have seen others ourselves. We do intend to "return to the charge" at a later date, for there is evidence that we are losing substantial tax. I have noted my honourable Friend's advice on consultation with commercial interests.

My honourable Friend, Mr BROWNE, has also referred to clause 22 regarding the exemption of licensed banks from the requirement, in connexion with Interest Tax, to issue to the recipient of interest a certificate containing an acknowledgement by the Commissioner of the receipt of interest tax deducted. This is part of the new provisions designed to give protection to the payer of Interest Tax when it is deducted at source. We do intend to move an amendment at the Committee stage empowering the Commissioner to specify non-banks for the purposes of this section. The Commissioner has, of course, an interest in lightening the burden on his own staff where the payer of interest is a responsible person making many such payments and the form of protection given by the certificate is not really necessary.

My honourable Friend, Dr CHUNG, spoke about the proposed new section 35B in clause 27 dealing with initial allowances for industrial buildings, objecting to the provision whereby an industrial building purchased and used by someone other than the person who constructed

it attracts an initial allowance on the basis of original cost or purchase price *which ever is less*, rather than on the purchase price to him; so that he gets no such allowance on any profit element in the sale price.

I must confess that I am more than a little surprised at some of my honourable Friend's remarks on this subject. He appears to imply that we are proposing to introduce a new burden on, or discrimination against, industry, particularly small industry, whereas in fact the proposal is to make an additional concession. In 1965, I moved the reintroduction of initial allowances for industrial buildings, which were abolished in 1955, and at an increased rate of 20%, with, furthermore, a doubling of the annual allowance. In addition, we removed at that time the restriction of these allowances to cases where the building is used only by the owners; this was to encourage the construction of flatted factories for rent.

What we did not do then, and are now proposing to do in this bill, is to extend the concession still further to a building which is owned and first used by persons other than the person who constructed it, *i.e.* to purchased buildings. My honourable Friend may, of course, argue that the concession as it stands is inadequate, but that is a different matter. I have substantial reservations with his argument on initial allowances as these allowances are not depreciation allowances in the proper sense of wear and tear allowances, but are designed to encourage industrial development; and it would be rather odd to give differential stimuli of this sort to identical buildings merely on grounds that one is used by its developer and the other is sold to another owner who first uses it.

I would have more sympathy perhaps with an argument on my honourable Friend's lines if it were applied to annual allowances over the life of the building. These, too, are affected by the provision of which he complains.

My honourable Friend has said that he finds the proposed method incomprehensible and has asked which other countries use it. It is taken in fact from United Kingdom law on the subject; but it is true that it does not take all the United Kingdom law for there is an additional provision in it that the sale price to the purchaser may be used, even if in excess of the cost of construction, where the seller is liable to tax on the resultant profit as being engaged in the business of development; but not otherwise. Such profits are taxable in Hong Kong in roughly similar circumstances.

As I have said, I see some degree of merit in my honourable Friend's argument as applied to annual allowances and I am prepared to undertake to give it further consideration. It is not possible, however, to promise an amendment by the Committee stage of this bill;

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

the subject is very complicated. I must ask my honourable Friend to be content in the meantime with the 90% or so of the loaf which is given by this bill as it stands.

My honourable Friend, Mr BROWNE, spoke of clause 37 dealing with a requirement that corporations with none of the usual functionaries in the Colony inform the Commissioner of the name and address of an individual who shall be answerable to the Commissioner under the Ordinance. He spoke of this as an additional length of red tape and said that no good reasons have been given for it. The reasons are given in paragraphs 375-381 of Part II of the Report; I think they are good reasons even if Mr BROWNE apparently does not. The bill does not, in fact, go as far as the Commissioner proposed, but it is surely not unreasonable that such companies should have someone in the Colony who will be answerable to him on matters arising from the Ordinance. In any event the kind of absentee company to which he refers is unlikely to have to do, to use the words of the bill, "any act, matter or thing required to be done under the provisions of the Ordinance" except, possibly, confirmation in the form of nil return that no business has in fact been carried on in the Colony.

As regards substitution of the word "person" for "individual", this would, and is, I presume, intended to allow representation by a corporation. But it would be most illogical to require a corporation to be answered for by a specified type of individual if an appropriate one is in the Colony (as provided by section 57 at present), but allow other corporations to be answered for by corporations.

I now turn to matters not provided for in the bill.

First, my honourable Friend, Dr CHUNG, raised again, perhaps I could be excused for saying yet again, the subject of depreciation of lease premia. This has been considered by a number of United Kingdom tax committees and by the Hong Kong committees of 1954 and 1965. All have rejected it for reasons given in the 1954 and 1965 Reports, albeit the 1954 Committee took this view by a majority. I do not think, in any case, that the length of the lease has relevance to the argument.

