

24th October, 1951.

PRESENT:

HIS EXCELLENCY THE GOVERNOR

SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, G.C.M.G.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL GEOFFREY CHARLES EVANS,

C.B., C.B.E., D.S.O.

THE HONOURABLE THE COLONIAL SECRETARY

MR. JOHN FEARNs NICOLL, C.M.G.

THE HONOURABLE THE ATTORNEY GENERAL

MR. G. E. STRICKLAND, *Acting.*

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. RONALD RUSKIN TODD.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, *Acting.*

THE HONOURABLE THEODORE LOUIS BOWRING, O.B.E.

(Director of Public Works).

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER.

(Director of Education).

DR. THE HONOURABLE YEO KOK CHEANG

(Acting Director of Medical and Health Services).

THE HONOURABLE KENNETH MYER ARTHUR BARNETT

(Chairman, Urban Council).

THE HONOURABLE CHAU TSUN-NIN, C.B.E.

DR. THE HONOURABLE CHAU SIK-NIN, C.B.E.

THE HONOURABLE LEO D'ALMADA E CASTRO, K.C.

THE HONOURABLE PHILIP STANLEY CASSIDY.

THE HONOURABLE MAURICE MURRAY WATSON.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE NGAN SHING-KWAN

MR. GEOFFREY CAWOW HAMILTON *(Clerk of Councils).*

ABSENT:

THE HONOURABLE LO MAN WAI, O.B.E.

MINUTES.

The Minutes of the meeting of the Council held on 10th October, 1951 were confirmed.

PAPERS.

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

<i>Subject</i>	<i>G.N. No.</i>
Sessional Papers, 1951: —	
No. 21—Annual Report of the Secretariat for Chinese Affairs for the year 1950-51.	
No. 22—Annual Report of the Prisons Department for the year 1950-51.	
No. 23—Annual Report of the Hong Kong Government Office, London, for the year 1950-51.	
University Ordinance, 1911.	
Amendment of Statutes of the University	A.180
Defence Regulations, 1940.	
Price Control Order, 1946—Amendments to the Schedule	A.181
Emergency (Requisition) Regulations, 1949.	
Appointment of Competent Authority. (Under Regulation 2(4))	A.182
The Quarantine and Prevention of Disease Ordinance, 1936.	
Declaration under section 18	A.183
Defence Regulations, 1940.	
Price Control Order, 1946—Amendments to the Schedule	A.185

MAGISTRATES ORDINANCE, 1952.

THE ACTING ATTORNEY GENERAL moved the follow resolution: —

Resolved that the procedure prescribed by subsection (5) of section 12 of the Magistrates Ordinance, 1932, as amended by the Magistrates (Amendment) Ordinance, 1949, shall apply to the offences specified in the Schedule to this resolution.

SCHEDULE.

All offences against the regulations appearing at pages 720-803 of Volume II of the Regulations of Hong Kong (1937 Edition) and made under section 3 of the Vehicles and Traffic Regulation Ordinance, 1912, (now repealed) and deemed by virtue of section 9(2) of the Interpretation Ordinance, 1950, to have been made under section 3 of the Vehicle and Road Traffic Ordinance, 1947, as from time to time amended by regulations made under section 3 of the Vehicle and Road Traffic Ordinance, 1947 except offences against the following regulations—

Regulations 40(3), 44, 46(5)(a), 46(5)(b), 47 and 112.

He said: Sir, the effect of this resolution is to enable a defendant who is charged with offences against any of the regulations controlling vehicular traffic with the exceptions mentioned to plead guilty by letter in lieu of appearing personally before the magistrate. The fact that this procedure applies in a particular case will be indicated on the summons itself. It will nevertheless be open to the magistrate if he considers that he cannot decide an appropriate punishment without causing the defendant to be brought before him to insist on the personal appearance of the defendant.

While Government has been induced to take this course in an anxiety to spare the public unnecessary appearance in court and to avoid congestion in the courts I would I think be giving an entirely wrong impression if I merely said that this solution had proved successful elsewhere and failed to give Council a reasonably accurate picture of the traffic situation in the Colony. I propose therefore, Sir, to give Council some statistics and also a resume of the difficulties which the Police have encountered in their efforts to reduce accidents on the road and to make the Hong Kong motorist co-operate to that end. At the same time, Sir, I hope to show that those whose duty it is to enforce the law are not unmindful or unsympathetic to the difficulties in

defending or trying a case of contravention of traffic regulations long after the date when the incident occurred, particularly when the incident compared to a fatal casualty or other serious accident appears to be a relatively minor one.

