OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 17th June 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*Acting*)
MR PAUL TSUI KA-CHEUNG, OBE, JP
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR CHARLES PHILIP HADDON-CAVE, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE TSE YU-CHUEN, OBE, JP
THE HONOURABLE KENNETH ALBERT WATSON, OBE, JP
THE HONOURABLE WOO PAK-CHUEN, ORE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JORN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP

ABSENT

THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR RODERICK JOHN FRAMPTON

Papers

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

Subject	*LN No*
Subsidiary Legislation: —	
Dogs and Cats Ordinance.	
Dogs and Cats (Fees) (Amendment) Order 1970	76
Pensions Ordinance.	
Pensionable Offices Order 1970	77
Buildings Ordinance.	
Building (Planning) (Amendment) Regulations 1970	78
Money-lenders Ordinance.	
Order of Exemption	79
Public Health and Urban Services Ordinance.	
Public Conveniences (Charges) (Amendment) (No 2) Order 1970	80
Revised Edition of the Laws Ordinance 1965.	
Revised Edition of the Laws (Correction of Error) (No 2) Order 1970	81

Oral answers to questions

Sale of remaining land on Central Reclamation

1. MR Q. W. LEE asked: —

In view of the growing demand for office space in the Central District, will Government inform this Council what programmes are on hand to release for sale the remaining portion of reclamation land along Connaught Road Central to help ease the situation?

MR J. J. ROBSON: —Sir, the statutory Town Plan for the Central District (LH 3/27) approved by the Governor in Council on 16th September 1969 provides two large sites on the reclamation at the foot of Pedder Street for commercial use. The first of these was sold by auction on the 1st of this month and it is understood that an office building is to be erected on the site—work being planned to start as soon as the site is made available at the end of this year.

The second site, slightly to the west of the one just sold, must, unfortunately, be used to provide temporary Post Office accommodation to replace the present temporary Post Office buildings on the waterfront west of the Star Ferry pier which are to be demolished to permit the construction of a new General Post Office on that site. As a result, this second commercial site will not be available for sale for some 2 to 3 years at least.

In the meantime in order to meet demands in the Central District in so far as this is possible from available resources of Crown land one or two sites, totalling some 50,000 *sq. ft.*, fronting Harcourt Road between Murray Road and Cotton Tree Drive are being processed for sale. It should be possible to offer these two sites for auction later this year or early in 1971, but I should mention that no firm request has as yet been received for this land.

MR LEE: —Thank you, Sir.

Public assistance

2. MR WILFRED S. B. WONG asked: —

> Would Government be prepared to make a statement on the progress of the public assistance scheme as proposed by His Excellency the Governor in his speech in 1969?

MR G. T. ROWE: —Sir, honourable Members will recall that during the budget debate earlier this year I reported to this Council that proposals for a revised public assistance scheme had been endorsed by Your Excellency in Council on the 17th of March, subject to the provision of the necessary funds by the Finance Committee of this Council.

Since then, the Social Welfare Department has been engaged in the production of detailed plans of the necessary administrative machinery, structure and procedures for the implementation of the revised scheme as approved by the Executive Council. These plans, together with estimates of costs and additional staff required at different levels, have been considered by Government and I am informed that a paper detailing the financial implications of the proposals will be placed before the Finance Committee of this Council later this afternoon. The Finance Committee will be asked to approve the provision of the necessary funds for the implementation of the scheme as a whole. When this approval is obtained, further decisions will still be required on the actual numbers of staff and the grades of the posts needed to put the scheme into operation. This is well in hand and should reach the

[MR ROWE] **Oral Answers**

Finance Committee early next month. It will take at least three months to recruit and train the new staff required to implement the scheme, which will involve the processing of applications for assistance, the assessment of needs of the applicants, authorization of payments and arrangements of payments to be made. Additional staff are also required for administrative, accounting, inspection and audit purposes as well as for those social work services which are required for certain public assistance clients. If all goes well, it may be possible to provide, as a first step, cash assistance in lieu of dry rations to existing recipients of public assistance towards the end of this year.

Honourable Members will recall that, when I spoke in the budget debate in March, I estimated that it would take nine months to a year to bring the revised scheme into full operation. That estimate still stands.

MR WONG: —Sir, would it also be right to say that, with the full support of this Council, this scheme might be going at the end of this financial year?

MR ROWE: —Yes. Sir. Subject to the provision of the necessary posts, and with the support of this Council, I would very much hope that it would be possible to have the scheme in full operation by the end of this financial year. I will certainly do my best to see that this is so.

Beaches on Lamma Island

3. MR G. M. B. SALMON asked: —

> Who is responsible for the cleanliness of the beaches on Lamma Island, and why are these left in a disgusting state?

MR D. R. W. ALEXANIDER: —Sir, generally speaking, the Urban Services Department is responsible for the cleanliness of beaches on Lamma Island. There are quite a number of beaches there but only two of them are gazetted and have permanent staff under the Recreation and Amenities Division. The others are cleaned up more, or less, frequently (depending on the use to which they are normally put by members of the general public) by labourers of the Cleansing Section of the New Territories Division as part of their normal cleansing duties.

If any of the beaches are in a disgusting state this would be due to the refuse and seaweed brought in by the tide or to the inconsiderate

and thoughtless dumping of litter by members of the public. But it is my Department's duty to see that adequate arrangements are made for the condition of these beaches to be restored (particularly those used by the general public for swimming); and I would be pleased to hear of any instances where this is apparently not being done. If my honourable Friend himself could be more specific, perhaps after this meeting, I should be happy to have the matter attended to and to see if some improvement in the situation can be effected.

Excess exhaust discharge from vehicles

4. MR SALMON: —

How many drivers of both public and private vehicles with excess exhaust discharge have been prosecuted so far this year, and has the Commissioner of Police given instructions to the Traffic Branch police officers to take action against all such offenders?

THE ACTING COLONIAL SECRETARY (MR D. R. HOLMES): —Sir, during the first five months of this year, 390 summonses have been issued against drivers of public and private vehicles for the offence of excessive discharge of exhaust gases.

The Commissioner of Police issues regular instructions to all police officers on the need for action against drivers of vehicles making excessive smoke.

MR SALMON: —Sir, in view of my personal observation one day last week in Garden Road, when a taxi spewing clouds of smoke was entirely disregarded by a European police officer, a traffic policeman on a motor bike and a lady police officer outside the Helena May Institute, would my honourable Friend ask the Commissioner of Police to ensure rather more action is taken against this unpleasant form of pollution?

THE ACTING COLONIAL SECRETARY (MR HOLMES): —Yes, Sir, certainly I am glad to give that assurance. The position is that all police officers—not only officers of the Traffic Branch referred to in the question—all police officers on duty in uniform have standing instructions that if they observe what appears to be a breach of the Road Traffic (Construction and Use) Regulations, that is to say a mechanical defect which would include exhaust defects, their orders are to report it after which notification is sent requiring the owner to produce the vehicle for inspection. I will certainly draw the attention of the Commissioner to the fact that this standing instruction does not, in my Friend's opinion, appear to be always carried out.

