# OFFICIAL REPORT OF PROCEEDINGS

## Meeting of 14th September, 1955.

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### PRESENT:

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR CECIL STANWAY SUGDEN, K.C.B., C.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

MR. EDGEWORTH BERESFORD DAVID, C.M.G.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR HOOTON, Q.C. (*Acting*)

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. BRIAN CHARLES KEITH HAWKINS, C.M.G., O.B.E.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING C.M.G., O.B.E.

(*Director of Public Works*).

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER

(*Director of Education*).

THE HONOURABLE HAROLD GILES RICHARDS, O.B.E.

(*Director of Urban Services*).

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

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

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE DHUN JEHANGIR RUTTONJEE.

THE HONOURABLE KWOK CHAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.

THE HONOURABLE JOHN ARTHUR BLACKWOOD.

MR. ROBERT WILLIAM PRIMROSE (*Deputy Clerk of Councils*).

### ABSENT:

DR. THE HONOURABLE YEO KOK CHEANG

(*Director of Medical and Health Services*).

## MINUTES.

The Minutes of the meeting of the Council held on 31st August, 1955, were confirmed.

## PAPERS.

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

| *Subject* | *G.N. No.* |
|---|---|
| Sessional Papers, 1955: — | |
| No. 21—Annual Report by the General Manager, Railway for the year 1954-55. | |
| No. 22—Annual Report by the Housing Authority for the year 1954-55. | |
| No. 23—Report on Proposed Tunnel between Hong Kong and Kowloon (by Consulting Civil Engineers, Messrs. Mott, Hay and Anderson). | |
| Regulations governing the grant, forfeiture and restoration of the Efficiency Medal ..... ..... | A. 83 |
| Royal Hong Kong Defence Force Ordinance, 1951. | |
| Hong Kong Women's Naval Volunteer Reserve (Amendment) Regulations, 1955 ..... .... | A. 84 |
| Education Ordinance, 1952. | |
| Grant Schools Provident Fund (Amendment) Rules, 1955 | A. 85 |
| Grant Schools Building Depreciation Fund (Amendment) Rules, 1955 ..... ..... | A. 86 |
| Diplomatic Privileges Ordinance (Chapter 190) | |
| Notifications tinder Section 2 ..... | A. 88 to A.91 |
| Emergency Regulations Ordinance (Chapter 241) | |
| Emergency (Squatter Clearance) (Amendment) Regulations, 1955 ..... ..... | A. 92 |

| *Subject* | *G.N. No.* |
|---|---|
| Juvenile Offenders Ordinance (Chapter 226) | |
| Remand Home Rules, 1955 ..... | A. 93 |
| Stamp Ordinance (Chapter 117) | |
| Stamp (Bank Authorization) (No. 6) Order, 1955 ..... | A. 94. |

He said: Honourable Members will recall that in February this year it was decided to invite a firm of consulting engineers to send an expert representative to the Colony to examine the feasibility of a cross harbour tunnel, and to provide an approximate estimate of its cost.

In March the senior partner of Messrs. Mott, Hay and Anderson, the firm which designed the Mersey Tunnel, visited the Colony and stayed for about two weeks. His full report has now been received and is among the papers tabled today. Further copies have been printed by the Government Printer and will be on sale to the public.

I do not propose, Sir, at this stage to make any comment on the report beyond saying that Government intends to undertake a detailed examination of the project in all its aspects.

## BUILDINGS BILL, 1955.

MR. T. L. BOWRING moved the First reading of a Bill intituled "An Ordinance to amend and consolidate the law relating to the construction of buildings."

He said: —Your Excellency: Honourable Members may recall that in November 1947 a Committee known as "The Building Costs Committee" under the Chairmanship of Mr. W. W. C. Shewan was appointed by Government to make a survey of the extent by which the present day building costs had risen above their level in 1938, and to investigate the practicability of introducing new methods of construction of dwellings of all types with a view to reducing building costs.

The Committee reported to Government that after due and diligent research they had found that, *inter alia*, the Buildings Ordinance of 1935 at present in force within the Colony is outmoded; and furthermore there is no procedure contained therein

for keeping up-to-date with modern development, and cheaper methods or materials of construction. In fact, Sir, the Committee formed the opinion that the Ordinance tends to restrict the economies which could be made by the use of sound modern building techniques, and that this is a contributory cause of high building costs.

The Committee recommended, therefore, that steps be taken to set up, at the earliest possible date, machinery to redraft the whole of the existing Buildings Ordinance to conform with modern practice.

Inquiries showed clearly that the building legislation in other parts of the world also had not kept pace with the progress of building research, and it became obvious that the modernization of the Hong Kong Buildings Ordinance would have to be a local effort.

Due to the shortage of professional staff in the Buildings Ordinance Office it was not possible at that time to allocate an officer for the task of redrafting the Buildings Ordinance. However, during the latter part of 1951 Government decided that a revision could no longer be delayed and so Mr. K. S. Robertson was appointed to act as Chief Building Surveyor whilst Mr. J. H. Bottomley, the substantive holder of the post was set the task of drafting a new Ordinance. He was assisted in his preliminary investigations by Mr. E. H. Sainsbury, Crown Counsel, and it was agreed that the new legislation should be presented in the form of an Enabling Bill and a Code of Regulations, providing simple means for revising the Regulations from time to time to keep pace with the developments in building practice, thus following the example of the London County Council.

In June 1953 the draft Bill and Regulations were completed, and in September of that year a Committee known as "The Building Regulations Committee" under the Chairmanship of the Assistant Director of Public Works (Buildings) was set up by me with the approval of my honourable Friend the Colonial Secretary to consider and advise on the matter of amendments to the drafts.

The Committee includes Mr. R. C. Lee, representing the Building Owners, Mr. S. E. Faber, the Structural Engineers, Messrs. J. E. March and G. D. Sü, the Authorized Architects,

the Deputy Director of Health Services and Mr. G. R. Sneath, Crown Counsel. Mr. R. Fairbairn, Building Surveyor, acts as Secretary.

This Committee met for the first time on the 10th September, 1953, and to date no fewer than 58 meetings have been held.

The earliest known example of building regulations is contained in the Laws of Hammurabi, King of Babylon, and they date from about 2000 B.C. I will read part of it: —

> "If a builder builds a house for a man and do not make its construction firm, and the house which he has built collapse and cause the death of the owner of the house, the builder shall be put to death." (*Laughter*).
>
> "If it cause the death of the son of the owner of the house, they shall put to death a son of the builder." (*Laughter*).
>
> "If it cause the death of a slave of the owner of the house, he shall give the owner of the house a slave of equal value.
>
> If it destroy property he shall restore whatever is destroyed; and, because he did not make the house which he built firm and it collapsed, he shall rebuild the house which collapsed at his own expense."

This extract, Sir, is interesting for its ruthlessness and simplicity of requirement. In this present age of scientific discovery and advancing knowledge, building regulations are no longer simple. They still maintain however the fundamental principle of King Hammurabi of trying to safeguard the public, and not only against structural collapse but also against the more insidious dangers to public health such as inadequate light, air and sanitation. They must provide safeguards against fire and tempest—typhoon winds appear for the first time in the new Regulations—and must provide for all the complex mechanism of modern buildings such as plumbing, drainage, lifts, escalators and the like. Site utilization must be regulated in respect of open space, heights and volumes of buildings; in this connexion, Sir, a new approach has been suggested by the Committee in that the new limitation is based not on the width of the adjoining street so much as on the volume of the building whilst at the same time

ensuring that each room has adequate light and air. The structural complexity of modern building has necessitated special requirements, specifications of building materials, loads and stresses, and structural requirements, all in considerable detail. Finally, in addition to the purely physical requirements there must be administrative regulations regarding plans and notices, registration of architects and contractors, fees, offences and penalties, encroachments and projections, and many others.

The task of compiling building regulations is thus a most onerous and lengthy one requiring wide knowledge of the science and art of building and structure, and an understanding of public safety and individual responsibility towards the general public.

In addition to considering the draft Building Regulations, the Committee has, at my request, advised me both on the registration of Building Contractors and on matters dealing with the responsibility of Government for ensuring that the plans, structural details and specifications approved by the Building Authority are followed without divergence.

The detailed and workmanlike manner in which the Building Regulations Committee has presented its recommendations to me and the very considerable time, care and expert knowledge which have already been given so freely by these public spirited members of the Committee deserve the most grateful thanks of Government, and indeed, Sir, of the whole community.

In August 1954 this Committee strongly advised that rather than wait until the whole field of building regulations had been covered, the recommendations in respect of the regulations so far considered, and in respect of the Bill itself, should be enacted as soon as possible and the remaining regulations considered and introduced later. They are of the opinion that unless such a policy is adopted, the introduction of the new Buildings Bill with the completed set of revised Building Regulations will be delayed many months, while in the meantime, new buildings are being constructed in accordance with the obsolete code. Government accepted this suggestion and that is why I am introducing the Bill now without the Regulations. There is still a considerable amount of work to be done in finalizing the regulations so far considered, but it is hoped that the more important ones will be completed before the end of this year when, after publication

for a suitable period, they will come into effect simultaneously with the provisions of the Ordinance. These deal with administration, planning and construction matters. Others which are considered to be necessary, will be brought into operation as soon as possible.

Now turning to the Bill itself, honourable Members will note, that in the Objects and Reasons, reference is made to major changes in policy to be introduced by the enactment of this Bill, and it is stated that the majority of these changes are the outcome of the progress in the science of building since the enactment of the 1935 Ordinance. Reference is also made in the Objects and Reasons to some sections of the Ordinance which have not been re-enacted because it is considered that their subject matter lies outside the province of the Building Authority, and to other policy changes which should be noted.