The allied subject of depreciation allowances for improvements carried out to leasehold properties was discussed by the 1965 Committee. It is a rather more difficult matter, where there are certainly some arguments in favour of some relief. The Committee's view, however, was that it was precluded in practice by the very great complications it was involve. I suggest that it is one of the advantages of our tax

system, both its simple form and its low standard rate, that we can avoid being forced into the kind of intricacies we find in the tax law elsewhere and can accept minor inconsistencies and inequities. If we were to go in for complicated provision to iron out all of these, particularly in the taxpayer's favour, there would be strong grounds for abandoning our present simple tax structure for something more sophisticated and burdensome.

My honourable Friend, Mr CHEUNG, has raised two points not dealt with in the bill but which have been represented to us by the Bar Association.

In the first place, it is suggested that the time limit, "imposed on the taxpayer", to use without accepting my honourable Friend's phrase, for objections before an assessment becomes final, unless the Commissioner accepts that there are reasonable grounds for an extension, should be increased from 30 days to 60 days. For all normal circumstances I should have thought that 30 days was ample; indeed, in Australia there is no provision for extension beyond this period in any circumstances.

Rejection of an application is uncommon and I have heard of no examples of the Commissioner withholding an extension unreasonably or oppressively, although I am afraid that I cannot say, at short notice, what proportion of applications have been disallowed. I shall try to provide the information before the Committee stage. I myself see no reason, therefore, for amending this provision. In any event an increase from 30 to 60 days would make little difference in practice as cases where extension of time is refused most often involve particularly uncooperative taxpayers.

My honourable Friend's second point is that he considers that costs should be awardable by the Board of Review against either the Commissioner or the appellant. I think that such a suggestion is, with respect for his protestations to the contrary, based on a misconception of the nature and purpose of the Board; and also perhaps, but possibly not, of the existing provision empowering the Board to order the payments of costs by appellants.

The Board is designed as a simple, cheap and confidential form of *review*, by an independent, lay body, of the decision made by the Commissioner on objections put to him by taxpayers. I stress the word *lay* although the chairman is a lawyer and there may be other lawyers on a board. It is not a court of law and its findings do not have the force of precedent; there is an appeal from it to the Supreme Court, where full judicial process may be had. Apart from the Chairman and two Deputy Chairmen, one of whom chairs each board,

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill—resumption of debate on second reading (2.12.70)**

the members give their services free. Appeals, equally, are free; there are no charges; the costs of the Board, unlike those of the Courts, are borne in full by public funds.

This does not mean that there is objection to professional men, including counsel, appearing on behalf of appellants, although they appear not as counsel but as "authorized representatives". But this is at the choice of the appellant; anyone can represent him; and he has, of course, another opportunity to make his case through counsel in the Supreme Court, should he be dissatisfied. The Commissioner himself does not normally employ counsel, except in some cases where the appellant does.

For these reasons it seems clearly inappropriate to provide for the award of costs, there being no legal charges and no compelling need to be represented by counsel or other professional representatives. Indeed, I think it is undesirable to encourage any development of the Board away from its lay role to a fully judicial one; its purpose would be largely defeated thereby, and we would have to consider more far-reaching changes.

The costs which may be awarded by the Board *against* the appellant are of a different kind. They are limited to \$100 and are paid "as costs of the Board". The minimum cost to public funds of a sitting of the Board (not to mention the time freely donated by the ordinary members who recently rejected a proposal that they should be paid) is \$1,000; and, as the appeal procedure is free, it would seem only reasonable that frivolous appellants should make some contribution to costs. It would be absurd, of course, to provide for a similar award of costs against the Commissioner as all the Board's costs are paid from public funds in any case. Indeed, it seems to me that there are grounds for raising the maximum award substantially higher as the present figure dates from the days when the minimum cost of a session was not \$1,000 but \$200. But the fact is that no order for costs has ever been made by the Board.

I should add finally that neither the General nor the Special Commissions in the United Kingdom, who closely correspond to our Board of Review, have power to award costs.

I think I have now spoken on all the points raised by honourable Members, perhaps not always to their satisfaction. I apologize for my prolixity but the subject of tax does not allow of brief replies if I am to explain the position fully.

Honourable Members have also received a list of the amendments which we at present propose to put forward at the Committee stage, with a brief account of the reasons for them.

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).

Adjournment

Motion made and question proposed. That this Council do now adjourn—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

3.54 p.m.