Oral Answers

Financial assistance for Hong Kong Technical College students

5. DR S. Y. CHUNG asked: —

> Last year Government established at the two Universities a new scheme of student finance which in essence provides two sorts of financial assistance—grants to cover tuition fees and certain other expenses, and loans for living expenses of students. In view of the success of this scheme of student finance, will Government consider an early introduction of a similar scheme for those needy students at the Hong Kong Technical College?

THE ACTING COLONIAL SECRETARY (MR HOLMES): —Sir, a scheme of financial assistance for needy students at the Technical College is already being considered. This scheme would seek to ensure that places at the Technical College are filled by the most able and promising students irrespective of family circumstances.

My Friend will recognize that, because of the differences between the Universities and the Technical College, a simple extension or adaptation of the scheme of University student finance would scarcely be entirely suitable. For one thing, the Technical College fees are at present much lower than the fees at the Universities. The normal fee charged at the Technical College is now $400 per annum, which is the basic secondary school fee, and even this comparatively low fee may be remitted in needy cases subject to an overall limit of 40%. My honourable Friend will be aware that there is no fee remission as such in operation at the Universities.

A further difference is that the Technical College is not a residential institution.

Clearly, therefore, the needs of the Technical College students are not quite the same as those of University students, and careful consideration is required to determine the most appropriate arrangements for giving help to needy students of the Technical College.

Consultation with the Director of Education is continuing, and it is hoped to place proposals before the Finance Committee of this Council in due course.

DR CHUNG: —Sir, I take the points of my honourable Friend, but I hope that Government in formulating new proposals will take into account the fast increase of student places in the next few years at the Hong Kong Technical College and that therefore more needy students will need financial assistance.

THE ACTING COLONIAL SECRETARY (MR HOLMES): —This fact will certainly be taken into account, Sir.

Use and conservation of the countryside

6. MR OSWALD CHEUNG asked: —

Is Government in a position to state which, if any, of the recommendations made in a Report of the Provisional Council for the Use and Conservation of the Countryside submitted to His Excellency on 28th June 1968 have been accepted, and which not, and the reasons therefore?

Is Government prepared at an early date to publish, or to release for publication, the said Report, so that its recommendations may be generally considered and discussed?

THE ACTING COLONIAL SECRETARY (MR HOLMES): —Sir, the Report of the Provisional Council is at present being printed and will be published very shortly, together with an official summary, in English and in Chinese, of the Report's main proposals. A statement of the action which Government proposes to take concerning recreational development and nature conservation in rural areas of the Colony will be published at the same time.

MR CHEUNG: —Thank you.

Statement

Kowloon Motor Bus fares

THE ACTING FINANCIAL SECRETARY (MR C. P. HADDON-CAVE): —Sir, during the debate in this Council on the 8th of April last on the two resolutions dealing with the elimination of the special rate of duty on diesel oil and the special licence fee payable by the enfranchised bus companies and setting the rate of royalty payable by the Kowloon Motor Bus Company in its current financial year at nil, I said that the Government was dealing with the related questions of a reasonable rate of remuneration for the company in return for adequate and efficient services in a logical sequence. At the same time I warned honourable Members that the elimination of royalty might not, in itself, provide the Company with an opportunity to earn a reasonable rate of remuneration in view of the increased operating expenses expected.

[THE ACTING FINANCIAL SECRETARY] **Statement**

This, Sir, has proved to be the case. By the end of its current financial year, in other words by the 14th of February 1971, the Company will have increased its carrying capacity in its urban area (enlarged to include Tsuen Wan and Kwai Chung) by about 25% compared with the beginning of the year. This will involve increased operating expenses over 1969-70 of the order of $22 million after taking into account the increases in fuel duty and licence fees, which amount to about $6 million. Then, in addition, the Company has recently agreed with its employees (both daily and monthly paid) a substantial adjustment of wages payable with effect from the beginning of its current financial year, in other words the 15th February of 1970, and the additional cost will be nearly $6 million this year. Thus the total increase in operating expenses over 1969-70 is expected to be nearly $28 million or 36%.

When discussions with the Company on its financial forecast for 1970-71 began some months ago it was hoped that these increased operating expenses, including the increased fuel duty and licence fees, would be offset by the elimination of royalty, which saves the Company nearly $15 million, and by an increase in income from the additional carrying capacity offered. In fact, the Company's income from its operations is unlikely to grow in 1970-71 by more than $6¼ million or by about 6%. Even this may not be achieved: in the past three months of March, April and May, income was 7.2% lower than in the same period of last year, despite the fact that 80 additional buses were brought into service in the urban area, making for an increase in carrying capacity of 13%.

It is against this background that the Company's application for the approval of Your Excellency in Council for a variation of fares in its Schedule of Services in accordance with section 17 of the Ordinance has had to be considered.

But before explaining to honourable Members the outcome of the Government's examination of the Company's application, I should like to mention again the two related questions of a reasonable rate of remuneration in return for the provision of adequate and efficient services. Section 11 of the Ordinance places a clear obligation upon the Company to provide adequate and efficient services in Kowloon and the mainland part of the New Territories. Much criticism, Sir, has been levelled at the Company over the past few years. In some measure, this criticism is justified; but, in all fairness, the difficulties under which the Company has been working must also, I suggest, be recognized. In June 1967 two-thirds of the Company's employees left their jobs. It took nine months for replacements to be recruited and trained; and it was fifteen months before the Company's services were re-established on anything like their pre-disturbances level. In the

past 18 months to two years the Company has completely reshaped its operational and maintenance arrangements with a view to providing services of a standard expected of an up-to-date transport company of its size.

By way of underlining Government's continuing surveillance of total public transport requirements, I should perhaps mention the positive steps which have been agreed with the Company for the *future* expansion and improvement of its services. For example, 465 buses have been ordered for delivery over the two years beginning October 1969. Of these 315 are double deckers and 150 are single deckers and, when all are delivered, the net effect on the Company's carrying capacity will be an increase of two-thirds over the level which obtained in September 1969. The Commissioner for Transport is now discussing with the Company the need for ordering yet further buses so that the impetus of expansion to meet increasing demand in the future may be maintained. The Company has introduced a revised maintenance programme which will ensure that all buses are regularly inspected and overhauled, and this should mean more reliable and regular services. Finally, quite apart from the increase of $1.25 a day in basic pay announced last week the Company has introduced a number of other measures in the field of staff relations and welfare which are expected to lead to a reduction in turnover of staff and to improved morale and performance on duty.