The most important changes from the existing policy and procedure which is in force under the present Buildings Ordinance, and to which I should like to make further reference, are the vesting of powers now exercised by the Governor in Council in other bodies, and the registration of building contractors.

For example, Sir, under section 2 subsection (2), the Director of Public Works is to be vested with the sole authority to delegate to officers of the Public Works Department the duties imposed on, and the powers granted to the Building Authority under the Ordinance. In the current Ordinance these powers are delegated in some cases by the Governor in Council and in others by the Building Authority.

In sections 3, 4 and 5 dealing with Authorized Architects, the power to censure or remove from the register will be vested in a Disciplinary Board established by regulations and not by order of the Governor in Council as at present. The regulations which are complementary to the sections in the Buildings Bill cover the notification of appointment of an authorized architect, the qualifications required for inclusion in the register, application requirements, removal from the register on death, duties of an authorized architect and the establishment and composition of the Disciplinary Board.

Under the present Ordinance only drainage contractors are required to be approved by the Building Authority and these contractors are known as "authorized drainage contractors". Honourable Members will note that by sections 6, 7 and 8 it is now proposed to register all contractors engaged in building works, to impose duties on them and to make them subject, if necessary, to a Disciplinary Board. This matter has no counterpart in the current Ordinance but it will be seen that these sections follow closely the provisions for Authorized Architects. The regulations which are complementary to the sections in the Buildings Bill provide for the notification of appointment of a registered contractor, the issue of certificate of registration, the removal from the register on death, duties of a registered contractor and the establishment and composition of the Disciplinary Board.

Change in the use of buildings is dealt with under section 16 and follows the trend of legislation in the United Kingdom. The operation of the provision of this clause will depend to a large extent on the co-operation of the public, that is to say, in the giving of due notice in the prescribed form to the Building Authority by the persons intending to carry out or authorizing the carrying out of such change of use. The submission of a block plan shewing the size, position and lot number of the building and its relationship to adjoining buildings is also required by regulations. A material change in use is defined in subsection (3) of Section 16. In the case of subsection (3)(*a*), if the erection of building for its new use would contravene the provisions of the Buildings Ordinance and Regulations then it is deemed to be a material change in use. In the case of subsection (3)(*b*) the definition is self explanatory on reference to para. (*c*) of section 9 subsection (5).

Under Section 21, the power to refuse consent to the erection or re-erection of a building over a private street is to be vested in the Building Authority and not the Governor in Council. The regulations detail the requirements with regard to projections such as varandahs, balconies, canopies, bridges and the like.

Under the provisions of the existing Ordinance the granting of modifications is restricted to certain sections, and the power to grant such modifications is in most cases vested in the Building Authority but there are a few cases where the consent of the

Governor in Council is required. By section 29 of the new Bill the power to grant modifications of, and exemption from, the provisions of the Ordinance and Regulations is to be concentrated entirely in the hands of the Building Authority who is, Sir, the Government's technical adviser on private building works.

In order to provide flexible legislation capable of taking advantage of future progress in building science and techniques which stimulate progress to better and cheaper building, the powers of waiver have been widened to include all matters other than those which constitute a danger to life and health. Administratively, this will call for well qualified, broad-minded building surveyors to assess proposals submitted to them.

In sections 30 to 34 appeals against decisions of the Building Authority in the exercise of his discretion are to go before a Tribunal appointed by the Governor. Reference to the Governor in Council will be made however in cases where the Building Authority certifies in writing that the determination of the Tribunal involves a matter of Government policy and gives notice to the honourable Colonial Secretary and the parties concerned within 14 days of such determination.

Sections 36 to 41 deal with the Temporary Provisions with regard to Enclosure of verandahs and balconies. The regulations detailing the requirements for verandabs and balconies provide that the fronts of the verandahs and balconies shall not be enclosed above parapet or railing level. Where the Building Authority grants exemption tinder section 29 in respect of the regulations prohibiting enclosures, fie may issue a permit to enclose for office accommodation only as provided in section 37.

I wish now, Sir, to refer very briefly to what has been written into this legislation with the object of making the Ordinance work. In framing the legislation it has been borne in mind that with the large amount of building construction that is being undertaken in Hong Kong and the speed with which building contractors work, it is virtually impossible with the staff available in the Buildings Ordinance Office to give the constant close supervision which one might expect in the United Kingdom.

All building works, except those not affecting the structure of the building, require the Building Authority's consent under section 9 of the Bill and this consent will be given on the basis

of plans submitted by authorized architects. It is an important principle, however, that plans so approved do not authorize any building in contravention of any of the regulations; indeed it is expressly stated in the Ordinance to be part of the duties of both the authorized architects and the registered contractors to notify the Building Authority of any contravention of the regulations which would result from the carrying out of the work shown in a plan approved by the Building Authority. Any exemptions to be given by the Building Authority must be applied for in the prescribed form and likewise his permit must itself be in tile prescribed form under section 29 of the Bill.

Approval of building plans having been given, the Building Authority has ample powers under sections 13, 14 and 15 to carry out a detailed inspection and, where he finds contravention of the regulations, to order the building works to cease and, if necessary, to order the demolition or alteration of the building. On the completion of all building works the authorized architect is required to deliver a completion certificate to the Building Authority.

I have, Sir, outlined the control exercised by the Building Authority at the various stages of the erection of a building, and have indicated the duties of both the architect and contractor to inform him of any contravention of the regulations which would be caused by following an approved plan. It has been thought necessary to make it a criminal offence on the part of either the architect or the contractor to fall to give this information if he is aware of it and also to contravene any of the regulations in carrying out the building works. Apart from the sanctions of the criminal law, there are the disciplinary tribunals which can impose, what I might call, domestic penalties on an offending architect or contractor; these penalties are the temporary or permanent removal from the register, a censure which can be published in the *Gazette* and, in the case of contractors, a fine not exceeding $2,000.

Finally, Sir, I should like to inform honourable Members that it is the intention of Government to introduce legislation to restrict the height of buildings in certain areas in the vicinity of the Kai Tak Airport including parts of Kowloon. It will therefore be necessary for the public to take note that whereas the Buildings Bill may permit an increase in the heights of

buildings generally, any compensation which may be payable in respect of any diminished interest or in damage sustained by reason of the interference with rights in or on land caused by the proposed restrictions will be assessed on the basis of the permitted heights of buildings at the present time and without regard to any increases in such heights which may be permitted by this Bill.

In conclusion, Sir, may I quote an eminent lawyer of our time, the late Lord MacMillan, who said—

> "Reform of procedure is always a ticklish business, for we grow accustomed to the paths we have long trodden however tortuous, and vested interests are apt to grow up around them. But the task must be undertaken from time to time if the vehicles of law are to keep pace with the changing requirements of the age."

THE COLONIAL SEARETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

*Objects and Reasons.*

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

The object of this Bill is to re-enact the Buildings Ordinance of 1935 (Cap. 123). Table 1 lists the sections of the Ordinance which have been replaced by clauses in the Bill, while Table 2 shows the fate of the other sections with some explanatory comments. It will be seen from this Table 2 that some 64 sections of the Ordinance are to be replaced by regulations to be enacted under the Bill. A further 35 sections are retained for the present in the Bill pending the preparation of regulations or other legislation to replace them.

2. The majority of the changes effected are the outcome of the progress in the science of building in the 20 years since the enactment of the Ordinance. For example, the provisions with regard to lath and plaster walls (section 17) and cocklofts (section 32) find no place in the Bill as they are not in accord with modern building practice.

3. Some sections have not been re-enacted since it is considered that their subject matter is outside the province of the Building Authority. Thus some of the matters formerly listed under the rubric "building nuisances" cease to be the concern of the Building Authority. This represents one of the changes of policy: with the development of the Urban Council it is thought that the responsibility of the Building Authority should cease once building works are completed to his satisfaction, except where buildings become dangerous (clause 17) or where drainage is unsatisfactory (clause 19).

4. Other changes in policy to be noted are—

(i) All building contractors are to be registered and made subject to a disciplinary tribunal (clauses 6, 7 and 8).

(ii) The Building Authority is prohibited from sanctioning building plans which conflict with "approved plans" made under the Town Planning Ordinance (Cap. 131) (clause 9).

(iii) Certain powers formerly exercised upon order of a magistrate are now exercisable by the Building Authority (*e.g.* clause 14—Building Authority may order building works to cease).

(iv) Owners are required to give one month's notice to the Building Authority of any intended change of user of the building (clause 16) with the object of checking the use of buildings for purposes for which they are not suitable.

(v) Provisions with respect to blasting (section 102) and earth cutting (section 103) are to be re-enacted under existing legislation.

(vi) Owners of private streets are given the right to require the Building Authority to accept the surrender of the title to the streets provided he is satisfied that the amount of public use justifies the upkeep of the street (clause 20).

(vii) Whereas under the present Ordinance certain powers are exercised by the Governor in Council or delegated by that body to various public officers, all powers under the Bill are concentrated in the Building Authority who may delegate to officers of the Public Works Department. (clause 2(2)).

(viii)The Bill provides for an Appeal Tribunal to take the place of the Governor in Council for the purpose of hearing appeals from the Building Authority (Part VI). Only where the Building Authority certifies that the Tribunal's determination involves Government policy is the matter required to go before the Governor in Council.