Crime Statistics

MR CHEUNG:—Sir, before the Council rises I wish to express my very deep concern at the statistics for serious crime, which appear as Appendix 12 to the Annual Report of the Commissioner of Police for the year ended 31st March 1970, which was tabled here earlier this afternoon.

If we look first at the cases of murder and manslaughter, we will see that 55 of such cases were reported to the police within that period. I wish to compare it with the figures for the years 1961-66: the average for those years was 29 cases in a year. For the 12 months which have just ended the number of murder and manslaughter cases was 70, as is well known, thanks to the vigilance of the press in giving cogent publicity to the deteriorating situation.

This cannot be called a low rate for a civilized society, for I compare it further with the number of murder and manslaughter cases reported in England and Wales for the year 1968, the last year for which I have data. In that year in England and Wales the number was 183. That is for a population of just over 47,000,000 which is 12 times the size of ours. So our rate of murder and manslaughter per million of population is $4\frac{1}{2}$ times the rate prevailing in 1968 in England and Wales.

In the year ended 31st March last year the Commissioner reveals that 28 young persons in the age group 16-21 were prosecuted for murder or manslaughter. This compares with the average of one young person prosecuted in each of the years 1960-65. However more alarming are the figures for robbery. Robbery with firearms has risen from one or two cases a year to 6 cases a year. At one time 20 years ago

[MR CHEUNG] **Crime Statistics**

it was an offence which was a dangerous threat, but it subsided after some salutary sentences of corporal punishment and long years of imprisonment had been passed on the culprits. I hope the lessons of those years have not been lost.

The real menace today comes from robberies of other descriptions. For the whole of the 5 years 1961-66, there were 1,100 cases, making an average of 220 cases a year. They have shown a disturbing rise in recent years. They had leapt to 1,600 or 1,700 a year in 1967-69; in the year ended 31st March 1970 the number of cases have jumped to nearly 2,500. In the 12 months just ended the figure is 3,000 or very near it.

That is more than the total number of robberies committed in England and Wales for the year 1968. It is a wholly intolerable level.

Even more disturbing is the fact that during January—November 1970, half the criminals prosecuted for robbery came from the age group 16-21 years, and another 23% from those between 8 and 16, showing marked rises from the year before.

In the early 1960's the number of young persons prosecuted in a year for robbery averaged 55. There has now been a 12 fold increase.

The serious assaults have also shown a sharp rise from the early 1960's; serious assaults in the statistics are those where the culprit has wounded or caused grievous bodily harm, sometimes with intent to wound, to disfigure or to inflict such grievous bodily harm, in which case the maximum sentence is imprisonment for life. Sometimes such wounding is without such mala fide intent, in which the maximum sentence is 3 years imprisonment.

The figures for serious assaults have doubled from the early 1960s. Cases of rape in 1961-66 amounted in all to 18 cases in those 5 years. Last year along there were 37. Indecent assaults on females have doubled; other sexual offences last year amounted to 300, almost the total for the whole of the 5 years 1961-66.

I will not take up honourable Members' time further with figures, but I would invite the public to study the statistics published in the Commissioner's report and compare them with the statistics published in previous years which are very conveniently found at the end of each Hong Kong Year Book.

I would not depart, Sir, for one moment from what you recently said—that we are essentially a law abiding community, and that it is a small minority who are lawless.

But I will collect together a few further facts before I sit down:—

- (1) The last two or three years have been years of employment.
- (2) The general standard of living has risen.
- (3) The police force is ever more efficient and vigilant.
- (4) Law enforcement finds strong support from the public; and not only strong support, but positive demand.
- (5) Corporal punishment, until recently, fell into general disuse.
- (6) This Council in late 1967 passed section 109(a) in the Criminal Procedure Ordinance, the section which directs the Courts not to send young persons aged 16-21 to prison unless no other method of dealing with them could be found.

In the book of any criminologist of reformatory persuasion, these are six factors which ought to have been contributed to a reduction in crime. Yet as the Commissioner reveals violent crime has steeply risen. To my mind the conclusion is obvious, but I will let honourable Members draw their own.

For my part, Sir,—if I may be permitted to say a few words addressed to those in our community who repudiate social discipline, and who are actuated towards crime by motives of indolence, easy money, vanity, excitement or the sheer love of evil—I say to them that we in this Council are not without power to ensure that they are visited with stern retribution. I hope that they note, and mark, that the word I use is "retribution" and not "denunciation". I hope none of them will underrate our resources or doubt our resolve.

MR P. C. WOO:—Sir, I have listened with great interest to the speech of my honourable Friend, Mr CHEUNG, and I am in full agreement with what he has said.