But, Sir, all this cannot be achieved without cost, and this leads me on to that section of the enabling Ordinance (section 17(*a*)) dealing with what should be done if the carrying out of the obligations of the Company is not reasonably remunerative. This brings us up against a dilemma, inasmuch as the standard of services is one of the main factors determining costs. Obviously, the return from running an un-crowded bus is much lower than the return from running a crowded bus. In other words, we can have a cheap crowded service, or a more comfortable, less crowded service which is more expensive. The question is: where do we draw the line? I am afraid we cannot achieve what the public is quite understandably demanding, namely, a cheap, un-crowded service. We have to settle, therefore, for some sort of reasonable compromise between cost and convenience. As I have said, the Company is now embarked on a phased programme of expansion of its fleet and is seeking to improve the standard of its operational performance generally. In the Government's view, there is now a good chance of the Company providing "adequate and efficient services" in the immediate future and in the longer term as well.

But the cost is considerable and will not be matched by the elimination of royalty and an increase in income. As I explained earlier, Sir, operating expenses are likely to rise over the course of this financial year by nearly $28 million or 36%. Operating income at

[THE ACTING FINANCIAL SECRETARY] **Statement**

present fares is likely to rise by more than $6¼ million or by approximately 6%. Even after allowing for the fact that royalty amounting to nearly $15 million had to be paid last year, and will not have to be paid this year, the result would be a net return on assets employed of somewhere between 2 and 3 per cent.

Since the receipt of the Company's application for a fare variation the Government has held lengthy and detailed discussions with the Company's officials and has sought the advice of the Transport Advisory Committee. Having established that the Company needs a variation of services in order to have the opportunity of earning a reasonable rate of remuneration, the form which such variation should take and the timing of its introduction then had to be considered.

The following conclusions were eventually put to Your Excellency in Council and approved: *first*, the introduction of a flat rate fare of 20 cents for all journeys within the urban area of Kowloon, including Tsuen Wan and Kwai Chung and, *secondly*, the raising of the price of an adult monthly season ticket from $18 to $20. These new fares will be effective from 1st of July next. The price of school children's monthly season tickets will remain at $6 and all fares on New Territories routes outside Kowloon, Tsuen Wan and Kwai Chung will remain at their present level. The resulting increase in income is estimated at $7.5 million and should give the Company an opportunity to earn this year about 10% on assets employed.

Before deciding, Sir, upon a flat rate structure, various other alternative ways of adjusting the present schedule of fares were considered by the Company and discussed by the Company with the Commissioner for Transport. The most obvious alternative would have been to extend the present stage fare structure so that fares would bear more relation to distance travelled. However, this was rejected on two grounds: in the first place, it would greatly increase the complexity and difficulty of fare collection and the opportunities for fare-evasion; and, secondly, it would affect most severely the residents of the major resettlement estates situated on the periphery of the Kowloon urban area since these are the people who travel farthest. In the Government's considered view, the introduction of a flat 20 cent fare, coupled with the proposal to extend the area within which this flat fare will apply to include Tsuen Wan and Kwai Chung, offers the best chance of ensuring the continuance of cheap travel facilities for the majority of lower-paid workers while, at the same time, giving the Company a chance to earn a reasonable rate of remuneration on its operations.

Now, Sir, as regards the impact of the flat 20 cent fare structure, I would make four points. First, on twelve routes passengers will actually benefit inasmuch as, on these routes, present fares range from

10 cents up to 70 cents. About 3% of passengers will actually pay lower fares. Secondly, the new flat 20 cent fare will preserve the existing level of fares for the majority of those who would be hardest hit if payment by distance were to be introduced. Thirdly, the elimination of 10 cent fares in the enlarged urban area will affect 27% of all passengers. Finally, the inclusion of Tsuen Wan and Kwai Chung in the Company's urban area will enable people living or working in those districts to enjoy for the first time the use of monthly tickets on routes terminating in those districts.

Honourable Members will naturally wish to have some idea of the effect of these increases on the cost of living and hence on costs generally. I am advised that the effect on the Consumer Price Index will amount to no more than about one fifth of one point.

To sum up, Sir: if the Kowloon Motor Bus Company is to provide the adequate and efficient services required under the Ordinance, its operations, in the Government's view, will not be reasonably remunerative if the fare structure is maintained at its present level, even with the elimination of royalty. Some variation in the fare structure is, therefore, essential and, after long and detailed examination of the various forms such a variation should take, the Government has agreed with the Company that the elimination of the present 10 cent per stage fare structure, and the introduction of a flat 20 cent fare in the urban area, together with the raising of the price of monthly season tickets from $18 to $20 is the form which will cause least hardship to the majority of travellers on the Company's buses.

MR SZETO WAI: —Sir, the finances of the Kowloon Motor Bus Company have been the subject of lengthy study and discussions by the Transport Advisory Committee. My Committee last year recommended that fare increases were unjustified as long as the Company was required to pay a substantial royalty. But the situation has now changed. Although the royalty has been eliminated, the Company is required to pay full fuel duty and licence fees and now, in addition, a wage increase apart from losing passengers to the public light buses.

As Government has approved the introduction of a flat rate fare of 20 cents for the whole of the Kowloon urban area in order to enable the Company to earn a reasonable renumeration, will Government ensure that the Company will provide adequate and efficient services in return and that its present expansion programme of purchasing 465 new buses will he completed and the buses ready for service by the end of 1971?

My honourable Friend mentions that upon the introduction of this flat rate fare, the Company will extend its urban services to include Kwai Chung and Tsuen Wan to offer cheap travel to the residents of

[MR SZETO] **Statement**

the major resettlement estates there. Should it not also be stressed that the introduction of a flat 20-cent fare on all existing urban Kowloon bus routes will offer similar benefits to people living beyond Kwun Tong?

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, I think my honourable Friend has asked me three specific questions and I shall do my best to answer them. In the first place, Sir, I think I have stressed several times that the Company does have an obligation imposed upon it by the Ordinance to provide adequate and efficient services. I can assure my honourable Friend that the Government will continue at all times to press the Company to meet this obligation.

As regards the new buses, the schedule of deliveries provides for them to be on the roads by the autumn of 1971—for all of them to be on the roads by the autumn of 1971. Barring delays beyond the Company's control, such as shipping delays, I have no reason to doubt that the target dates will not be adhered to—I beg your pardon—I have no reason to doubt that the target dates will be adhered to. I'm sorry. (*Laughter*).

As regards my honourable Friend's reference to the impact of the flat fare on distant districts, I think it would be helpful if I took, Sir, the Sau Mau Ping and Ham Tin resettlement estates as examples. Passengers carried on the Company's buses from these estates number about 83,000 to 84,000 a day. Of these only 8,500 or about 10% pay 10¢ for their journeys and these people will have to pay more in the future. But 90% will be no worse off and may even be better off than at present. For instance, Sir, if we take the whole of Kwun Tong area, about 35,000 passengers pay 30¢ or more each day for their journeys, and will, therefore, benefit from the new flat fare. In other words, Sir, to reiterate the point I made at the end of my speech—that, for the majority of people living in the outlying resettlement estates, the new flat fare will at least maintain their present level of expenditure on travel.

Government Business

Motion

PUBLIC HEALTH AND URBAN SERVICES ORDINANCE

MR D. R. W. ALEXANDER moved the following resolution: —

Resolved, pursuant to section 144 of the Public Health and Urban Services Ordinance, that the Public Swimming Pools (Amendment) By-laws 1970, made by the Urban Council on the 2nd day of June 1970 under section 42 of that Ordinance, be approved.