To take statistics first, the number of motor vehicles in Hong Kong on the 18th instant was 15,741, a figure which does not include vehicles operated by His Majesty's Forces which probably number several thousand. This figure gives Hong Kong a comparative density per mile of road of 38.39 vehicles as compared with 20.5 in the U.S.A. and 17.7 in Great Britain. If we turn to countries such as France, Italy and Japan the figures would be 6.14, 3.32 and 0.28 respectively. In fact with the possible exception of Singapore there is no territory with a greater vehicular density than Hong Kong. Some idea of this density problem might be conveyed to those who know London by the following comparison. On a census taken from 8 a.m. to 8 p.m. of traffic passing through Piccadilly Circus in 1949 the total number of vehicles was 39,786. A similar census in Hong Kong in 1951 of traffic at the junction of Garden Road, Murray Road, Queen's Road East and Queen's Road Central gives the figure of 42,100. Moreover, it must not be overlooked that no trams pass through Piccadilly Circus, whereas during the busy hours a tram passes the bottom of Garden Road every twenty seconds.

To those who don't know London the following figures taken in 1948 and 1951 and applying to the stream of traffic in one direction only might be more illuminating. Again the period is from 8 a.m. to 8 p.m. The location, Garden Road into Queen's Road Central; in 1948, 3,600; in 1951, 7,611. Queen's Road East westwards on to Garden Road; in 1948, 10,084; in 1951, 15,035. Queen's Road Central, junction Jackson Road, traffic westwards; 1948, 4,560; 1951, 10,387.

The above are examples of increases which proved to be general throughout the Colony. Pedestrians have also greatly increased and whereas Pedestrian Crossings have reduced the wanderings at random, it now means that traffic movements must be co-ordinated with large flocks of pedestrians at given points. The two busiest Pedestrian Crossings are Des Voeux Road (between the Post Office and Jardines) and Queen's Road Central opposite the King's cinema. On 18th May, 30,626 pedestrians crossed over Des Voeux and 31,422 crossed over at the point mentioned in Queen's Road Central, so that there was an average of 2,500 pedestrians per hour.

I now pass to the problem of road accidents. Before, Sir, I embark on this subject I wish to make it perfectly clear that I consider that the ultimate solution must be public co-operation; rapid and effective police action; speedy trial by tribunals who are aware of the problems and who will not hesitate either to protect the public or to impose a sufficiently deterrent sentence for an admitted or proved offence. Moreover, Sir, as what I say to-day will be reproduced in Hansard and be available for reference, I hope that it may assist tribunals in obtaining a composite picture of the traffic problem to-day.

In the early days of the re-occupation, as soon as motor vehicles began to appear on the roads, it soon became obvious that we were to be faced with the problems of preventing an increase in road accidents. As the volume and density of traffic increased, so increased the number of road accidents.

The blackest year for fatal road accidents was 1947 with a total of 132 recorded, 69 in Kowloon and 63 in Hong Kong.

The Traffic Branch commenced to maintain a comprehensive system of records and statistics so that the causes of road accidents could be adequately surveyed and steps taken to prevent them. In Hong Kong, owing to the narrow roads, commercial activities and the great density of traffic, almost any traffic offence can be the cause of a road accident. The fatal and serious accidents have been mainly caused by jaywalking, by speeding, reckless driving, when occurring on the open roads. Although the jaywalker may be the cause of many fatal and serious accidents, some measure of blame must be shared by the motorist and many would have been prevented, if the motorist had been driving a little more cautiously and had been ready to stop rapidly in the event of such an emergency.

Briefly, the chief causes have been the following: speeding, *i.e.*, being unable to stop when a jaywalker crosses the path of the vehicle; overtaking improperly; forcing ones way through persons boarding or alighting from tramcars; failing to slow down or stop on approaching intersections, tramcar stops; failing to signal when turning a corner or displaying the signal too late, when the driver has actually commenced to turn; driving off from parked positions without giving a signal: passengers jumping or falling off buses or open vehicles; and jaywalking.

There are other causes, the offence for which is often termed a "trivial offence", such as parking in such a manner as to cause

obstruction. To some this may be a trivial offence, but if the presence of such obstruction causes traffic congestion or any form of hazard to motorists, which it frequently does, it ceases to be trivial. The driver who stops his vehicle at a roadside, in a main stream of traffic to pick up or let down passengers (or actually wait, as some do) frequently causes a large build up of cars behind. Traffic proceeding in a steady stream, however slow, is usually safe, but if the movement is subject to constant stopping and starting, accidents occur even with cautious motorists.