The Crime Report by the Commissioner of Police for November 1970 shows in Appendix I on page 15 of that Report that offences rose from a grand total of 209,509 cases in 1965 to a total of 288,632 in 1970; on page 4 at Table VI, the Divisional Breakdown of Robberies shows a grand total of 242 robberies in July 1970 and that for November 1970 is 318, which latter figure is the highest monthly total ever recorded.

My honourable Friend, Mr ROBERTS, in his speech before this Council on 7th October 1970 said:—

"While the task of deciding on the actual sentence in a particular case is that of the Courts, it is this Council which decides what kinds of punishment may be imposed."

[MR WOO] **Crime Statistics**

and he cited as an example that this Council amended the Criminal Procedure Ordinance inhibiting the Courts from imposing prison sentences on young offenders unless there are no other appropriate ways of dealing with them.

This was true in 1967, but it must be realized in 1967 this Colony was not faced as we in 1970-71 are faced with the problem of violence by young persons. I invite this Council once again to look at the November 1970 Crime Report by the Police. At page 12, the graph shows that for January to November 1970 the percentages of persons prosecuted for robberies were:

Adult (21 years and over).....	27%
Young person (16-20 years).....	50%
Juvenile (under 16 years)	23%

These figures are great cause for alarm, and the time is ripe for this Council to act, and act effectively to combat this evil afflicting this Colony today.

My honourable Friend, Mr CHEUNG, said "that we in this Council are not without power to ensure that they (the criminals) are visited with stern retribution." I amplify this statement by saying "that we in this Council should now consider whether the 1967 amendment to the Criminal Procedure Ordinance preventing the Courts to send young criminals to prison should be suspended until the spate of violent crimes has subsided."

Let us act now, let us delay no more.

MR WILFRED S. B. WONG:—Sir, in supporting my colleagues in their concern regarding crime statistics, I would like to call attention to an assessment of the basic principles of law and order.

In Western civilization the Sixth and Eighth Commandments formed the basis of law against murder and robbery. In Chinese civilization the priority of crime is also in the same order of murder and robbery, *i.e.* against life and property. In recent years there has been a tendency throughout the world to classify criminals as a whole or a group of unfortunate young people lacking in opportunities to be useful members of society. This kind and sympathetic permissiveness acts as no deterrent against violent crimes emanating from immature minds who employ the primitive but effective method of plain bullying against defenceless people, thus increasing murder and robberies to an extent that the so-called civilized communities have never experienced

before. The statistical aspect of the presentation has been amply made by my colleagues.

No one quarrels with the theory that a few misguided youths should have another chance in becoming responsible citizens, but the incongruity lies in the fact that too many defenceless citizens are exposed like sitting ducks to violence, and are we, as Government, providing the essential protection to life and property to which people are entitled? By we, I mean the executive, legislative and judicial branches of Government. Are we tackling the special problem with special measures? With organized triad societies who commit murder in the flick of an eyelash and organized gangs who systematically raid innocent victims in multi-storied flats and lonely staircases of buildings, are we organizing a special squad to counteract this menace? I realize that it is difficult to operate a mod squad in Hong Kong, but a special effort should be made in that direction.

Legally and technically, people who break the law are all lawbreakers. Socially and morally, there is a vast difference between those who break the law of the Sixth and Eighth Commandments and those who break the traffic parking regulations.

I have nothing but respect for the traffic branch of the police which last year hauled away some 25,000 cars from the streets, but in the light of the present priority would it not be more appropriate to divert policemen who are spotting and hauling cars from off streets to the major task of tracking down triad murderers and robbers. The record of solving murders in Hong Kong, to be fair, is good, but robberies remain the major problem. A knife in a lift and an iron pipe in a staircase is becoming a pattern of social behaviour against defenceless citizens. It may be possible to organize teams to ambush and bait such robbers. If this is ever successful I sincerely hope that the police will not be branded "agent provocateurs" when they do catch robbers in that manner. Heavy sentences must be meted out to act as a deterrent against such crime. I am confident that certain citizens are prepared to assist these special squads so that robbery will not be allowed to pay.