He said: —Sir, the Public Swimming Pools (Amendment) By-laws 1970 will enable the Urban Council to charge a fee for the use of public address systems installed at public swimming pools under its control.

Question put and agreed to.

First reading

EVIDENCE (AMENDMENT) BILL 1970

PROMISSORY OATHS (AMENDMENT) (NO 2) BILL 1970

ROAD TRAFFIC (AMENDMENT) (NO 2) BILL 1970

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1970

HONG KONG STADIUM BILL 1970

BUILDINGS (AMENDMENT) BILL 1970

SAND (AMENDMENT) BILL 1970

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

Second reading

EVIDENCE (AMENDMENT) BILL 1970

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of: —"A bill to amend the Evidence Ordinance."

He said: —Sir, the first of the two main objects of this bill is to replace references in the Evidence Ordinance to "British possession" by references to "Commonwealth country", since the former expression, which is now inaccurate, is no longer used in legislation.

The second object, which is achieved by clause 3(*b*), is to provide that a certificate signed by the Colonial Secretary and stating that an enactment of a Commonwealth country was in force on a day specified in the certificate shall be prima facie evidence of this fact. This provision will make it unnecessary to call an expert witness in judicial proceedings merely to give evidence that an enactment was in force on a particular date.

Question put and agreed to.

Bill read the second time.

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

Evidence (Amendment) Bill—second reading

Explanatory Memorandum

The Bill amends sections 25, 26 and 29 of the principal Ordinance so as to extend their operation to all Commonwealth countries instead of only to "British possessions", a term which excludes republics within the Commonwealth.

2. Section 26 is also amended by clause 3(*b*), which inserts a new subsection (1A), under which a certificate purporting to be signed by the Colonial Secretary and stating that the provisions of any enactment of a Commonwealth country were in force on the date specified in the certificate shall constitute *prima facie* evidence of all the matters contained therein. This obviates the necessity of calling an expert in foreign law to give evidence that a particular enactment was in force at a relevant time.

PROMISSORY OATHS (AMENDMENT) (NO 2) BILL 1970

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Promissory Oaths Ordinance."

He said: —Sir, clause 2 amends the Promissory Oaths Ordinance so as to require a Coroner to take the Oath of Allegiance and the Judicial Oath on his appointment. Formerly, the duties of coroners were performed by magistrates, who took the oaths in their capacity, but special appointments of coroners are now made.

Clause 3 of the bill replaces a reference to the Officer Administering the Government by a reference to "Acting Governor", which is the term now used to describe the office.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

Clause 2 amends the Promissory Oaths Ordinance so as to require a coroner to take the Oath of Allegiance and the Judicial Oath on his appointment.

2. Clause 3 amends the wording of the Oath of Fidelity contained in the Second Schedule to the principal Ordinance by substituting the expression "Acting Governor" for the expression "Officer Administering the Government", since the latter is no longer used.

ROAD TRAFFIC (AMENDMENT) (NO 2) BILL 1970

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Road Traffic Ordinance and to validate certain regulations made under that Ordinance."

He said: —Sir, in a recent appeal against a magistrate's order for the detention of a public light bus, the Full Court ruled that part of the regulations which authorize the impounding of this kind of motor vehicle was *ultra vires*. The court based its decision on two main grounds, firstly that the regulations went beyond what was permissible by the wording of paragraph (L) of section 3(1) of the Road Traffic Ordinance, and secondly, that in some respects those regulations were contrary to one of the principles of natural justice.

The first of the Court's reasons was that paragraph (L) of section 3(1), which empowers the Governor in Council to make regulations for the impounding of vehicles "*used*" in contravention of the Ordinance, must be strictly construed and that the word "used" does not include "driven". Consequently, regulations could not be made to authorize the impounding of a vehicle which had been "driven" in contravention of the Ordinance.

Clause 2(*a*)(ii) of the bill therefore amends section 3 of the Ordinance so as to enable regulations to be made for the detention of vehicles "*used or driven*" in contravention of the Ordinance. The opportunity has been taken, by clause 2(*a*)(i), to make a similar amendment to another paragraph of the same subsection, to ensure that regulations made under that paragraph shall not be held invalid for the same reason.

Most of the considerable amount of subsidiary legislation which has been made under section 3 of the Road Traffic Ordinance is not affected by the decision of the Full Court. However, in order to validate so much of it as is affected, clause 3 provides that subsidiary legislation made under section 3 and in force at the date of commencement of this bill shall be valid, as from that date, as if this amending bill had been in force when the subsidiary legislation was made. The effect of clause 3 will therefore be to validate any regulations, including those dealing with impounding, made under section 3 in so far as they are

[THE ATTORNEY GENERAL] **Road Traffic (Amendment) (No 2) Bill—second reading**

affected by the first ground of the Full Court's decision, with effect from the date when the bill was enacted.

The second and, I think it is correct to say the main, ground for the Full Court's decision was that the regulation which authorizes the detention of public light buses is *ultra vires* because it is contrary to that rule of natural justice which provides that a man shall not be deprived of his property unless he has had a fair opportunity of being heard.

The regulation which the Full Court found to infringe this rule obliges a magistrate, save in exceptional circumstances, to order the detention of a public light bus for seven days if the driver of the vehicle is convicted of one of a number of offences, among which are dangerous, drunken or careless driving, carrying too many passengers, parking or waiting near a bus stop, using the vehicle in contravention of its licence and disobedience to traffic signs. If the owner of the vehicle was also the driver at the time of the offence, then of course he will have been summoned for the trial of the charge and will therefore have been afforded an opportunity of objecting to an order impounding the vehicle. But if the driver who is convicted of an offence is not the owner, then the vehicle could be ordered to be detained without the owner being given at present an opportunity to come and object before the order for detention is made.

It is intended, in the near future, to submit regulations to the Governor in Council to provide that if a driver who is charged with an offence is not also the owner, a notice shall be sent by registered post to the owner's registered address, warning him that an order may be made for impounding his vehicle if the driver is convicted and informing the owner that, if he wishes to object to such an order, he should appear in court on a stated time for this purpose. This will, I suggest, give the owner a reasonable opportunity to state his case and will, I hope, meet the objection that the regulations infringe the rules of natural justice in this respect.

Clause 2(*b*) of the bill deals with another objection of a technical nature which has been taken to the regulations dealing with the impounding of mini-buses. By section (3) of the Ordinance, a regulation made under section 3 may provide that a contravention of it shall be punishable by a fine of up to $1,000 and imprisonment for a maximum of 6 months. It has been argued that this subsection prevents any punishment of any other kind being imposed by regulations under section 3 and that consequently regulations authorizing the impounding of the vehicles would be in conflict with this provision and so *ultra vires*. Clause 2(*b*) of the bill amends section 3(3) of the principal Ordinance

so as to make it clear that regulations for impounding may be made in addition to regulations which impose any other penalties.