It is noteworthy that as soon as prosecutions against bad drivers got under way, there was a progressive reduction in road accidents of all categories. Causes were closely watched and, as far as possible, the Divisional Superintendent Traffic directed his men to detect the type of offences known to be the prevalent causes of such accidents. The results have been worth the trouble.

Thus we have a total of only 7,510 in the year 1950/51 compared with 9,178 in the preceding year. This represents a reduction of approximately 25%, and breaking up the figures we have 106 fatal accidents compared with 140; 534 cases of serious injury compared with 677; and for this final period down to the 30th of last month, we have only 65 fatal accidents compared with 101 in the corresponding period of the preceding year.

This reduction in road accidents, particularly fatal accidents, is a great achievement when one considers the increasing density and is unquestionably the main duty of our traffic police and it is something they can point to and be proud of.

I pass now to the question of offences. As previously stated, however, every effort has been made to direct prosecutions to the type of offences known to be the causes of road accidents. There is no doubt that the increased pressure has been brought on the bad and careless drivers and as seen by the accident results, this has been justified. In addition, there are many of the so called 'minor or trivial offences' which it was considered could not be permitted to continue unabated, such as—

- (a) Parking on pavements (in some cases so that pedestrians had to step on the roads in order to pass).

- (b) Parking and obstruction offences (not always serious but sometimes very inconvenient to other motorists. The one motorist, for example, who stops his car outside Lane Crawfords, can cause a long build up of traffic behind him).
- (c) Reversing down 'one way streets', making 'U' turns, unnecessary use of motor horns.
- (d) Failing to display licence disc. It is frankly admitted that this offence in the ordinary way is not the cause of a road accident but it is the only effective method of checking that licences have been taken out. This is the system employed elsewhere, that is to examine cars on the road, and members of the public have only themselves to blame when unnecessary time has been wasted when it has been found that their car has not the proper licence disc. Justices of the Peace have complained that much of their time is wasted by such cases. It is to be hoped, however, that all these cases will now be dealt with under the plea of guilty by letter except of course where the motorist wishes to contest his case.

Latterly there has been a certain amount of criticism both by the public and those whose duty it is to try cases that certain cases need not have been brought or that too long a time has elapsed in bringing cases to trial.

To deal first with the trivial cases—these are not always so trivial as they are made to appear and it must be remembered that their occurrence often causes great inconvenience to other users and pedestrians. Moreover, for a considerable time the police endeavoured to try the system of issuing warning notices as opposed to traffic summonses. Unfortunately they proved a dismal failure. The motorist usually did not mend his ways and when after a series of notices he was eventually summoned and fined a negligible sum the police can scarcely be blamed for abandoning a system which had produced such poor results. Moreover it is not possible to allow the rank and file of the Traffic Branch to exercise their own discretion on the streets as to whether a warning should be given or a summons issued. This means a check by senior officers and in view of the volume of cases involved a thorough check of each individual case is not always possible. The volume of offences is a little staggering as will readily appear when I state that the number of offences in Hong Kong island, not including the mainland, was 17,477 in the first nine months of this year. In fact the Divisional Superintendent

Traffic does withdraw many prosecutions for minor offences where it is clear that a warning would suffice or that the offence is too trivial to complain of. The question of delay in the trial of cases is in my view a genuine grievance as is also a case where delay occurs in calling the offender's attention to the offence committed, particularly if the offence is of a minor nature. Delay in trial is largely due to the congestion in the courts and the increased volume of cases which has resulted in our falling several months into arrear. I should also point out, however, that where pleas of not guilty are entered and counsel appears, delay is often due to the fact that counsel cannot give the court an early date on which he can appear. The courts cannot be blamed for that kind of delay. So far as delay on the police side is concerned, except in the cases where it is necessary to ask the owner for particulars of who was driving at the relevant time, I am assured by the police that applications for a summons to issue are normally made within 48 hours of the occurrence of the event and in the former cases within 48 hours of obtaining the necessary particulars.

Both the Commissioner of Police and I have recently made it our duty to study how we can further reduce delay in bringing cases up for trial. Delay appears to be worse on the island where the figures are much higher and the Chief Justice has undertaken in the near future to make one magistrate available on the Hong Kong side to deal almost exclusively with traffic offences. It should be remembered however that pleas of guilty by letter although convenient for the public may involve the magistrates in a good deal of work. It will greatly facilitate matters if the letter is sent by messenger with enough money to pay the probable fine as this would usually make it unnecessary for the magistrate to communicate further save to inform defendant of the fine imposed. I trust the press will give the necessary publicity to this suggestion.