5. The policy of permitting a temporary enclosure of verandahs and balconies for office accommodation has been continued by the provisions of Part VIII which are to remain in force till the end of 1957 or for a further period of two years by resolution of Legislative Council. The Verandahs and Balconies (Inclosure for Office Accommodation) Ordinance, Cap. 263, which was to have effect till the end of this year, is repealed. Using of an enclosed verandah or balcony for any purpose other than as office accommodation is made an offence (clause 38). Upon the expiry of Part VIII, or where an offence is committed in respect thereof, enclosed verandahs and balconies may be dealt with as if they were buildings erected in contravention of the provisions of the Ordinance; *i.e*. the Building Authority may order their demolition or alteration.

## SUMMARY OFFENCES (AMENDMENT) BILL, 1955.

MR. T. L. BOWRING moved the First reading of a Bill intituled “An Ordinance to amend the Summary Offences Ordinance, Chapter 228.”

He said: —Your Excellency: The purpose of this Bill is, I think, sufficiently explained in the statement of "Objects and Reasons" and there is nothing that I can usefully add.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

*Objects and Reasons.*

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

The object of this Bill is to make a consequential amendment to the Summary Offences Ordinance following the enactment of the Buildings Bill. The Buildings Ordinance, Cap. 123, now to

be repealed, contains provisions for the control of earth cutting on Crown land. This control is now to be exercised by means of permits granted under the Summary Offences Ordinance. This Bill makes the necessary amendment to section 3 of that Ordinance. On enactment of this amending Bill it is intended to amend the Summary Offences (Licences and Fees) Regulations, 1953, to make provision for fees to be charged for earth cutting on Crown land.

## CHURCH OF ENGLAND TRUST BILL, 1955.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to revest in the Crown a portion of the precincts of Saint John's Cathedral Church, and to extinguish a right of way through the said precincts."

He said: —Sir: The purposes of this measure are explained in the preamble to the Bill and in the statement of Objects and Reasons appended thereto.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

*Objects and Reasons.*

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

A public footpath is shortly to be constructed by the Government on a strip of Saint John's Cathedral Church land bordering Garden Road. For this purpose and with the concurrence of the trustees, Clause 2 revests in the Crown the required strip of land.

2. Clause 3 extinguishes the right of way through the Cathedral precincts, and relieves the Government of the responsibility of maintaining the road. It is intended that a new footpath in lieu of this right of way will be built on the north side of the wall on the northern boundary of the Cathedral precincts.

## CHURCH OF ENGLAND TRUST (AMENDMENT) BILL, 1955.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Church of England Trust Ordinance, Chapter 277."

He said: —Sir: This short amending Bill is, I think, sufficiently explained in the statement of Objects and Reasons appended thereto.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

*Objects and Reasons.*

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

The trustees of the Church of England wish to construct in the Cathedral precincts a building which, although connected with the church, will not be used for the purpose of a church. The object of this Bill is to permit this to be done.

## HOLIDAYS (AMENDMENT) BILL, 1955.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Holidays Ordinance, Chapter 149."

He said: —Sir: At this stage I have nothing useful to add to that which is stated in the Objects and Reasons to the Bill.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

*Objects and Reasons.*

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

Under section 2 of the Holidays Ordinance, public holidays are made *dies non* and under the common law no judicial acts other than those done of necessity ought to be done on a *dies non*. To remove any doubt as to the validity of the acts of magistrates performed on public holidays, the new section has been added to the Ordinance specifically authorizing such acts on the part of permanent, special and marine magistrates.

## INLAND REVENUE (AMENDMENT) BILL, 1955.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance further to amend the Inland Revenue Ordinance, Chapter 112."

THE COLONIAL SECRETARY seconded.

MR. BLACKWOOD: —Your Excellency: I rise out of a sense of serious misgiving over Clauses 18 and 36 of this Ordinance.

Under the Ordinance now in force the principle is that tax is charged on income or on profits arising in or derived from the Colony. The Inland Revenue Committee in its Report recommended a complete change in the law and the adoption of a formula whereby all income and profits shall be deemed to arise in Hong Kong unless proof is adduced to the Commissioner that a corresponding tax has been borne by them elsewhere. Of course, there can be no logical reason why income or profits which have not been taxed in another country should be said to arise in or be derived from the Colony and the new principle is entirely artificial and arbitrary. The Financial Secretary in his address in the Legislative Council on August 17th expressed his objection to the new formula on other grounds. He said "But lengthy consideration made it clear that the Committee's suggested remedy might perhaps give rise to evils greater than the disease and accordingly the recommendation as now put in legal form in Clause 18 and also in Clause 36 has been very considerably modified".

The two Clauses 18 and 36 are the same except that the former deals with income and the latter with profits, and it is sufficient to take Clause 36 to base my views on the subject. The first subsection envisages a doubt (a word which has now been introduced to replace "dispute") as to whether a profit arises in or is derived from the Colony. The second subsection purports to introduce a principle which is to be applied in the determination of such doubt. It states:

> "In determining any such doubt regard shall be had to the fact *inter alia* as whether or not the profit has borne elsewhere a tax of substantially the same nature as the tax charged on such profits tinder this Part".

The new test is to be applied only where there is a doubt, that is, where the other factors have not appeared decisive in deciding whether or not the profits have arisen in or derived from the Colony. It is also mandatory that regard shall be had to the new test. It seems to me clear that the effect of specifically introducing this arbitrary test in the determination of a doubt must be that it is to be regarded and that in practice it will be regarded as the deciding factor, so that if profits are not proved to have paid tax elsewhere they will be deemed automatically to have arisen in or be derived from the Colony. We are then back again on the recommendation of the Committee which the Financial Secretary has tried—unsuccessfully in my opinion—to avoid as capable of giving rise to evils greater than the disease.

The Law Officers have obviously striven hard to give effect to the introduction of the new test in a modified way, but with all due respect, the subsection as interpreted by them is ambiguous and gives no clear guidance either to the taxpayer or to the Court as to how the liability to tax is to be governed. That is not my own opinion only. The Committee of the Hong Kong General Chamber of Commerce, in order to obtain professional opinion on the interpretation of Clause 36, submitted the question for the opinion of the members of its Legal Sub-committee, who, in five separate opinions, which were corroborated by the independent views of other lawyers, were unanimous in emphasizing that section 2 of Clause 36 was ambiguous and without any clear statement of the principle on which profits were to be taxed and that the only meaning it could be given that would make it workable was that in case of doubt the deciding factor was whether or not profits had borne tax elsewhere.

The Chamber felt so strongly on this subject that it submitted the matter for the opinion of a leading Chancery Counsel in London, Mr. Edward Milner Holland, Q.C. His opinion which was received yesterday corroborates to the full the views already expressed by the members of the Legal Sub-committee of the Chamber and I propose at a later stage in my address to quote it *in extenso*.

The Law Officers and I am advised also at least one other member of the profession hold contrary views. No less weight, however, should be accorded to the unanimous view of the Legal Sub-committee of the General Chamber of Commerce fortified by the opinion of Mr. Milner Holland and also to those of the Association of Chartered Accountants in Hong Kong who strongly support the opinions of their legal brethren. These two bodies represent professional practitioners whose task it will be to advise the taxpayers and who will be called upon to play an important part in the administration of the provisions of the new Ordinance.

The substitution of the word "doubt" for dispute does not remove the objection to subsection (2); on the contrary it emphasizes the very point I have been trying to impress. Subsection (1) provides that the onus of proving that a profit is not a profit arising in or derived from the Colony shall always be on the taxpayer. If his attempt to adduce such proof results in a doubt, it means that he has failed to discharge the burden of proof, and he is automatically liable to pay tax as if the profit had arisen in or was derived from the Colony. Subsection (2) then is entirely unnecessary, and should be dropped not merely as surplusage but as being in conflict with subsection (1).

What then can be the purpose of subsection (2)? Why should it be considered necessary to conjure forth an entirely external and logically irrelevant test that has nothing to do with Hong Kong? The very existence of a doubt shows that the factors or combination of factors that are ordinarily applicable to determine the place where profits arise have proved inconclusive; they have not sufficient weight to turn the scale one way or the other. Then regard is had to the question whether the profit has borne a corresponding tax in some foreign country. A judge may drag in also the factors which have already proved inconclusive, which are referred to rather vaguely in the term "*inter alia*", but as they have already proved to be broken reeds and inadequate

to support a decision, can anyone fail to see that the new test must of necessity be the one to turn the scale? It is introduced where the other factors have resulted in a doubt. Its effect is unquestionably that of a deciding factor—so that the taxpayer is to be taxed in Hong Kong if it happens that his income or profits have not been subjected to a corresponding tax elsewhere.

A further point which in my opinion and, I am assured, in the minds of others, of many others, adds to the uncertainty and makes confusion worse confounded, is the phrase "a tax of substantially the same nature". The burden is placed on the unfortunate taxpayer of proving that his income or profits have borne a tax of substantially the same nature in another country whose tax laws may be entirely different from those of Hong Kong. I do not envy those who shoulder the task of interpreting this phrase. As an example of the difficulty which will confront them, a certain country not far from here calls upon traders making business profits to pay a "defence contribution". How would an Assessor, or whoever is to pronounce judgment, view such a problem at this?

I wonder whether any of my colleagues here can, with hand on their hearts, say that this clause is, to them, clear and unambiguous. If it is, our duty it plain and we can vote for or against with conviction. If, however, there are doubts, I would commend to my honourable Friends a passage which was quoted to me by one of my legal advisers and which is apposite. Lord Buckmaster, in the House of Lords, said: —

> "It is important to remember the rule, which the Courts ought to obey, that, where it is desired to impose a new burden by way of taxation it is essential that this intention should be stated in plain terms. The Courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer."