MR KAN:—Sir, within the few minutes yet available under Standing Order 9, may I add one or two words to what has already been said by the three previous speakers. Sir, the serious concern which they have expressed is indeed shared by all the Unofficial Members of the Council and I believe by a very wide section of the community here. Admittedly the record of the police in crime detection is very high and I think the Commissioner of Police is to be congratulated on it. But there is very small consolation to the victim, or would-be

[MR KAN] **Crime Statistics**

victims, particularly when life and serious injuries to persons are involved. Sir, whatever may be said, I don't think it can be denied that we have a serious problem upon us, a problem which needs to be tackled with every resolve, a problem which I believe concerns all of us—Government, this Council, the courts and the whole community. I think the situation requires that some positive action must be taken and I believe I am right in saying that any measure which Government proposes in that regard will have the support of the Unofficial Members.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH):—Sir, may I first thank honourable Members who have today given so clear an indication of the resolve of this Council to adopt whatever measures are thought fit to counter any challenge to the personal safety which every member of the public is entitled to expect. Government, Sir, is no less resolved and I would not want anything I say today to be taken as minimizing the seriousness which Government attaches to any upward trend in crime figures, particularly violent crime perpetrated by youngsters.

May I now refer, Sir, as has already been done by my honourable Friend, Mr P. C. WOO, to the speech by the Attorney General in this Council on 9th October 1970, when he was concerned, as he said, with punishment as a deterrent. He spoke, Sir, of the practice of the Courts of inflicting what he called sharper sentences when any particular offence became too prevalent. He might, Sir, have gone on to say that that process had perhaps already begun because in June this year the Chief Justice in open court stated that neither he nor any of his brothers on the Supreme Court objected to the imposition of the penalty of caning where some offences had become too prevalent and he went on to single out crimes of violence as being cases where that penalty would not be inappropriate.

However, Sir, the Attorney General went on to remind this Council, as has been done today by my honourable Friends, Mr Oswald CHEUNG and Mr P. C. WOO, of the amendment to the Criminal Procedure Ordinance carried out in 1967. I do not wish to suggest, Sir, that we have moved too far with that amendment, nor that the Courts have in any way misinterpreted the intention of the legislature. What I would like to suggest is that before we act on the suggestion of my honourable Friend, Mr P. C. WOO, that that amendment should be temporarily suspended, we should first consider very carefully whether our courts are armed with the full range of methods of dealing with young offenders—particularly offenders who commit crimes of violence,

and honourable Members will recall that the Chief Justice has advocated the introduction into Hong Kong of detention centres for young offenders, and I am glad of this opportunity, Sir, to say that Government is considering carefully this proposal.

A reference has been made to the functions of the Police Force in curbing crimes of violence. And indeed my honourable Friend, Mr Wilfred WONG, has suggested—if I understand him aright—that the Police priorities might be adjusted in the present situation; and in particular that less men should chase the erring motorist and more should be used to prevent these types of crimes, perhaps by the use of special squads. I think, Sir, I fairly represent the Police view when I say that the deployment of manpower is always a fine balance between competing interests, and there are here two points to be made. The first is that any relaxation for any length of time of the efforts of the Traffic Branch could quite easily bring traffic in our streets to a halt and hand those streets over to chaos; and the second is that in the fight against crime new tactics are constantly being sought to meet each new threat.

May I finally suggest, Sir, and again I am sure that in this I speak for the Commissioner of Police, that the public also has its part to play. The Hong Kong householder is well used to securing his premises against intrusion. We are all familiar with the chains on the front doors which are fitted with "peep-holes" and elaborate bars on the lower windows. It is, therefore, all the more strange that these same people seem to neglect their first line of defence, for, Sir, the first line of defence for society against depredation is its Police Force, and I think, Sir, that the detection rate for crime shows how well served Hong Kong is in this respect.

But why then do robberies and assaults continue to happen in public places, often in broad daylight? Part of the answer may be that the robbers and the assailants rely on the fact that no passer-by is going to intervene and, more serious, that no spectator is likely to call the Police nor to volunteer information and offer his services as a witness, thereby rendering it more likely that the assailant will be caught and prosecuted successfully. And worst of all, Sir, is the fact that the victims themselves so often fail to report to the Police. It may be wondered how one can make a confident statement about that. The evidence lies in the large number of stolen articles which the Police are able to recover only to discover that their loss has never been reported, even in cases when the Police know full well that the loss occurred during the course of a robbery.

The moral, Sir, perhaps, is that assault and robberies, particularly in public places, would significantly diminish if every passer-by could be relied on to summon help immediately, and every spectator to give

[THE ATTORNEY GENERAL (ACTING)] **Crime Statistics**

full information and volunteer his services as a witness. Then, Sir, we should be making full and effective use of our first line of defence.

Sir, I support the motion.

Question put and agreed to.

Next sitting

HIS EXCELLENCY THE PRESIDENT:—Accordingly I now adjourn the Council until 2.30 p.m. on Wednesday 20th January 1971.

The Council adjourned at twenty-three minutes past four o'clock.