MR SZETO: —Sir, this bill to validate the existing legislation which calls for the impounding of public light buses has my support because the Transport Advisory Committee was deeply involved in bringing the operations of these vehicles within the ambit of the law. In the light of their past attitude of complete disregard of traffic regulations and the rights of other road users and franchised transport operators, special penalities and sanctions were considered necessary to regulate their operations, of which impounding was the most effective measure, which has impact on both the owner and the driver. My Committee gave very careful consideration to the justification of this penalty before giving it its support.

I agree with my honourable Friend, the Attorney General that of the two grounds on which the Full Court based its decision, that in respect of the rule of natural justice has the greater import and significance. The general public would not draw a distinction between "use" and "drive" and the intention of the law is clear as far as operations of public light buses are concerned.

As regards the infringment on the rule of natural justice, regulation 41B(4) enables the owner of the vehicle to be heard if he is present in court when the driver is convicted and before the order for detention is made. This provision is, however, considered to be inadequate, and what my honourable Friend now proposes, to send the owner of the vehicle a warning to appear in court to state his case, will no doubt overcome the objection.

It must be realized that the majority of the public light buses are owned by operators who do no more than rent out their vehicles and who adopt the attitude of the absentee landlord towards their investment. They have no concern over who drive their vehicles, which often are re-leased to someone else without their knowledge. The common plea of these owners when their vehicles are impounded as a result of conviction is that they cannot be expected to exercise control without actually being on board the vehicles. This is of course unacceptable as other public transport undertakings assume responsibilities for the behaviour of their operating crews and seek to discipline them. Regulation 41B(2) states clearly that the fact that the owner of the vehicle was not aware of the commission of the offense or did not permit the commission of the offense, or had taken reasonable steps to prevent the commission of the offence is not a good defence against the vehicle's detention.

[MR SZETO] **Road Traffic (Amendment) (No 2) Bill—second reading**

In the short history of a mere 9 months since these vehicles were legalized, 3,655 impounding orders have been made by the Courts for a total of 3,752 vehicles licensed, some of the vehicles having been impounded over and over again. The fact that the number of orders has been falling in the last three months shows the deterring effect of the penalty. My Committee and the Transport Department will continue to examine the operations of these vehicles and review their necessary controls, but until such time when there is evidence that both the owners and the drivers realize their responsibilities and obligations as a component of our public transport systems, it is advisable to retain this effective though strong measure.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

In its judgment in LAU Ping v. The Queen, the Full Court held that the power conferred by section 3(1)(*l*) of the principal Ordinance to make regulations for the seizure, impounding and detention of vehicles is limited to the user of vehicles in contravention of the Ordinance and does not include power to make regulations for the seizure, impounding and detention of vehicles which have been driven in contravention of the Ordinance.

2. Clause 2(*a*) seeks to overcome that decision, not only in relation to section 3(1)(*l*) of the principal Ordinance but also in relation to section 3(1)(*b*), under which regulations controlling the driving of vehicles have been made.

3. A considerable volume of subsidiary legislation has been made under section 3 of the principal Ordinance, though most of it is not affected by the Full Court's decision. Clause 3 seeks to validate that legislation for the future, without retrospective effect, so far as its validity has been called in question by the decision in LAU Ping v. The Queen, so as to make it unnecessary for the Governor in Council to re-enact the legislation under the amended section 3.

4. Clause 3 will not, however, validate regulation 41B of the Road Traffic (Taxis, Public Omnibuses, Public Light Buses and Public Cars) Regulations—the particular regulation which

fell to be considered in LAU Ping v. The Queen—because the Full Court held that this regulation is also invalid for other reasons. This invalidity will be cured by further regulations of the Governor in Council, which will come into operation very shortly after the commencement of this Bill.

5. The opportunity is being taken to amend section 3(3) of the principal Ordinance in the light of a suggestion that it limits the scope of section 3(1)(*l*) of the principal Ordinance to the extent that no regulation imposing a punishment or penalty may be made thereunder. It was always intended that section 3(1)(*l*) should enable the Governor in Council to make regulations requiring a court to impose the penalty of detention in respect of public light buses which have been driven or used in contravention of the principal Ordinance and clause 2(*b*) will remove any doubt which may exist as to the scope of that provision.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1970

MR R. M. HETHERINGTON moved the second reading of: —"A bill to amend the Factories and Industrial Undertakings Ordinance."

He said: —Sir, the bill, now before Council, makes minor amendments to sections 2 and 3 of the principal ordinance.

Clause 2 amends the definition of "Commissioner" in section 2 to enable a wider range of senior officers to exercise powers under the Ordinance and Regulations. This change is necessary in order to distribute more widely the increased volume of work now falling on the few senior officers at present included in the definition of "Commissioner".

Section 3 of the principal Ordinance at present enables you, Sir, to appoint only one officer in some senior grades to carry out the purposes of the Ordinance. With the expansion of the establishment of the Labour Department, more than one officer is required in the grades of industrial health officer and of superintendent of factory inspectors but such appointments are not at present possible as the Ordinance now stands. The opportunity has been taken to amend section 3, by clause 3, so as to refer to all senior grades of officers, other than the Commissioner of Labour, in the plural. This amendment will enable you, Sir, to make several appointments in all these grades according to the number which may be considered necessary from time to time.

Question put and agreed to.

Factories and Industrial Undertakings (Amendment) Bill — second reading

Bill read the second time.

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

Explanatory Memorandum

The purpose of this Bill is to make minor amendments to the Factories and Industrial Undertakings Ordinance.

Clause 2 amends the definition of "Commissioner" so as to include in that expression any deputy commissioner of labour and any person appointed as a superintendent of factory inspectors, or as a divisional factory inspector.

Clause 3 amends section 3 of the principal Ordinance by enabling the Governor to appoint more than one of the following, namely, a deputy commissioner of labour, a labour officer (industrial undertakings), a senior industrial health officer, an industrial health officer and a superintendent of factory inspectors. The section at present enables the appointment of one only of each of such officers.

HONG KONG STADIUM BILL 1970

MR ALEXANDER moved the second reading of: —"A bill to make provision for the management of the Hong Kong Stadium."

He said: —Sir, the Hong Kong Stadium at So Kon Po, the largest stadium we have, was completed in 1955. Until 1965, it was managed on behalf of Government by the Hong Kong Football Association. In that year, it was decided that the Urban Council should be invited to take over the management of the Stadium, and the bill now before honourable Members (which has been endorsed by the Urban Council) is designed to confer powers of management and control upon the Council. Pending the enactment of this legislation, the Stadium has been managed since 1965 by the Urban Services Department under the guidance of the appropriate Select Committee of the Urban Council.