Although in this Chamber I am speaking as a member of the Legislative Council, I feel I am justified in emphasizing that I am expressing not only my own opinion on the subject under discussion but that of the General Committee of the Hong Kong

General Chamber of Commerce who have done me the honour of nominating me for appointment by your Excellency. The Chamber represents trade and commerce in the Colony, it represents companies whose profits may be subject to a new burden of taxation. If the new sections 18 and 36 will have, as I am advised they will, the effect of rendering liable to tax in Hong Kong income and profits unless it is proved that they have borne a tax of substantially the same nature elsewhere, then I have to express the Chamber's utmost opposition to them. If, however, as the Law Officers contend, they are not intended to have that effect, then in view of the decided cleavage of professional opinion as to their interpretation, they are open to the fatal objection that their meaning is uncertain and ambiguous, and leave the taxpayer without any clear indication as to his liability to tax.

In any case, in my submission, subsection (2) which is the objectionable feature of both Clauses is not only unnecessary and inconsistent with subsection (1) as I pointed out before but its ambiguity and the emphatic difference of opinion as to its meaning is a compelling cause for its total omission.

At this stage I shall ask honourable Members to bear with me while I read the opinion of the Learned Queen's Counsel to which I have already referred.

> "I have carefully considered the recommendation in Part IV, paragraph 22, of the report of the Inland Revenue Ordinance Committee of December 1954, and the wording of the new section 27 which it is at present proposed to enact by way of amendment to the principal Ordinance. My attention has been specially drawn to subsection (2) of this new section. I am asked for my opinion
>
> (*a*) whether section 27 (2) will have the same effect as paragraph 22 of the Committee's report;
>
> (*b*) if not, whether it will have the effect of rendering liable to taxation profits not previously taxable as arising in or derived from the Colony;
>
> (*c*) if so, whether this would amount to a change in the system of taxation in Hong Kong; and

(*d*) whether, if Hong Kong Government were to embody the recommendation in paragraph 22 of the Committee's report in the amending Bill, that would amount to a change in the system of taxation in Hong Kong.

The proposed new section ought in my opinion to be construed by analysing how the Court or person charged with the duty or applying it would feel bound to operate it. It is a mandatory clause and cannot therefore be disregarded in any case.

The analysis must proceed by a process of logic; and I begin by expressing the view that the fact whether the profit in dispute has borne elsewhere a tax of substantially the same nature is wholly irrelevant to the determination of the question whether that profit arises in or is derived from the Colony. It may have arisen in some other place which does not by its Revenue law impose any taxation on such a profit, or which imposes a tax of a wholly different nature. In such circumstances, the fact that the profit has borne no tax or no similar tax elsewhere confers no assistance whatever in determining whether the profit arose in or was derived from the Colony; but nevertheless the Court or person determining the question *must* have regard to the fact; he cannot ignore or disregard it. At once therefore the provision appears to me to be anomalous and unjust. I have however to consider what is the effect of so providing.

Now, as between a number of relevant facts a Court is able to give more weight to some and less weight to others, and to decide on balance between all the relevant facts where the truth of the matter lies. Irrelevant facts have no weight and are therefore ignored. If, then, the Court is compelled by law to have regard to an irrelevant fact, and may not disregard it as it should, how is this to be done? The irrelevant fact remains irrelevant and has no evidentiary weight whatever; but regard must be had to it. Its value in evidence is nil, but regard has to be paid to it; the Court cannot weigh it against the other evidence because it has no weight. The only logical method, therefore, by which the Court could obey the section would be by deciding the question by reference to the statutory test alone. It is impossible to say "We have had regard to the irrelevant matter,

but we find it is of less weight than the other evidence" because it cannot bear on the question. Accordingly it must either be disregarded (which the proposed section prohibits) or used as the determining factor.

In my opinion therefore the proposed new section, if faithfully operated according to its terms, would have the same effect as the direct proposal of the Committee's report.

In these circumstances question (*b*) does not strictly arise; but if my reasoning is at fault and cases could occur where the profit in question did not attract similar taxation elsewhere and yet the Court came to the conclusion that it did not arise in or derive from the Colony, it is equally obvious that by the use of the irrelevant test profits not arising in or deriving from the Colony might be held to have arisen in or derive from the Colony; and this would plainly have the effect of subjecting to taxation profits not previously taxable.

The remaining two questions admit of very simple answers. Question (*c*) depends upon an affirmative answer to question (*b*), namely, that profits not previously taxable as arising in or derived from the Colony have become taxable. If this is presupposed, it follows in my opinion inevitably that a change has been effected in the system of taxation in Hong Kong.

As regards question (*d*), the Committee proposed that it should be assumed that profits arise in the Colony unless proof is adduced that they have borne a corresponding tax elsewhere. This would in my opinion also amount to a change in the system of taxation in Hong Kong, since it would be an artificial and indeed arbitrary test render liable to Hong Kong taxation any profits not subjected to a "corresponding tax" (whatever that means) in some other place, whenever any doubt exists as to the place which the profits arise. The introduction of such a provision would undoubtedly subject to Hong Kong taxation some profits which did not in fact arise in or which were not in fact derived from the Colony; and it is, I consider, incapable of argument that this would not effect a change in the system of taxation in Hong Kong.

(*Signed*) MILNER HOLLAND,

*Lincoln's Inn,*

*7th September, 1955."*

I come now, Sir, to the possible effects of this Legislation, if passed, on the mercantile community. The policy has been, and still is, to attract business to the Colony and there is no better way of achieving this object than to persuade commercial interests to open offices, and preferably head offices, in Hong Kong. In recent years, new names have been added to business directories and, in some cases, the status of existing organizations has been raised and these developments have been most welcome. I have no doubt that many factors were taken into account when reaching decisions to establish offices here but I am certain that a most telling factor was the relatively favourable basis of taxation which had been laid down. Newcomers opened up and others expanded on the understanding that only profits arising in or derived from the Colony would be taxed, but I am afraid that this faith will now be rudely shaken. Confidence, once lost, is hard to regain. I do not for a moment suggest that a general exodus will start tomorrow; I do, however, feel that some will wish to re-examine their positions, in the light of shaken confidence, and that strangers, who may be considering establishing offices in the Colony and who are finding that the arguments for and against are nicely balanced, must take into account the alteration now proposed in the system of taxation. I would not attempt to guess how far this loss of confidence will affect the business life of Hong Kong but it would indeed be sad if it was sufficient to raise doubts as to whether, from a revenue point of view, the cure had not been worse than the disease.

Sir, I shall not oppose the Second reading but I shall oppose Clauses 18 and 36 in Committee.

MR. LO MAN WAI: —Your Excellency: When this Bill was introduced in this Council on the 17th August, I had intended to say only a few words in its support, with special reference to clause 36 of this Bill. I had taken quite an interest in this Clause, and was aware of the controversy over it. Since then strong pressure has been brought to delete this clause from the Bill. I have had the opportunity of studying the arguments advanced against it, and I knew that my honourable Friend, Mr. Blackwood, would speak against it this afternoon. As I differ profoundly with the views expressed by him in this regard, I feel I should have to speak at greater length than it was my original intention.

I propose to make my observations under two headings. First, I shall attempt to set out the grounds upon which I base my opinion that this clause should form part of this Bill, and then I shall comment on some arguments which my honourable Friend has made against it.

Sir, it is obvious that it is extremely difficult to understand the intention and effect of an amending provision in a Taxation Ordinance, without a knowledge of the legal background and the local conditions and circumstances giving rise to the proposed amendment. I would therefore crave the indulgence of the honourable Members to permit me to give a sketch of what I conceive to be the present state of affairs which calls for the remedy provided by this clause.

Our system of taxation under the Inland Revenue Ordinance differs fundamentally from that which obtains in the United Kingdom. The policy of the Income Tax Legislation in U.K. is to tax the resident in U.K. upon all his income whencesoever derived and to tax the person not resident in U.K. upon all income derived from property and business in the U.K.

Under the system of taxation embodied in the Inland Revenue Ordinance, the tax is not on all sources of income but only on five sources of income which include the Corporation and Business Profits Tax, with which we are concerned in the proposed amendment. The tax under sections 14 and 15 of the Ordinance is limited to the profits arising in or derived from the Colony from trade or business carrying on in the Colony. I suggest that the only common element in both the U.K. Income Tax Legislation and our local fiscal Ordinance is they both do not provide a code of law on the subject matter of taxation, and that they consist of a number of more or less disconnected enactments which leave undealt with many matters of the first importance. Take, for instance, the very matter, with which we are at present concerned, namely, “What are profits arising in or derived from the Colony.” There is no exhaustive definition of this in the Ordinance. It is obvious that this must be so because this must be a question of fact. Now having regard to the enormous complications of modern commerce, a proper assessment of such profits must be an administrative problem of the first order. It is true that there are cases decided in U.K. where the Courts have laid down certain leading principles for determination of this

question of fact. For instance, in case of profits arising from a contract of sale, it has been laid down that the important and indeed crucial question is where the contract was made, but it has been also stated that no doubt reference has sometimes been made to the place where payment is made for the goods sold or to the place where the goods are delivered, and that it may be that in certain circumstances these are material considerations. But I have not come across any reported case in U.K. which has decided that the fact of payment of tax outside U.K. is a material factor.

I am sure that honourable Members will appreciate that in practice it is sometimes most difficult to draw the line as to what are, for short, I call "Hong Kong Profits", and what are profits made outside the Colony.