In an endeavour to enable the courts to start with a reasonably clean slate I have in consultation with the Commissioner of Police and Divisional Superintendent Traffic given instructions which will result in about 3,742 cases never being brought to trial. Of these 2,648 relate to cases of which the trial has not yet been fixed.

In many of the other cases it will probably be necessary to enter *nolle prosequi* in order to secure the desired result. All the cases to which these instructions relate are cases in which the incident occurred before the first of October and in which the offence was of a comparatively minor nature, *i.e.*, compared with

the cases in which we have decided to maintain prosecution even though the cases have been awaiting trial for sometime. I wish to make it perfectly clear that these instructions in no way reflect any blame on the police. Indeed I hope that the observations I made earlier in connexion with the reduction of traffic accidents show quite the contrary. The instructions have been given not because the summonses should not have been issued but because they have not been brought to trial within a reasonable time and in the hope that by thus disposing of the arrears we shall be able to assist the courts in keeping up to date with current prosecutions and thus enable their speedy trial and remove any public grievance on this score. It is to be hoped that the offenders concerned will think themselves lucky and mend their ways without our having to prosecute them for other offences. If despite these measures we start falling into arrear again we shall, I fear, Sir, be compelled to press for more magistrates or alternatively for the creation of other courts to try some of the more serious indictable offences now tried by magistrates thus leaving magistrates free to deal with summary offences. But a little co-operation on the part of the public would go a long way not only in reducing the number of accidents and rendering the road safer for all but also for making the roads less nerve racking both for motorists and the general public. A little courtesy in allowing a pedestrian to cross the road or to a parked motorist in a busy thoroughfare looking in vain for a good samaritan to allow him to join the traffic stream is well repaid and usually failure to extend the courtesy does not get one to one's destination any quicker. Similarly if you are not driving at the pace the road allows choose the inside lane so that others may pass and if you are cruising along admiring the view be sure that you wave others on as soon as you can safely may. These courtesies not only make the roads pleasanter but by avoiding irritation they also tend to minimize the risk of accidents. Many an accident has been caused by an irritated motorist who has not been allowed to overtake, endeavouring to overtake when it is unsafe to do so.

We are, Sir, also undertaking a revision of the traffic regulations and it is hoped to produce some sort of Highway Code which might in some convenient form be handed to all those who obtain a driving licence, but even such a code must be supplemented by courtesy and that can only be achieved by the goodwill and co-operation of the public.

I trust I will be forgiven, Sir, for having taken up so much of Council's time in moving this resolution. I have done so, Sir, in an endeavour to show that this resolution is by no means a panacea for all our difficulties and in the hope that by giving a picture of the problem as a whole we shall secure greater co-operation from the public and sufficiently deterrent sentences from the courts to reduce the vast volume of offences now being committed.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

REVISED EDITION OF THE LAWS ORDINANCE, 1948.

THE ACTING ATTORNEY GENERAL moved the following resolution: —

WHEREAS the Revised Edition of the Laws Ordinance, 1948, provided for the preparation and publication of a revised edition of the law of the Colony:

AND WHEREAS a revised edition of Ordinances and a revised edition of subsidiary legislation have been prepared in accordance with the provisions of the said Ordinance:

AND WHEREAS the said revised edition of Ordinances and the said revised edition of subsidiary legislation have now been printed and have been laid on the table of the Legislative Council:

AND WHEREAS subsection (1) of section 7 of the said Ordinance provides that upon the passing of resolution of the Legislative Council authorizing him so to do, the Governor may, by proclamation, order that the revised edition of Ordinances shall come into force on such date as he may think fit:

NOW THEREFOR BE IT RESOLVED as follows—

The Governor is hereby authorized to order by proclamation that the revised edition of Ordinances prepared under the authority of the Revised Edition of the Laws Ordinance, 1948, shall come into force on such date as he may think fit.

He said: Sir, Honourable Members will recollect that at the last meeting of Council I placed on the table the revised edition of the ordinances and the revised edition of subsidiary legislation.

I then foreshadowed that Council would be asked to pass the resolution which I am now moving. If the resolution is passed it is proposed to ask you, Sir, to issue a proclamation bringing the revised edition into force as from 1st November, 1951. Although the enabling Ordinance was passed in 1948 it was not until 1949 that any real work on the revised edition could be commenced. Even so it represents the work of about three years.

I trust, Sir, that the Edition will prove pleasing to those who have to use it. If so, the Commissioners and in particular Mr. Griffin, whose great personal interest in the work led to his reading the proofs personally, will feel amply rewarded. In view of the explanation given in the preface to Volume I and in the preface to Volume VII, it is, I think unnecessary for me to make any reference to the method of arrangement. The Commissioners much regret that the demands made on their time have made it impossible to produce either an index or the volume of Imperial Statutes and other instruments contemplated by section 12 of the Ordinance. Both these would have great value. It may be that this work could be attempted at a later date if the Legal Department were more fully staffed.