The bill confers the usual powers of management and control upon the Urban Council, including the power to make by-laws (which are subject to the approval of this Council), and to fix, reduce, or waive fees for the use of the Stadium and admission charges where the Council has organized a function there. Such fees and charges are subject to

the approval of the Colonial Secretary. Where the Stadium is hired out for a function, admission fees will be fixed by the hirer. The day to day management of the Stadium will be in my hands as Director of Urban Services.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

Clause 3 vests the management and control of the Hong Kong Stadium at So Kon Po in the Urban Council.

Clause 4 enables the Council to grant the exclusive use of the stadium or part thereof for a period to any person. The grantee may decide whether or not the public should be admitted to the stadium during that period and what admission charges, if any, should be paid.

Clause 5 empowers the Council to make by-laws, for the proper running of the stadium. By-laws must be submitted to the Governor and approved by the Legislative Council.

Clause 6 gives the Council the power to—

(*a*) fix fees for the use of the stadium or any facilities therein;

(*b*) fix admission charges when the Council has organized a function at the stadium;

(*c*) fix advertising charges;

(*d*) specify the conditions to be observed in the use of the stadium.

Clause 7 provides that all moneys obtained by the Council in connexion with the management of the stadium shall be paid into the general revenue of the Colony.

Clause 8 sets out the functions of the Director of Urban Services in connexion with the running of the stadium.

Clause 9 declares those parts of the stadium to which the public has access to be public places for the purposes of the Summary Offences Ordinance.

Clause 10 protects public officers carrying on duties under the Ordinance from personal liability for acts done in good faith, though the vicarious liability of the Crown is not affected.

BUILDINGS (AMENDMENT) BILL 1970

MR J. J. ROBSON moved the second reading of: —"A bill to amend the Buildings Ordinance."

He said: —Sir, clause 2(*a*) of the bill before Council provides for two additions to section 16 subsection (1) of the principal Ordinance. By the first the reference to the Governor in Council in paragraph (*k*) of the subclause will be altered to "Governor or Governor in Council". This is consequential to a recent amendment to the Landlord and Tenant Ordinance which now permits you, Sir, to make Exclusion Orders under the Landlord and Tenant Ordinance when there have been no appeals against the decision of the Tenancy Tribunal.

The second addition to subsection (1) of section 16 is the new subparagraph (*o*) given in the bill. This will enable the Building Authority to reject plans which are in respect of land which is the subject of a resumption notice under the Crown Lands Resumption Ordinance or the Crown lease of the land. The primary object of this amendment is to ensure that Government has the powers to prevent frustration of its plans for urban renewal but the amendment has also Colony-wide application.

Clause 2(*b*) of the bill replaces subsection (3A) of section 16 of the principal Ordinance and the new wording of this subsection is to make it clear that the plans approved for the time being by the Governor or the Governor in Council in connexion with an Exclusion Order under the Landlord and Tenant Ordinance do not lapse after a period of two years from the date of their approval by the Building Authority.

Question put and agreed to.

Bill read the second time.

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

Explanatory Memorandum

The Landlord and Tenant Ordinance (Cap. 255) now provides that an exclusion order may be made by the Governor if no appeal is lodged and clause 2(*a*)(i) extends the provisions of section 16(1)(*k*) to cases where an order is made by the Governor. By clause 2(*a*)(iii) power is conferred on the Building Authority to refuse to approve plans of building works if those plans relate to land in respect of which a resumption notice has been served under the Crown Lands Resumption Ordinance or under the Crown lease of the land. Clause 2(*b*) creates an exception to

the Building Authority's power, under section 16(3)(*d*) of the principal Ordinance, to refuse consent to the commencement of building works or street works where a period exceeding two years has elapsed since the prescribed plans were approved, where the plans are those approved for the time being by the Governor or Governor in Council.

SAND (AMENDMENT) BILL 1970

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Sand Ordinance."

He said: —Sir, this bill seeks to transfer to the Director of Public Works the powers and the duties which are at present conferred under the Sand Ordinance on the Director of Government Supplies and the District Commissioner, New Territories.

The reason for the proposed transfer is that most of the problems arising from the administration of the Sand Ordinance and of contracts for the supply of sand are connected with engineering and building rather than with supplies.

At the same time, so that there is only one Authority under the Ordinance, the section conferring powers on the District Commissioner, New Territories, is being repealed. In practice, the Director of Public Works will, under section 43 of the Interpretation and General Clauses Ordinance, delegate to the District Commissioner such powers as are necessary to enable him to issue permits to villagers for local village building work and for community purposes.

If the bill is enacted, the Director of Public Works will assume the powers and the duties under the Ordinance with effect from the 1st of July 1970, the commencement date of the new three year contract for the supply of sand.

The opportunity provided by this bill is being taken to clarify two other points. The first concerns the imposing of conditions in sale and removal permits; and the second excludes from the scope of the Ordinance quarried sand and sand washed from other materials. The intention of the Sand Ordinance is to control the removal of natural sand and natural sand only. Sand produced by other means is adequately controlled through other legal and administrative procedures.

Question put and agreed to.

Bill read the second time.

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

Sand (Amendment) Bill—second reading

Explanatory Memorandum

The principal object of this Bill is to transfer to the Director of Public Works the powers and duties which are conferred on the Director of Government Supplies and the District Commissioner, New Territories. Clauses 3 and 5 provide accordingly.

Clause 4 replaces the existing subsection 2(2), which relates to the issue of removal permits, and gives the Director of Public Works power to impose such conditions in permits as he thinks fit.

Clause 2 makes it clear that the Ordinance does not apply to quarry sand or sand produced by washing other material.

MARRIAGE REFORM BILL 1970

Resumption of debate on second reading (3rd June 1970)

Question again proposed.

MR P. C. WOO: —Sir, the main provisions of this bill are based on the recommendations of the Committee on Chinese Law and Custom in Hong Kong made in February 1953 but it took 17 years before this matter comes to this Council for debate, and during these 17 years as the mover of the bill rightly pointed out, "that public attitudes and preferences and practices have been undergoing changes", which behoves us to review the antiquated Chinese law of marriages and to reform the same so as to suit the present condition in Hong Kong.

I think it would not be out of place here to point out certain distinctions and differences between the modern English family law and Chinese law and custom, since the two peoples have entirely distinct notions of the law.

The ancient Chinese were under the complete domination and influence of the Confucians who preached a set of practical ethics and who placed virtues above the law. They relied on virtues and despised the law. This influence still exists among the Chinese people in various parts of the world, in spite of the modern law particularly family law which is modelled after the Continental system of law.

Just as virtues constituted the conduct of life of the ancient Chinese so Christianity has been part of the law of England. In English family law religion has played not an unimportant part in its development and there is enormous influence of the Church over the English people in their domestic life. But the English are practical people;

they have been taught to look upon the law as their friend, the defender of their rights, and the preserver of freedom. The result is that while the function of the Chinese Court in the sphere of family law was and still is strictly limited, in England only the Court has the exclusive jurisdiction to determine the nature and the existence of the rights and liabilities of the respective members of the family.

Another fundamental distinction is that in China, until recently, the family has been regarded as a unit both for the ownership of property and the control of the individual. The supremacy of the English Court in family matters affords a striking contrast to the laxity of the Chinese Court in these matters.