Now this difficulty of ascertaining what are Hong Kong Profits has been taken care of, in case of a non-resident company, insurance companies, shipowners, aircraft owners and charterers, by special provisions in the Ordinance, and in the case of Hong Kong branch of banks with office outside Hong Kong, Hong Kong branch of foreign companies and firms by rules made by the Board of Inland Revenue under section 85 of the Ordinance: but in the case of such profits of a corporation incorporated in the Colony, this question has been left at large to be decided in case of dispute by reference to the U.K. cases. It is no surprise to me to learn that in many cases there have been long and protracted correspondence between the Inland Revenue Department and the tax payers on this question.

Sir, I have been a member of the Board of Review for some years. In the course of my work as such member, it has occurred to me that in case of a dispute as to whether a profit arises or is derived from the Colony, a most interesting and illuminating question to ask, would be this: if the profit is claimed to have been made in another place, whether there was a similar tax in that other place, and if so, whether the profit in question had borne the tax? Bearing in mind that there are few countries in the world where one can carry on a profitable business and where one is not liable to a tax on such profits, it does not seem to me there is any hardship for a tax payer in Hong Kong alleging that a profit has been made elsewhere to disclose this information. I am told that the tax payer, on the advice of his professional

adviser, had refused to give any information along this line on the ground that the Assessor is not legally entitled to this information having regard to certain cases decided in U.K.

I understand that the Inland Revenue Department has so far given in to this contention of the tax payer. To obtain an authoritative ruling on this point would probably mean an appeal to the Privy Council, and this no doubt would take a long time. Why can we not remedy this state of affairs by direct legislation?

Now, I should like to speak frankly on this matter. My honourable Friend, the Financial Secretary, in his speech on the first reading of this Bill, drew attention to paragraph 10 of the Report of the Inland Revenue Ordinance Committee and said that their recommendation was prompted by rather serious cases of avoidance of tax. I fully endorse this view. Let me illustrate a case of gross evasion of tax. A company incorporated in Hong Kong with head office here has a branch in Japan. Such company has, under our Companies Ordinance, to file a profit and loss account showing the whole of its profits made whether in Hong Kong or elsewhere. The account shows that the greater proportion of its profits is made in Japan. But of course it is only assessable in respect of its Hong Kong profits. In such a case, it is easy for such company to manipulate its accounts and documents in support of its claim that only a small proportion of its profits is made in Hong Kong. It is so easy to produce a contract of sale purporting to be made in Japan and this contract, under the present state of the law, could be the deciding factor. Now there is nothing to prevent such a company having another document in existence for the benefit of the taxing authorities in Japan which shows the profits in question arose out of a contract purporting to be made in Hong Kong. I think this clause would be of great use in such a case as this.

Sir, in interpreting a clause in a taxation legislation, it is worthwhile to bear in mind the remarks of Lord Dunedin in the case of Whitney v. Inland Revenue Commissioners (1926) A. C. page 52. He said: "Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability

does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, it the person taxed does not voluntarily pay." Again, let me quote from Halsbury's Laws of England, 2nd edition, vol. 17. Page 30. I quote: "It is important to distinguish between 'charging' provisions and 'machinery' provisions. The former impose the charge and the latter provide the machinery for the quantification of the charge and the levying and collection of the tax in respect of which the charge is imposed. Purely machinery provisions do not impose a charge." Having regard to the above quotation, can it be seriously argued that this clause 36 is a charging provision and has the effect of enlarging the area of taxation? The charging provision is clearly sections 14 and 15 of the Ordinance. This clause 36 in my opinion is a machinery provision. Subsection (1) makes it clear that the onus is on the tax payer. Subsection (2) directs that the fact as to whether or not the profit in question has borne elsewhere a tax of substantially the nature as the tax under our Ordinance should be considered among other facts, and subsection (3) gives power to an Assessor to require the tax payer to give the information which at present is denied to him. I can see nothing in this clause which would adversely affect a person whose return contains a true account of Hong Kong profits. For in case of a disputed item, if the tax payer can show he has borne tax of substantially the same nature elsewhere, and if the rate of taxation is higher than the Hong Kong rate (which would be in most cases) it stands to reason that the Assessor would not pursue the matter further. On the other hand, if although he claims that the profits in question were made in another place, and there is a tax on profits in that other place, and yet he cannot show that he has borne that tax on such profits, it seems to me that he would find it somewhat difficult to substantiate his claim that the profits did not arise or was not derived from Hong Kong.

Sir, for the reasons which I have tried to elaborate, I would give my full support to this clause.

And now let me deal with some arguments of my honourable Friend, Mr. Blackwood. There is one thing in this matter where I agree with him, and that is where he says that the two clauses 18 and 36 are the same except that the former deals with income and

the latter with profits, and it is for this reason that I have confined my observations on clause 36 only. Let me summarize his arguments: —

1. That this clause introduces a new test and in that in practice it will be regarded as the deciding factor so that if profits are not proved to have paid tax elsewhere, they will be deemed automatically to have arisen or be derived from the Colony.

2. That this subsection (2) of clause 36 is ambiguous.

3. That the members of the legal sub-committee of the Hong Kong General Chamber of Commerce have expressed certain legal opinions which were corroborated by the independent views of other lawyers and that weight should be accorded to the unanimous view of the legal sub-committee of the Hong Kong General Chamber of Commerce and also those of the Association of Chartered Accountants in Hong Kong who strongly support the opinion of their legal brethren.

4. That this subsection is unnecessary and should be dropped and that its retention would shake the confidence of the mercantile community and of the business companies which have established here on the understanding that only profits arising in or derived from the Colony would be taxed.

Before commenting on these arguments, I would like to make some observations of a general nature. It seems rather remarkable to me that there is no reference in my honourable Friend's speech whatsoever as to the state of affairs which have led to this clause. It seems as if Hong Kong is one of the rare places in the world where the problem of evasion of tax is non-existent. My honourable Friend has said that the legal subcommittee of the Hong Kong General Chamber of Commerce and the Association of Chartered Accountants in Hong Kong represent professional practitioners whose task is to advise the tax payers. Surely they must know that evasion of tax is not uncommon in Hong Kong? And surely this evasion of tax should be the concern of the Hong Kong General Chamber of Commerce?

I confess I find the attitude of this responsible body in this matter is rather inconsistent. One of the objections it has to this clause is that it, in effect, changes the present system of taxation.

Now the present system of taxation has clearly been changed in respect of the interest tax. This has been effected by clause 37 of this Bill, whereby interest tax would be payable whether the loan is evidenced in writing or not. And yet it has not raised any objection on this score.

And now as regards the first argument of my honourable Friend, I think what my honourable Friend, the Financial Secretary, has said in his speech on the first reading and what I said in the first part of my speech is a sufficient answer.

As regards to his second argument that this subsection (2) is ambiguous, I would like to make this comment. If my honourable Friend has confidence in his legal advisers as I am sure he has, then for the life of me, I cannot see what he has to worry about. For surely he can sleep peaceably in bed, repeating to himself, the soothing words of a Lord Chancellor, which he has quoted for our edification, that if a section in a taxing statute is of doubtful and ambiguous meaning, it is not possible out of such ambiguity to extract a new and added obligation not formerly cast upon the tax-payer.

As regards the third argument, it seems to me that my honourable Friend in effect invites the members of this Council, in the difficult task of drafting a taxing ordinance, to adopt the opinion upon the legal effect of a clause, given by legal advisers of a body, some members of which are undoubtedly interested parties, contrary to the clear opinion by the law officers of Government. I feel that a member of this Council who has no legal training should accept the advice of the law officers on a matter of this nature. Furthermore, in this case, we have the clear declaration by the Financial Secretary that there is no intention on the part of Government to tax profits arising out of the Colony. Surely, this declaration should be sufficient to allay any fear, which I personally regard to be imaginary, entertained by those companies on whose behalf my honourable Friend has so eloquently pleaded. Sir, may I make a suggestion in this regard. I suggest when this clause has become law, a directive should be given to the Commissioner of Inland Revenue embodying the declaration above referred to. If this were done, I feel that no tax payer would, because of this clause, be made to suffer or pay a tax on what are not in fact and in truth Hong Kong

profits. For we have in Hong Kong a body of expert taxation advisers who are more than a match against their opposite number in the Government Service.

As regards the last argument of my honourable Friend, this is of course a matter of opinion. My humble opinion is that so long as we keep the rate of our taxation low, we shall not drive business away and we shall continue to attract companies establishing themselves here. But, I would like to add this, that I do not see why we should allow companies enjoying the protection and security provided by Hong Kong, to make profits and with the utmost freedom to remit all profits from Hong Kong and not to pay the due proportion of the profits tax. If this new clause has the effect of driving such companies out of the Colony, I think we can do without them.

Sir, what I have said so far is my prepared speech. Since then my honourable Friend Mr. Blackwood has given me this morning a copy of an opinion which he has just read out this afternoon. Now I think it is my duty to say whether my view has been changed after having read this opinion. I would say that my view has not been changed in the slightest by this opinion obtained from London, and I should like to give you, Sir, my reasons for saying so.