HON. LEO D'ALMADA E CASTRO, K.C.:—It is not often Sir, that I am induced to speak at this Council, wherefore I hope I am forgiven if I take a little time at this meeting over a resolution which is riot controversial. The editing and rearranging in its present form of our Ordinances is a task which anyone having even cursorily examined these volumes will realize is one of magnitude and it should no doubt be a matter of satisfaction to those concerned with it that they have produced so satisfactory a result. I know that so soon as the legal profession begins to use these volumes they will find it a matter of satisfaction and I feel certain also that Government Departments who so very often have to refer to them also will be pleased.

The rearrangement in a form more in conformity with the statutes of England as published by Halsbury commends itself for more than one reason and from the point of view of the general public of Hong Kong is advantageous also because it does assist in my opinion various sections of the community. Thus the commercial section of the community will find a very great deal of what it may have to look for in Volume 2. Land owners will largely have recourse to Volume 3 and even criminals and the potential criminal, Sir, can make of Volume 5 their *vade-mecum*. The result of this rearrangement is a publication of easy reference.

It has been the custom in the past to call the various editions of the Ordinances as and when they were published after the name of their principal editor. This edition I take it will be known as Griffin's and in my submission a most suitable name because the ease of reference in all of its volumes makes it particularly suitable for any griffin. This publication has been the result of much time, labour and skill on the part of the Legal Department and particularly those whose names are mentioned on the first page of the first volume, and the work is particularly creditable in my opinion because that department is as we all know a very much overworked one these days. Anyone who has anything to do with the administration of the law in this Colony realizes that the personnel of that department is very much taxed these days. Long gone, Sir, are the days when it might be said of the office, for example, of Crown Solicitor that Mr. So-and-so was its recumbent. It is therefore in my view fitting that the names of the persons particularly concerned with the preparation of this edition should be recorded in Hansard, wherefore I now take leave to read them. They are: —

The Hon. J. B. Griffin

The Hon. G. E. Strickland

Mr. H. A. de Barros Botelho, and

Mr. E. H. Sainsbury.

It is proper also on this occasion that congratulations and thanks should be given them for their work, and I know that members of this Council who are practising members of the legal profession, the Hon. M. M. Watson and the Hon. M. W. Lo, wish to associate themselves with me in my remarks.

I may perhaps be allowed to conclude on a note of personal gratification that amongst the editors is a Portuguese and that the printers are a Portuguese concern who have been Government Printers for well nigh a century. (applause).

The question was put and agreed to.

MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) BILL, 1951.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to make provision for the protection of third parties against risks arising out of the use of motor vehicles." He said: Sir, the Bill is explained in considerable detail in the

Objects and Reason's and I think that almost anything I may say would necessarily be repetitive. I shall content myself therefore with a view observations which may emphasize the objects of the Bill.

Under subclause (1) of clause 4 of the Bill it is an offence for a person to use or cause or permit the user of a motor vehicle on the road unless there is in force a policy of insurance for security in respect of third party risk complying in each case with the provisions of the Ordinance. Apart from the punishment for the offence the offence entails disqualification of the offender for at least one year from holding a driving licence unless a magistrate, for special reasons, thinks fit to order otherwise. A series of cases in the United Kingdom has established that special reasons are those which relate to the facts which constitute the offence and not matters which are special to the offender. This is of fundamental importance because the mitigation or extenuating circumstances must be something connected with the offence itself and not to the person of the offender or the fact that being without a licence will deprive him of earning his living. It is of fundamental importance because the danger of being disqualified is considerably increased and therefore persons are unlikely to fail to comply with the duty to take out the requisite insurance.

The policy of making insurance compulsory is amply justified by paragraph 2 of the Objects and Reasons. Experience elsewhere, however, indicates that there is another salutary effect which a Bill of this nature has when it is passed into law. If a person is not insured he cannot lawfully drive a motor vehicle, but there is no obligation for an insurance company to insure him. If he is guilty of persistently bad driving involving the insurance company in liability, he incurs the danger that insurance companies won't insure him and that he will thus be driven off the road. If so, the roads will be rendered safe for other users. Presumably insurance companies will not lose sight of this aspect of the matter and will endeavour to inquire into the blame of the insured when an accident occurs even if, as a matter of policy, agreements are entered into with other companies which preclude blame being established.