I now turn to the Chinese customary marriages. As we are all aware, the rites and ceremonies to be performed are of a highly complicated nature and without any of the ceremonies, with certain exceptions, the marriage cannot be valid. Theoretically no Chinese marriage is valid unless it has gone through the ceremonies of what we call "Three Books and Six Rites". I have doubt whether in the present time such ceremonies have taken place in Hong Kong. Probably such ceremonies are still extant in the New Territories. I support therefore the simple ceremony of registration of the marriage.

With regard to the modem Chinese marriage or open marriage, this form of marriage was instituted after the Chinese Republic in 1911 and was recognized in China during the Nationalist Regime and is still followed in Taiwan. The procedure is very simple; the requirement is that the marriage has to be performed in public and in the presence of two or three witnesses. My honourable Friend, the Secretary for Home Affairs, made a distinction between a Chinese customary marriage and an open marriage in that he rightly pointed out that a customary marriage allows the husband to take concubines whereas in an open marriage it does not.

However, by a series of decisions in the Highest Court in Nanking after the Second World War it was decided that although the husband is not allowed to have concubines under the Chinese Civil Code of 1931 yet if the wife does not object, a concubine so taken can be regarded as a member of the family. However, in 1958 the Supreme Court here in Divorce Case No 15 of 1958 decided that a marriage performed in China in accordance with the Chinese Civil Code is a monogamous one and that the Court has jurisdiction to deal with the petition for divorce by the wife against her husband on the ground of desertion under the Divorce Ordinance (now replaced by the Matrimonial Causes Ordinance). In Divorce, Action No 23 of 1966 the Supreme Court ruled that a marriage celebrated after the promulgation of the marriage law of the People's Republic of China on the 13th April

1958 was a monogamous marriage and that the Court has jurisdiction to entertain a petition under the said repealed Divorce Ordinance. In law it is quite correct, as my honourable Friend, the Secretary for Home Affairs said, that if a Chinese customary marriage is registered the parties cannot apply to avail themselves of the provisions of the Matrimonial Causes Ordinance whereas in an open marriage after registration they can resort to the provisions of that Ordinance. In other words, Sir, this only follows the existing law. In a Chinese customary marriage the only means of divorce is by mutual consent of the parties. I therefore support the provisions with regard to this aspect of the Marriage Reform Bill.

With regard to the question of divorce by mutual consent in a customary marriage or an open marriage, this practice has been in existence in China for many years despite the belief that a marriage is indissoluble. I am glad to see that this form of divorce is being preserved in this bill.

In Hong Kong dissolution of marriages by mutual consent has been used frequently if the parties agree. I welcome the idea that divorce by mutual consent should be registered and that parties to the registered marriages can petition to the Court for divorce under the Matrimonial Causes Ordinance. There were such provisions in the Civil Code of the Republic of China as well as in the marriage law of the People's Republic of China. The question of registration is in fact now practised in the People's Republic of China and such divorce is not valid until it has been registered with the sub-district of the People's Government and a divorce certificate issued by the authority of the sub-district to that effect.

It must be emphasized that such form of divorce is by mutual consent and therefore any party who is not agreeable must petition the Court for divorce under the Matrimonial Causes Ordinance. This will solve problems when one of the parties refuses to divorce the other by mutual consent.

May I now turn to the question of concubinage. This institution was tolerated under the old Chinese custom because of the desire of the Chinese to continue the family line, and as no stranger in blood could he admitted into the family the taking of concubines but not wives for the purpose of having posterity was allowed. After the Republic it is interesting to note that even by the Civil Code of China of the Nationalist Government promulgated in 1931 the legislature did not take the bull by the horns by abolishing this institution expressly.

This is understandable since it has existed for thousands of years and the reason for its abolition—perhaps equality of the sexes—does not seem so important when compared with the traditional view of having posterity, since the cry for equal treatment comes from one portion of the people whereas the desire to have children to preserve the family line is universal among the Chinese people. It is regrettable that the legislature of the Nationalists does not abolish it expressly. Indeed, the Highest Court at Nanking, on the construction of subsection 3 of Article 1123 decided that a concubine if she satisfied the above definition must be duly recognized as a member of the family. In this particular case, the concubine was admitted into the family before the promulgation of the Civil Code.

With regard to the question of concubines in the marriage law of the People's Republic of China it is definitely declared that marriage is a monogamous one. In Article 1 of the said marriage law it is provided that, "The arbitrary and compulsory feudal marriage system, which is based on the superiority of man over woman and which ignores the children's interests shall be abolished". It further provides that, "The New Democratic marriage system, which is based on free choice of partners, on monogamy, on equal rights for both sexes, and on protection of the lawful interests of women and children, shall be put into effect". In Article 2 it is provided that, "Bigamy, concubinage, child betrothal, interference with the re-marriage of widows and the exaction of money or gifts in connection with marriage shall be prohibited". In Article 3 it also provides that "Marriage shall be based upon the complete willingness of the two parties. Neither party shall use compulsion and no third party shall be allowed to interfere."

It therefore clearly shows that the Chinese Communist marriage law completely once and for all abolishes the institution of concubinage.

Under the old law, the children by a concubine were legitimate in spite of the fact that they were born out of wedlock and it seems that this is the reason why an old Chinese marriage is said to be polygamous in nature though in actual fact no Chinese could have two wives at the same time. However, Article 1065 of the Civil Code of China allows a child born out of wedlock to be deemed legitimate if he has been acknowledged or maintained by the natural father. This Article is intended, it is submitted, to permit a natural father to strengthen his family by admitting his natural child as his legitimate born.

I for myself do not think it right to bastardise children who under the existing law are legitimate children. When we come to deal with the question of legitimacy and intestacy we will have to give serious consideration to all these matters.

[MR WOO] **Marriage Reform Bill—resumption of debate on second reading (3.6.70)**

The reforms proposed in this bill, Sir, are no more than to put the legal position of the Chinese spouses in the same status as in Taiwan or in Communist China. Complaints have been made about the delay in bringing up the Chinese law of marriages to suit the present condition in Hong Kong, but such a delay in my opinion is worthwhile as we now clearly see that we are heading at the right direction in this aspect of law reform.

MRS ELLEN LI: —Sir, I rise to support the Marriage Reform Bill, now before Council. I am not going to go into the whys and whatfors again. All arguments for such a move have been exhausted long ago and would have been superfluous. Suffice it to say that after such a long passage of time, all comments from the different sections of the community have been favourable, including our elders in the New Territories.

This bill will now rectify a chaotic condition and confusion regarding the various types of Chinese marriages. It gives the sanctity of marriage the legal protection it deserves and provides the official document of proof of marriage, necessary for overseas travel and numerous other legal transactions.

Some people may still argue that we cannot with a stroke of the pen do away with Captain ELLIOT's proclamation that Chinese people be governed according to their law and customs. Since then, Government in China has changed hands twice in the last 60 years, and laws and customs along with it. The Hong Kong Government should have taken some action to rectify the situation when China became a Republic in 1911 or at the latest in 1925 when the Civil Code came into force.