Although I am a lawyer I would say that a lawyer can only express an opinion on instructions given to him, and it would depend on what are the facts which are given to him before he can express an opinion. Looking at this opinion of this eminent lawyer, I would say that the best Chancery lawyer is not necessarily the best lawyer from whom we can have an opinion on this matter, because a Chancery lawyer is not concerned with facts, generally speaking: he is more concerned with interpreting documents. In this case it is a question of fact and, looking at the opinion, he seems himself to take a certain view and he himself accepts the view that the fact that a profit has not borne a tax elsewhere is irrelevant. Well, with due respect to him, I would say that is a very relevant fact and it is up to us as Members of this Council to ask ourselves, looking at the question broadly: does it make sense that, when a question of this kind arises, there should be no way of ascertaining whether a profit has or has not borne tax elsewhere? I understand it is so, that the assessor has no right under the law at the present time to

ask a person: "where did you make the profit?" and also “where have you paid tax?” I should have thought that if he made it in America, if he can show that there is an American tax of this kind, the fact that he has paid a tax is a material and most relevant matter, but, according to this counsel, he says "no".

And now the other point which I want to make is that insufficient instructions have been given to him upon which this opinion is based. The only matter he is asked to consider is to compare a certain recommendation in the report with the provisions of the clauses and give an opinion whether they will have the same effect. He has not been referred to what I call the charging sections, that is, sections 14 and 15 of the Ordinance. And until and unless he has been shown those sections and compared them with the present clauses he cannot judge whether they are charging clauses or machinery clauses. In my opinion they are machinery clauses: I have given my reasons for saying that. Having read this opinion and having studied it, I am not at all influenced; this opinion has not had the slightest effect on the view I expressed prior to reading the opinion.

MR. TERRY: —Your Excellency: Lord Atkin, in his introduction to Sir Alan Herbert's admirable work "Uncommon Law" says: "The general impression of law is too often that it is the product of a black art administered as a mystery which none but the initiates need hope to understand."

After listening, Sir, to the very erudite and cogent arguments of my honourable Friends Mr. Blackwood and Mr. M. W. Lo, I find myself among those holding the general impression defined by the learned Lord. To me, purely as a layman, and possibly because this particular point has been the subject of discussions in which I have taken part, the intention of sections 18 and 36 in the Bill before Council is perfectly clear, and was expressed clearly by the honourable Member in charge of the Bill as being designed to prevent avoidance of payment of taxation legitimately due to this Colony by placing upon those persons who contended that such profits arose outside the Colony the onus of proving that fact. This seems to me to be perfectly reasonable, and whereas the original recommendation of the Committee limited such proof to proof that these profits had borne tax elsewhere, the clause as now presented, to my mind, permits the tax payer to advance any other form of proof which he may consider relative,

and furthemore this onus only has to be discharged in the case of doubt. That, as I have said, is my own interpretation, possibly coloured by knowledge of the intention of the framers of the clause. My honourable Friend, Mr. Blackwood, however, has made it quite clear that in the minds of a number of distinguished lawyers, it is possible that a Court could hold the intention to be otherwise, and I myself would have preferred a form of words in more suitable language, leaving no doubt of the actual intention. It seems apparent that there is difficulty in achieving this desideratum in legal phraseology, and I would welcome an assurance from my honourable Friend the Financial Secretary that in fact the form of words used by the Law Officers of the Crown means what I think it should mean, and not what my honourable Friend Mr. Blackwood fears it might be construed as meaning.

Sir, I support this Bill in the main, insofar as those portions of it which fall within my comprehension as a layman. The more technical aspects of it I am content to leave to those better qualified than I to discuss.

There is one point, however, to which the honourable Financial Secretary referred when introducing the Bill with which I cannot find myself in agreement. That is the rejection of the recommendation contained in paragraph 26 of the Committee's Report that the cost of Leave Passages for the proprietor of or partner in a business who is debarred from incorporation by the rules of his profession should be allowed as a charge against profits. This recommendation has been rejected because Government has decided that it is unable to depart from the principle that allowable deductions from profits are restricted to expenses wholly and exclusively incurred in production of those profits. In my opinion this rejection amounts to discrimination against a small body of tax payers who are debarred by their professional standing from seeking the relief which is accorded to a much larger but analogous number of non-professional people. I am aware that in the United Kingdom the principle has been well established that in connexion with such allowances what is known as "Lord Davey’s Test" should apply, and that briefly the criterion is that it is not sufficient that such expenses should arise in connexion with the earning of an assessable income, but in the course of earning it. My honourable Friend Mr. Lo has already made it clear that our basis of taxation is fundamentally different

from that in the United Kingdom, but in any event, I submit that in any decision on the application of principles, regard must be had to the circumstances of the place in which they are applied. It is not customary in the United Kingdom for partnerships, whether professional or otherwise, to incur the cost of Leave Passages, because it is not necessary for members of such firms to be granted the extended periods of leave away from the climatic conditions there prevailing which are common in this Colony. It is a well established fact here that leave outside the Colony is necessary at varying periods for anybody who hopes to retain the efficiency necessary to conduct their business properly. This applies whether the individuals concerned are local born or born outside the Colony, and it is further recognized by the fact that deductible allowances are permitted in respect of these items of expenditure, not only in respect of partners and employees of incorporated businesses, but also in respect of employees of those same professional firms who are debarred from incorporation and so debarred from that same relief. It seems to me therefore completely inequitable that the comparatively few partners or proprietors of these professional firms should be the only people debarred from the same relief which is accorded their non-professional counterparts in other businesses, and it is on the principle of equity that I ask for reconsideration of this ruling. The amount of tax involved is a comparative drop in the ocean, but the principle that taxation should be equitably and justly applied is one of great importance. The point, Sir, is one of application of the law, and does not so far as I can see necessitate any amendment of the Bill. I do, however, most strongly press for its reconsideration on the grounds I have outlined.

MR. DHUN RUTTONJEE: —Your Excellency: This Bill has attracted surprisingly little public attention—the reason being, I think, the difficulty of the ordinary person to make head or tail of the amendments. The Report of the Inland Revenue Ordinance Committee, published last year, was too lengthy for the man in the street to wade through, and when my honourable Friend the Financial Secretary introduced the Bill, he elaborated on a few points only. It was not to be expected that he would comment on each of the many amendments proposed, but in the circumstances it is to be regretted that the usually comprehensive "Objects and Reasons" attached to a Bill were shortened and set out instead in table form, making Press publication difficult.

My honourable Friend, Mr. Terry, has spoken at length on passage expenses for professional men, and I whole-heartedly support his comments. Others of my Unofficial Colleagues have already spoken, or will be speaking, on other matters and I will limit myself to two items. One is in regard to section 42B (1) and the other relates to retired persons.

The increased family allowances set out in section 42B (1) will offset, to some extent, the inequities of the present system of direct taxation, and I have no doubt that the public welcomes them. I think this section, however, should be enlarged to include within its scope, dependants in addition to wife and children. In Britain, I believe a taxpayer can claim allowances for those persons whom he can show to be dependent on him. It would not be amiss if we were to make likewise allowances up to the limit of $7,000 stipulated in subsection (1) (*c*) of this section. Due to circumstances beyond their control, many elderly people are dependent on their children, and it is not uncommon to find taxpayers supporting young brothers and sisters as well.

As I understand it, amendments relating to retirement funds will be dealt with next year. There are points however in the present amendments that adversely affect retired persons and I urge that the time to deal with the funds of, and allowances for, retired persons is now and not at some future date. One point in particular is in regard to taxation of dividends on investments. It is known that many retired persons in Hong Kong are living entirely on their investments. As all receipts from investments have already borne one tax or another at source, I strongly urge that retired persons whose income is derived solely from investments, should not lose the benefit of their personal allowances, as I understand will be the case if the proposed legislation is enacted, or they should be compensated in some manner for any such losses.

The repeal of section 27 will mean that tax borne by a company is no longer considered as being passed on to its shareholders, and dividends are now to be regarded as a distribution from a Taxed Fund. It follows that the re-enactment of section 42 has the effect of excluding such dividends from the definition of "total income" of an individual, and it must result in hardship where the income is made up entirely of dividends. In the past, such individuals have been able to claim a refund of

tax in respect of their appropriate personal allowances and reduced rates of taxation, and it would seem only equitable to introduce a subsection to the new section 42 (1) whereby any individual whose entire or main income is from dividends could claim some form of Tax credit to compensate him for the Personal Allowances which would have been due to him had all his income been subject to Tax by Assessment.

Paragraph 109 of the Report of the Inland Revenue Ordinance Committee makes recommendations relating to payments to employees under retirement schemes. I would strongly urge that the Board of Inland Revenue draw up without any further delay, rules for the approval of retirement schemes, and that the earliest possible implementation be given to the recommendation that sums provided to retiring employees under such schemes be wholly receivable by the recipients and not subject to further taxation by them.

DR. RODRIGUES: —Your Excellency: The mainpoints regarding the Bill before Council, have been treated at length and I might add, adequately by honourable Members.

I now raise my voice, not in protest nor in acclamation but to plead on behalf of those Hong Kong Citizens who hope to enjoy a well-earned retirement on income derived solely or in the main from dividends received from local corporations.

I agree with my honourable Friend Mr. Ruttonjee that the repeal of section 27 (which relates to the deduction of tax from dividends received from local corporations) and the provisions of the proposed new section 42 (which excludes from total income dividends received from local corporations) taken together result in considerable hardship to persons living in the Colony mainly on investment income.

The Committee whose Report formed the basis of this Amendment Bill, in recommending the repeal of section 27 admitted that there would be disadvantages but said "Any small disadvantages to a few individuals will be offset to some extent by the increased wife allowance . . . . . and . . . . . by the relaxation of the conditions imposed on the grant of child allowances", but this will be of no comfort to those who are not entitled to those allowances.