There is one other matter to which I should direct attention. Subclause (5) of clause 4 provides that the important provision contained in subsection (1) making it an offence to use a motor vehicle without a policy or security in lieu of policy, shall not come into force until a date fixed by order of the Governor in

Council. The object of this was to enable insurance companies to make all proper arrangements, that is not to say that such companies have not already been consulted. In fact they have been consulted as far back as 1948 and their comments have so far as possible been met. It is still, however, proposed to give them further time to study the final form of the Bill, regulations and forms and to fix rates. It is anticipated that the operative date will be 1st June, 1952.

THE COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. The primary object of this Bill is to compel, in some degree, owners and users of motor vehicles to take out insurance against the liability to pay compensation to other persons (third parties) which may arise in the event of road accidents.

2. The reason which prompts the introduction of this legislation is that in default of such provision, a person who is entitled to recover damages as a result of personal injury caused by another's negligent driving may in fact be unable to do so owing to that person's lack of means to satisfy any judgment obtained against him.

3. The Bill in general follows the model of the Road Traffic Acts, 1930-1934. Compulsory insurance is restricted to motor vehicles (as defined in Clause 2) and is not applicable to certain of these, namely vehicles which belong to the Crown or to the Government, vehicles being driven for police purposes and vehicles owned by persons who have deposited the sum of \$200,000 (either in cash or approved securities or partly in cash and partly in such securities) with the Accountant General. (Clauses 4(4) and 5). These exceptions are made because the financial security of the owner of the vehicle is established.

4. The liability against which insurance must be taken out is that of causing bodily injury or death to third parties when using a motor vehicle upon the road. It does not extend to damage to property. (Clause 6(1)(b)).

5. "Third parties" in 'this Bill do not however include—
 - (a) employees of the insured if death or injury arises out of and in the course of their employment, nor
 - (b) passengers in the vehicle the use of which has caused the death or injury unless they are being carried for hire or reward or in accordance with a contract of employment (proviso to clause 6(1)(b)).

The requirement to insure employees and passengers is not made because in the case of employees it is intended by other legislation to regulate compensation payable in the case of injury or death arising from their employment and because in the case of passengers in private cars other considerations are present.

6. The responsibility for taking out insurance is placed upon any person who uses or causes or permits any other person to use a motor vehicle to which the Bill applies. (Clause 4(1)). Failure so to do is made a criminal offence punishable on conviction by fine and/or imprisonment. Such conviction also entails disqualification from holding a driving licence for at least one year, unless the magistrate holds that there are "special reasons" why such disqualification should not be made. (Clause 4(2)). A time limit within which prosecutions for the above offence may be instituted is prescribed (Clause 4(3)).

7. Insurance may be in the form either of a policy of insurance or of a security in respect of third party risks (Clause 4(1)).

8. A policy of insurance to be valid for the purposes of this Bill must be issued by "authorized insurer" who is an insurer authorized by the Governor in Council or his nominee ("The Authority") to carry on the business of motor insurance in the Colony. (Clause 6(1)). The Authority can only grant such authorization if satisfied of the insurer's financial stability and for this purpose may require a sum not exceeding \$200,000 to be deposited with the Accountant General (Clause 3). Such deposit may be made either in cash or in approved securities or partly in one and partly in the other (Clause 5). It is to be retained so long as the insurer carries on motor insurance business in the Colony (Clause 7(3)) and is applicable for the discharge of liabilities incurred under policies of insurance issued under this Bill (Clause 5(f)).

9. The insurer's liability under a policy of insurance issued under this Bill extends to a liability to indemnify the persons or classes of persons specified in the policy in respect of liabilities

purported to be covered by the policy. This liability is "notwithstanding anything in any other law", and therefore certain defences which might in certain cases have been open to the insurer are excluded, *e.g.* that the person seeking indemnity was not a party to the contract of insurance or that his name had not been inserted in the policy (Clause 6(2)).

10. A security in respect of third party risks (which is an alternative to a policy of insurance) to be valid must be given either by an authorized insurer or alternatively by a body of persons carrying on in the Colony the business of giving security as to whose financial stability the Authority is satisfied. For this purpose the Authority may require a similar deposit to that which it may require from an insurer. The security consists of an undertaking to make good up to \$80,000, or in the case of public service vehicles up to \$400,000, any failure by the owner of the vehicle or the persons specified in the security to discharge any such liability as is required to be covered by a policy of insurance. (Clause 7).

11. Neither a policy of insurance nor a security in respect of third party risks is to be of effect under the Bill unless a certificate of insurance or a certificate of security, as the case may be, has been issued. (Clauses 6(3) and 7(4)). Its object is to afford evidence that the person using the vehicle is insured. Such certificate is required for production, particularly after an accident. (See clause 16 which makes it an offence not to produce it when required by a police officer).

12. Clause 8 places upon the insurers a liability to pay direct to a hospital the reasonable expenses incurred in treating a person injured or killed in a traffic accident. A "hospital" in this connexion means one which is not carried on for profit.

13. Conditions in policies or securities against third party risks relieving the insurers of liability by reason of an act or omission after the accident are to be of no effect as regards third party claims (Clause 9).

14. Whenever a certificate of insurance has been delivered and judgment is obtained by a third party against a person covered by the policy, the insurers must satisfy such judgment. A statutory debt by the insurers is thus created on which the third party can sue. This liability attaches notwithstanding that the insurers have avoided or cancelled or are entitled to avoid or cancel the policy (Clause 10(1)). If however the amount which

insurers have to pay as a result of this provision is greater than would otherwise have been payable the excess may be recovered from the insured (Clause 10(4)). Certain qualifications upon the provision are contained in clause 10(2) and (3). The insolvency of the insured is not to affect his liabilities to third parties (Clause 11).

15. Clause 12 provides that certain restrictions in policies of insurance *e.g.* restriction as to the condition of the vehicle, number of passengers carried, are not to affect liabilities to third parties.

16. Clause 13 assists a third party in his right to recover payment from an insurer by requiring a person who ought to be insured to furnish on demand particulars of the policy.

17. Clauses 17, 18 and 19 make provisions for offences and penalties, and clause 20 enables the Governor in Council to make regulations for the purpose of carrying the Bill into effect. Regulations entitled the Motor Vehicles Insurance (Third Party Risks) Regulations, 1951, are contained in the Schedule to the Bill. These provide *inter alia* for the manner of issue of certificates of insurance and certificates of security and prescribe appropriate forms.

18. An interval of time must necessarily be afforded to enable insurers to set up organization to meet the obligation of compulsory third party insurance imposed by clause 4(1) of the Bill. In these circumstances, clause 4(5) of the Bill provides that the operation of clause 4(1) be postponed (notwithstanding the enactment of the Bill) to a date to be fixed by Order of the Governor in Council published in the *Gazette*.

THIRD PARTIES (RIGHTS AGAINST INSURERS)

BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to confer on third parties rights against insurers of third party risks in the event of the insured becoming insolvent, and in certain other events". He said: Sir, the Bill is another measure of law reform necessary to lay the foundation for the Bill, the First reading of which I have just moved, but is also of general application to all cases where under a contract of insurance a person is insured against liability to third parties which he may incur.

The main object of the Bill is to provide that if any such liability is in fact incurred and the insured becomes bankrupt or makes a composition or arrangement with his creditors, or in the case of a deceased insured, his estate is being wound up under the laws of bankruptcy, or if in the case of the insured being a company which is being wound up or any of the matters specified in clause 2 (1) (b) being events which might also defeat the rights of the third party, occur or if in the case of a cooperative society an order for cancellation of registration is made, then in every such case the insured's rights against the insurer shall with certain reservations vest in the third party.

The object of the measure is to prevent the third parties' rights being defeated by certain rules as to the distribution of assets applicable in bankruptcy and the liquidation of the company. These rules are explained in the first paragraph of the Objects and Reasons to which I have nothing further to add.

THE COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

The object of this Bill is to follow the example set by the United Kingdom in remedying a defect in the law regarding the method of distribution of assets upon the winding-up of a company or upon the bankruptcy of an individual. Briefly stated the defect in the absence of legislation is this—when a person becomes bankrupt or a company is wound up all the assets of the bankrupt or the company as the case may be become, with certain exceptions, which are not material here, available for distribution among the general body of creditors. So far so good, but these assets include a claim by the bankrupt or the company to indemnity from an insurance company against liabilities incurred by the bankrupt or the company to third parties. Thus, for example, A might be insured with B against accident to his employees or to persons using his motor car, aeroplane, train or as the case may be, and an accident occurs under which he becomes liable to pay damage to C, and in respect of which he may claim indemnity from B. Now, if A becomes bankrupt or being a company is wound up before C has recovered his damages, C may never get relief because the law requires that A's claim for indemnity shall pass to his trustee in bankruptcy or, in the case of a company, to the liquidator and become available for distribution among all

his creditors, among whom C will only be included if he has actually recovered judgment before the bankruptcy or the commencement of the winding-up. The injustice of this rule was commented upon in the United Kingdom by the Court of Appeal in 1928 and led to the enactment there of the Third Parties (Rights against Insurers) Act, 1930 (20 & 21 Geo. 5 Cap. 25).