Under the present arrangements a person, whose total income includes dividends, can recover the tax deducted from these dividends to the extent of the tax on his personal allowances (insofar of course as those personal allowances have not been set off against income taxed by direct assessment). Under the proposed legislation tax paid by a Company will no longer be regarded as having been deducted from the dividends received by a shareholder. A person who receives a dividend will therefore no longer be considered as having paid any tax and will accordingly not be able to recover the tax in respect of his personal allowances.

This means that a person, whose main source of income is dividends from local corporations, loses the benefit of the personal allowances. The proposed legislation accordingly discriminates unfairly against persons living on investment income, many of whom are in retirement and have relatively modest incomes.

I strongly support the recommendation of my honourable Friend, that to remedy this inequity a new subsection should be added to section 42(1) under which an individual whose income arises wholly or mainly from dividends from local corporations could obtain a tax credit equal to the tax which he would have been able to save on his personal allowances had his income been subject to tax by direct assessment.

THE ATTORNEY GENERAL: —Your Excellency: I rise to comment upon certain criticisms made by my honourable Friend Mr. Blackwood regarding clauses 18 and 36 of this Bill.

Sir, it is not possible in my view to consider, as the learned author of the opinion cited by my honourable Friend has apparently done, the effect of these clauses without first appreciating exactly what liability as to taxation of income and profits is provided by the charging sections of the Ordinance. The liability stipulated in the respective charging sections is that it attaches only if the income or the profits, as the case may be, arise in or are derived from this Colony. In every case this is a question of fact which must be decided having regard to all the facts of the particular case. Sometimes there is no difficulty—for example, if a person earns his livelihood solely as a salaried employee in this Colony or if a trader buys and sells solely within the Colony. There are, however, many cases which are far more

complex than these and in deciding the real source of income or profits regard must be had to all the circumstances of the case—for example, where the contract leading to the making of the profit was entered into, where the performance of the terms of that contract has taken place, and so on.

Sir, no change is sought to be made by this Bill to the principle of liability to taxation as set out in the charging sections of the Ordinance.

The clauses which have been criticised by my honourable Friend Mr. Blackwood are not clauses seeking to amend the charging sections. They are clauses which my honourable Friend Mr. Lo has described as machinery clauses and what they do is to make provision as to the onus of proof as to the source of the income or profit and as to the ascertainment of that source. In particular they provide that in ascertaining whether the source of the profits is this Colony, in cases of doubt, regard shall be had "*inter alia*" to the fact whether the income or the profits have borne a corresponding tax in another country. In other words, all the facts which must normally be taken into account are still to be taken into account and in addition one further fact is to be taken into account. These clauses do not say this further fact is to be given more weight than any other. These clauses do not say that this further fact is to be the determining factor. These clauses do not say that income or profits are to be treated as arising or being derived from this Colony merely because they have not borne tax elsewhere. Sir, one cannot read into a taxing Ordinance words which are not there. I cannot believe that it will be ever contended before the Courts on behalf of any aggrieved taxpayer that these clauses say what they do not. All that they do in my submission is to give further guidance to those who have the duty to decide whether tax is payable by saying "before you make up your mind whether the income or profits arise in or are derived from this Colony, you must take into account, in conjunction with the other facts, whether tax has been paid elsewhere". The amount of importance to be attached to this particular fact will, in my view, vary in different cases depending upon all the circumstances of the particular case under review, including the circumstances in which the income or profits came to be taxed, or not to be taxed, elsewhere.

Sir, I have listened with interest, but without conviction, and without dismay, to the opinion cited by my honourable Friend Mr. Blackwood. The author of that opinion places upon the clauses in question a construction more favourable to the Crown than any person appearing on behalf of the Crown in the Courts would ever seek to put forward. It is well-known that the Courts construe taxation statutes very strictly and in any case of ambiguity they construe them against the Crown and in favour of the subject. It seems to me that there are at least two manifest flaws to the argument in the opinion. One is that no heed is taken of and indeed no reference is made to the charging sections of our Ordinance. Indeed the learned author does not include these sections amongst those to which he says his attention was called. The second is that he completely ignores the words "*inter alia*" in the clauses. It would appear from his use of the phrase "*statutory test*" that he considers what the clause says is that regard must be had to the fact whether or not the profits have been taxed elsewhere. Sir, this is not what the clause says—what the clause says is that regard must be had "*inter alia*" to this fact. It is no less mandatory to have regard to all the other facts of any case and no Court or person determining the question of the source of income or profits can either ignore or disregard them or fail to give due weight to them. He assumes that it is logically irrelevant to have regard to the fact whether a corresponding tax has been paid elsewhere. I wonder whether any taxpayer who can show that he has paid a corresponding tax elsewhere and by reason of this satisfies the authorities that the source of his profits is not this Colony will be in agreement with this view.

Finally Sir, we are asked to believe in effect that the words used in the clauses have the same effect as those used in the relevant paragraphs of the Report. Sir, I cannot believe that any Court would ever hold that the words of the clause "in determining any doubt regard shall be had to the fact *inter alia* as to whether or not a profit has borne elsewhere a tax of substantially the same nature" mean the same as the words of the Report "such profits shall be deemed to arise in the Colony unless proof is adduced to the Commissioner that they have borne a corresponding tax elsewhere". Sir, if ever they should be held to have the same meaning my faith that the law is not an ass will be fundamentally shaken. (*Laughter*).

THE FINANCIAL SECRETARY: —Sir: I would like if I may to offer my congratulations to my honourable Friend, Mr. Blackwood, on his very able and fighting speech; I believe his maiden speech in this Council. It is therefore with very much regret that I have to take issue with him on his misreading of the particular recommendation of the Inland Revenue Ordinance Committee to which he takes exception. He stated, if I understood him correctly, that the Committee recommended the adoption of a formula whereby all income and profits shall be deemed to arise in Hong Kong unless proof is adduced to the Commissioner that a corresponding tax has been borne by them elsewhere.

Now I am afraid that the Committee did not recommend this. The particular paragraph, paragraph 10, rather than paragraph 22, pointed out the difficulty of stating with certainty where any particular item of profit arises, and recommended that *in case of doubt*, that is to say, where the difficulty could not be resolved, then the profit should be deemed to arise in Hong Kong unless it had borne tax elsewhere. My honourable Friend has omitted to mention the qualification. I feel, in justice to the unofficial members of that Committee, who devoted a great deal of their time, and gave a very great deal of thought, to the problems which were put to them, and who I am afraid have received little in the way of thanks for their services to the public, this misquotation of their views should not be allowed to pass without comment.

The objections to the disputed clauses have been dealt with very competently by my honourable Friend Mr. Lo and by my honourable and learned Friend the Attorney General, and I think I need add no more. As has been indicated, Government in this matter is acting on the advice of its legal advisers, but in view of the arguments that have been adduced against these two clauses, Government is preparing a full case for consideration at leisure by legal authorities in the United Kingdom. My honourable and learned Friend does not claim to be infallible, and has gladly agreed to this course. If it should be found that his views as to the meaning of these two clauses are not in accord with the opinion so obtained from the United Kingdom, Government undertakes to reconsider the matter. In the meantime it is proposed to proceed with the Bill.

So far as these particular clauses are concerned I have two final points to make. One is that the Inland Revenue Ordinance Committee, despite the suspicions of my honourable Friend, did not in its Report intend to recommend that Government should tax profits and income arising outside the Colony. I happened to be its Chairman, so I can perhaps speak with a little inside knowledge. The other point is that Government in introducing this Bill does not thereby intend to change its present policy of restricting the scope of taxation to earnings and profits which arise in or are derived from the Colony. It does *not* intend this Bill to be a means of extending the scope of the tax to earnings and profits which arise outside, or which are derived from outside, the Colony. I trust that this explicit statement of policy, which will be brought to the notice of the Commissioner of Inland Revenue is satisfactory to honourable Members.

My honourable Friend, Mr. Terry, has raised the question of allowing against profits the cost of a leave passage for the proprietor of a business who is debarred from incorporation by the rules of his profession. The Committee whose recommendations form the basis of this Bill did indeed recommend, in paragraph 26 of their Report, that this concession should be made. Government has not found it possible to accept this recommendation, and not only my honourable Friend, but also certain professional associations, have raised the matter.

It is normal taxation practice that any expense wholly and exclusively incurred in production of the profits shall be allowed as a deduction from the profits. Now in the case of an employee of a firm it may be the case that the employee is employed on terms of service which include the right to passages, at the expense of his employer, to and from his country of domicile or elsewhere at stated intervals. If this term is in his contract of service, then clearly the employer has a liability in respect of the employee's passage. That is to say, the cost of the passage is an expense incurred in production of the profits just as much as the salary paid to the employee, and the tax authorities must allow it against profits. The question of whether the passage is necessary for efficiency or for health has nothing to do with the matter. But the cost of the leave passage of a self employed person is in quite a different category. A person cannot contract with himself to provide himself with a passage, and the view taken by the Inland Revenue Department is that when a self

employed person goes on holiday the cost of his passage is *not* an expense wholly and exclusively incurred in the production of the profits.

Now it has been said by my honourable Friend, and it has been represented to Government by the professional associations, that this view is incorrect, and that overseas leave is essential if the profits are to be earned. If this contention is correct then surely the proper course, the obvious course, is for those concerned to avail themselves of the right of appeal which is open to all taxpayers, and to eadeavour to prove that the Inland Revenue Department is wrong. I hope they will do so. But Government, as at present advised, has taken the view that it should not depart from normal taxation practice in this case, although it is perfectly willing to reconsider the question if the Unofficial Members feel that the peculiar circumstances of Hong Kong justify a special concession to this type of taxpayer. Meanwhile I feel that I cannot agree with my honourable Friend when he says that they are now being discriminated *against*.

The question of allowances for dependants of various kinds has been raised by my honourable Friend Mr. Ruttonjee. This question crops up periodically. I think I am correct in saying that when direct taxation was first introduced into the Colony before the war, and again when it was re-introduced after the war, the unofficial view was, and I believe still is, that it should be on lines as simple as possible to suit the peculiar circumstances of this Colony. It is for this reason that we do not have a full income tax. It was, I believe, also the unofficial view that rather than get mixed up in all sorts of allowances for dependant parents, or for dependant grandmothers, or for housekeepers, as is the case in the United Kingdom, and perhaps elsewhere, it would be infinitely simpler to give fairly generous personal allowances, and allowances for wife and children, and leave taxpayers no scope for producing miscellaneous relatives as candidates for allowances. That always has been the policy, and I do not think that with the very generous allowances that are now given there is really any case for additional allowances for dependants. But if honourable Members think otherwise then Government is prepared to reconsider the whole question of allowances at leisure.

There has also been raised the question of the new treatment which it is proposed to accord to dividends. Reference to paragraphs 39 and 40 of the Report of the Inland Revenue Ordinance

Committee will explain the reasons for the recommendation which occasioned this change, a recommendation which seemed to Government, and still seems, logical and reasonable. The present suggestion that the decision to accept the recommendation as it stands should be reversed or partially reversed comes at a very late stage, and is apparently based on the ground that it will cause hardship to that class of taxpayers whose income is wholly or mainly unearned. It is open to any of my honourable Friends to propose an appropriate amendment in the Committee stage of the Bill, but I would make again the suggestion I have made privately to my honourable Friend, that as a further amending Bill has to come along in the course of a year, the present Bill should be allowed to proceed, but that I should be supplied with particulars of hard cases. If genuine hardship is shown to have been caused I can assure honourable Members that Government will reconsider the matter sympathetically, and will make any necessary changes in the next amending Bill.

It has also been suggested that the recommendations of the Committee in regard to retirement schemes should be proceeded with at once. I am in full sympathy with this suggestion, but I am sure that it will be realized that the formulation of rules governing retirement schemes, of which there are many variations, is not a task that can be accomplished in a hurry, and the Legal Department has a great deal of work on its hands. I shall use my best endeavours to see that the proposals are pushed forward as rapidly as possible.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 9 were agreed to.

Clause 10.

THE FINANCIAL SECRETARY: —Sir: I beg to move the amendment to clause 10 in the table of amendments circulated to honourable Members.

*Proposed amendment:*

After the word "pension" at the end of line 2 of the proposed new section 8(2) (*c*) insert a comma.

Clause 10 as amended was agreed to.

Clauses 11 to 17 were agreed to.

Clause 18.

THE FINANCIAL SECRETARY: —Sir: I beg to move the amendment to clause 18 included in the table of amendments circulated to honourable Members.

In section 13A—

(*a*) in subsection (1) leave out the first line and substitute the following—

"In the case of any doubt as";

(*b*) in subsection (2) in the first line leave out the word "dispute" and substitute the following—

"doubt".

The amendment was agreed to.

Clause 18 as amended:

A division was taken on the question that clause 18 as amended stand part of the Bill. Dr. Chau Sik Nin, Mr. Lo Man Wai, Mr. Terry, Mr. Ngan Shing Kwan, Mr. Dhun Ruttonjee, Mr. Kwok Chan, Dr. Rodrigues, the Commander British Forces, the Colonial Secretary, the Attorney General, the Secretary for Chinese Affairs, the Financial Secretary, Mr. Bowring, Mr. Crozier, Mr. Richards and the Chairman voted for the motion. Mr. Blackwood voted against the motion. The Chairman declared that 16 votes had been cast in favour of the motion and one against it and that the motion was carried.

Clauses 19 to 35 were agreed to.

Clause 36.

THE FINANCIAL SECRETARIAT: —Sir: I beg to move the amendment to clause 36 which has been included in the paper before honourable Members.

*Proposed amendment:*

In section 27—

(*a*) in subsection (1) leave out the first line and substitute the following—

"In the case of any doubt as";

(*b*) in subsection (2) in the first line leave out the word "dispute" and substitute the following—

"doubt".

Clause 36 as amended was agreed to.

Clauses 37 to 53 were agreed to.

New clauses.

THE FINANCIAL SECRETARY: —Sir: I beg to move that the two clauses as set forth in the paper before honourable Members be added to the Bill.

*Proposed new clauses: —*

Amendment of section 4.

Section 4 of the principal Ordinance is amended—

(*a*) by the deletion from paragraph (*b*) of subsection (4) of the full stop and the substitution therefor of the following—

", or";

(*b*) by the addition after paragraph (*b*) of subsection (4) of the following new paragraph—

(*c*) to the Director of Commerce and Industry to such extent as the Commissioner may deem necessary for the purpose of enabling the Director of Commerce and Industry to exercise his discretion as to remission of fees on grounds of hardship as provided for in subsection (5) of section 7 of the Business Regulation Ordinance, 1952.

(14 of 1952).

Amendment of rule 6 of the Inland Revenue Rules. (Vol. IX, Revised Edition, p. 356).

Paragraph (1) of rule 6 of the Inland Revenue Rules is rescinded and replaced as follows—

(1) For the purpose of assessment to interest tax under Part V of the Ordinance, an annuity payable in respect of valuable consideration given shall first be apportioned as between capital and income in accordance with the provisions of this rule. The capital portion shall be ascertained by dividing the consideration (*i.e.*, premiums paid, or the total of such premiums if more than one, or other valuable consideration given) by the figures ascertained from the Table set out in paragraph (2) hereof by reference to the age of the annuitant at the date of his or her last birthday prior to the first payment of the annuity. The excess of the annual annuity over the capital portion thus computed shall be deemed to be interest chargeable to interest tax under Part V of the Ordinance. This apportionment between capital and interest shall be constant each year until such time as the accumulated total of the capital portions shall equal the total consideration. Thereafter, the whole of the annual amount of the annuity shall be deemed to be interest for the purpose of interest tax: Provided that no apportionment to capital shall be made in respect of any consideration given by a person other than the annuitant, or his or her spouse, and provided further that any premium or portion of a premium which has been allowed as a deduction under section 42B of the Ordinance, shall be excluded from the amount of the consideration.

The two new clauses then agreed to.

Council were resumed.

THE FINANCIAL SECRETARY reported that the Inland Revenue (Amendment) Bill, 1955 had passed through Committee with amendments and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

## SAND (AMENDMENT) BILL, 1955.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled “An Ordinance to amend the Sand Ordinance, Chapter 147.”

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 5 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Sand (Amendment) Bill, 1955 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

## QUARANTINE AND PREVENTION OF DISEASE (AMENDMENT) BILL, 1955.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Quarantine and Prevention of Disease Ordinance, Chapter 141."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 8 were agreed to.

Clause 9.

THE ATTORNEY GENERAL: —I beg to move the amendment to clause 9 included in the table of amendments before honourable Members.

*Proposed amendment:*

By the deletion from paragraph (*c*) of the word "disinsection" and the substitution therefor of the following—

"disinsecting".

Clause 9 as amended was agreed to.

Clauses 10 to 32 were agreed to.

Clause 33.

THE ATTORNEY GENERAL: —Sir: I beg to move the amendment to clause 33 standing in my name.

*Proposed amendment:*

By the deletion from paragraph (*c*) of subsection (1) and from paragraph (*a*) of subsection (2) of section 60 there set out of the words "twelve days" and the substitution therefor in each case of the following—

"fourteen days in the case of typhus and eight days in the case of relapsing fever".

Clause 33 as amended was agreed to.

Clauses 34 to 37 were agreed to.

Council then resumed

THE ATTORNEY GENERAL reported that the Quarantine and Prevention of Disease (Amendment) Bill, 1955 had passed through Committee with amendments and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

## HONG KONG CHRISTIAN COUNCIL INCORPORATION BILL, 1955.

MR. NGAN SHING-KWAN moved the Second reading of a Bill intituled "An Ordinance to provide for the incorporation of the members of the Hong Kong Christian Council."

MR. DHUN RUTTONJEE seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

Clauses 1 to 8 were agreed to.

Clause 9.

MR. NGAN SHING-KWAN: —Sir: I beg to move the amendment to clause 9 included in the table of amendments which has been circulated to honourable Members.

*Proposed amendment:*

In subsection (4): —

Leave out the words "on dollar" and insert the words "five dollars".

Clause 9 as amended was agreed to.

Council then resumed.

MR. NGAN SHING-KWAN reported that the Hong Kong Christian Council Incorporation Bill, 1955 had passed through Committee with one amendment and moved the Third reading.

MR. DHUN RUTTONJEE seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

## FOREIGN MISSION SISTERS OF ST. DOMINIC INCORPORATION (CHANGE OF NAME) BILL, 1955.

MR. LO MAN WAI moved the Second reading of a Bill intituled "An Ordinance to amend the Foreign Mission Sisters of St. Dominic Incorporation Ordinance, Chapter 282."

MR. KWOK CHAN seconded.

The question was put and agreed to.

The Bill was read a Second time.

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

MR. LO MAN WAI reported that the Foreign Mission Sisters of St. Dominic Incorporation (Change of Name) Bill, 1955 had passed through Committee without amendment and moved the Third reading.

MR. KWOK CHAN seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

## ADJOURNMENT.

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

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

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