2. The present Bill follows closely the U.K. Act but contains slight modifications by reason of the fact that the person insured may be a co-operative society and that in Hong Kong there are special provisions for the dissolution of a co-operative society.

3. Clause 2 provides that where a person who is insured against third party risks ("the insured") becomes insolvent and in certain other specified events his rights against the insurers shall pass to the third party to whom he has incurred liability. The insurers thereupon are in respect of that liability to be under the same liability to the third party as they were to the insured. If, however, the liability of the insurers to the insured is greater than the liability they thus incur to the third party, the insured remains entitled to the balance, but if their liability to the third party is less than of the insured to the third party, the insured remains liable to the third party for the balance. Contracting out of the Ordinance is forbidden. The Ordinance however does not apply to contracts of re-insurance.

4. Provision is made in clause 3 for the supply of necessary information by bankrupts, debtors, personal representatives, trustees in bankruptcy etc. to third parties claiming to have had rights transferred to them under clause 2.

5. The insurers and the insured are prohibited from entering into agreement to defeat the rights of third parties. Any such agreement is made void by clause 4.

LAW REFORM (MISCELLANEOUS PROVISIONS)

BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the law as to the effect of death in relation to causes of action, as to the doctrine of contributory negligence and as to the doctrine of common employment".

THE COLONIAL SECRETARY seconded, and the Bill was read a Second time.

Council then went into consider the Bill clause by clause.

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Law Reform (Miscellaneous Provisions) Bill, 1951 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

PLACES OF PUBLIC ENTERTAINMENT REGULATION (AMENDMENT) BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Places of Public Entertainment Regulation Ordinance, 1919".

THE COLONIAL SECRETARY seconded, and the Bill was read a Second time.

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

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Places of Public Entertainment Regulation (Amendment) Bill, 1951 had passed through Committee without amendment, and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

ROYAL HONG KONG DEFENCE FORCE (AMENDMENT) BILL, 1951.

THE ACTING ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Royal Hong Kong Defence Force Ordinance, 1951". He said: Sir, the objects and reasons explain that the object of this Bill is to enable the Oath or Declaration required to be made by members of the Force on enrolment to be made before an officer of the Force as well as before a Justice of the Peace. The measure is most urgently required because enrolment into the Force is, in the present state of the law, being hampered by difficulties in securing the attendance of Justices of the Peace.

As you are aware, Sir, arrangements have already been made for training camp for persons now being called up and speed in completing enrolment is essential. Incidentally, the presence of a Justice of the Peace is not required for the purpose of enlisting into the Army in the United Kingdom.

THE COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

Subsection (3) of section 36 of the Royal Hong Kong Defence Force Ordinance, 1951, requires that every officer or member on enrolment into the Force shall make an oath or declaration before a Justice of the Peace of the Colony. Difficulty has been experienced in applying this requirement as large numbers of recruits are now joining the Force under the provisions of the Compulsory Service Ordinance, 1951, and continuous attendance of a number of Justices of the Peace at Royal Hong Kong Defence Force Headquarters would be necessary while the process of swearing-in continued. Although it is desirable that in the case of volunteers their willingness to serve in the Force should be formally sworn to before a Justice of the Peace this is not considered necessary in the case of persons directed into the Force.

2. Clause 2 of the Bill therefore amends subsection (3) of section 36 of the principal Ordinance to permit the oath or declaration to be made either before a Justice of the Peace or an officer of the Force.

THE ACTING ATTORNEY GENERAL: —Sir, my name is down to move the Second and Third readings of the Bill before Council. Does Your Excellency declare under Standing Order 29 (2) that it is desirable that that Standing Order should be suspended in order to enable the Bill before Council to pass through its remaining stages at this meeting of Council.

H.E. THE GOVERNOR: —I so declare.

THE ACTING ATTORNEY GENERAL: —I move accordingly that the Standing Order be suspended for the objects stated.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

THE ACTING ATTORNEY GENERAL: —Sir, I rise to move the Second reading of a Bill shortly intituled "An Ordinance to amend the Royal Hong Kong Defence Force Ordinance, 1951".

THE COLONIAL SECRETARY seconded, and the Bill was read a Second time.

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

Council then resumed.

THE ACTING ATTORNEY GENERAL reported that the Royal Hong Kong Defence Force (Amendment) Bill, 1951 had passed though Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

ADJOURNMENT.

H.E. THE GOVERNOR: —That concludes the business, Gentlemen. When is it your pleasure that we should meet again?

THE ACTING ATTORNEY GENERAL: —Sir, I suggest this day fortnight.

H.E. THE GOVERNOR: —Council will adjourn to this day fortnight.