If Captain ELLIOT's proclamation was to be taken literally, the Chinese people of Hong Kong should be governed by the laws and customs of the Republic of China from 1911 and the People's Government of China from 1948, but not the laws and customs of the Tsing Dynasty which is long since dead. Captain ELLIOT would certainly turn in his grave if he knew that he is being blamed for binding the Government of Hong Kong and the Chinese people to a dead generation for ever, and preventing us from progress.

Still some people may ask why the Chinese in Hong Kong cannot still be given a choice of the form of marriage they wish to follow. This is of course can only be construed to mean the dying struggle of

a few selfish males who would have liked to retain their right to polygamy. If a choice would be given at all, it would have to be the choice between the registry marriage and the modern marriage, which is the law, or customs prevailing in mainland China and in Taiwan.

For more than 50 years, many Hong Kong Chinese and Chinese from China now living in Hong Kong were married according to the modem marriage, not realizing that such form of marriage has no validity in Hong Kong; and also not realizing, or shall I put it more naively, refused to realize or accept, the fact that the modern marriage is a monogamous marriage. This is especially true with the Hong Kong Chinese who continued to assume that they have the right to take concubines. The new bill definitely establishes that modern marriages are monogamous and provides for their disolution by court action under the provisions of the Matrimonial Causes Ordinance, Chapter 179, as well as by mutual consent. It, however, makes no provision for any concubines taken under false pretences under this form of marriage.

Some organizations, including some women's and some men's, worried that there is no definition given in the bill for concubine and that there is no provision for registration of such persons. I myself am of the opinion that such registration is unnecessary and would even bring embarrassment to many self-respecting and self-righteous men who would prefer to keep their private affairs private. A definition in this context is also unnecessary since it is a family affair and can better be dealt with between the man himself, his wife and the other woman or women. On the other hand I think a definition is absolutely essential when we deal with intestate estates in order to protect the man's good name, because he is not there to defend himself.

Prof. EVANS made one important and relevant point in his letter to the press on the 3rd of June. He reminded us that at the time the Marriage Reform Bill was published last year, the Secretary for Home Affairs intended also to deal with many consequential family problems concerning legitimacy, succession to property and intestate estates; otherwise we will be faced with a situation in which different aspects of personal law are out of phase with each other. The Secretary for Home Affairs assured us again in his speech when he introduced the Marriage Reform Bill on the same day in this Council that he hoped to introduce legislation dealing with other connected matters of personal law, well before the "appointed day", which he informed us will be approximately one year after the Ordinance comes into force.

Sir, this bill has my full support and I am glad after all these years to see that this measure is about to become law.

Marriage Reform Bill—resumption of debate on second reading (3.6.70)

MR WILSON T. S. WANG: —Sir, this bill is the result of a long process of survey, discussions and consultation, all in keeping with the good tradition of the Government to give due consideration to Chinese customs in all matters of reform. There is therefore little fault to be found in this bill and, if I have any criticism, it is to say that the processing of this bill has been over prolonged.

I would like to take this opportunity, however, to say a few words on the conservation of Chinese customs. I am a Chinese and I am, being no exception, very jealous of the many good Chinese customs that I have the fortune to inherit from my ancestors. However, I must emphasize here that it is the good customs taken in the light of the present and local circumstances which one should treasure.

To give one example: I am in full support of the complete ban of fire-crackers. Fire-crackers might have been once a good music in the old customary way of living in a quiet and monotonous life of a village. It might therefore have served very effectively as a means of awakening the populace in stepping forward to a happy and properous new year. It might have also served as a good means of communication in lieu of telephone and radio services in the announcement of a festivity, a wedding, or any similar jubilant occasion. There is no need of such a signal at present. There is no need to add more noises now as, on the contrary, it is some moment of tranquility which has now become a luxury in a very urbanized and industralized town like ours. Such a custom we must not and can not afford to preserve, as it is also a good Chinese virtue that we should not do to others what we do not wish them to do to us.

The Chinese customary marriage which this bill proposes to bring to an end could well be a good custom a century ago, under the old family structures and the way of life at that time. When slavery was a customary practice, the admission into the family as a new member on the status of a concubine was certainly regarded as one of a more charitable act. Indeed there used to be a time when the slave girl, the mui tsai (妹仔), worked very hard with the hope that one day she would be promoted to the rank of a concubine. We had no need therefore to jeer at the old customs practised at the old time, but what is important is that we must not fall into the habit of accepting any old Chinese custom as being equally fit for the present. And this is where reform is always called for.

Every race and every nation has possessed an invaluable asset in the inheritance of good customs. We, Chinese, are particularly fortunate in this field with thousands of years in our history. But against this, there is inevitably some liability that has been passed over

to us in the form of customs which are not practicable nor beneficial to us in our present way of life. They will only serve to hinder our progress if we are not alert in affecting some changes in good time.

As I sit on this side of the bench, I have the privilege to have a clear view of the broad smile of my honourable Friend, Mrs. LI. While admitting today is her "field day", I would not like it to be mistaken that this bill does not offer equal advantages, if not more, to the man also.

MR OSWALD CHEUNG: —Sir, my attention and time this week have been so taken up with mini-buses that I haven't had the time to devote proper attention and effort to the preparation of my remarks this afternoon on mini-wives. There is so much in this bill with which I agree, and so short a part of it with which I am in disagreement—but violent disagreement—that I am almost embarrassed to stand up to speak this afternoon. But unfortunately that short part with which I violently disagree is what my honourable Friend, Mr HOLMES, has described as the central provision of this bill—namely, that after the "appointed day" all marriages should be monogamous and that no man should thereafter take a concubine and no woman should thereafter become a concubine.

Like my good Friend, Mrs LI, I do not propose to argue whether monogamy or the traditional Chinese marriage is the better institution. Any such argument, to my mind, is fruitless and would never end and, what is more important, would completely miss the point which is—and this is the question that honourable Members should consider before they give assent to the Second Reading of this bill this afternoon—the question is, is monogamy so manifestly a superior institution to the traditional Chinese institution of marriage that we should completely deny the right to people to opt out of it if they so wish? Are we right to force this institution upon the people who do not believe in it and who do not want it?

I regret I am completely unable to draw the conclusion from the historical or the present day evidence which is available to me that monogamy is so successful, so obviously superior and so more conducive to the public good and to the individual happiness of men and women, that I am prepared to say that this—and this only—shall be the way men and women shall regulate their lives. Let me observe, if I may, that even today monogamy is not accepted by a very large proportion of mankind. Let me next observe that the institution of monogamy, which is in force in Hong Kong and in all places where divorce is permitted, is at best a compromise between polygamy and the teachings of the Christian church. The Church decrees that a man shall have only one wife in his life. Our system of monogamy says a man shall

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have one wife at one time. It does permit him to have different wives at different times. Equally the Chinese customary marriage is a compromise.

As my Friend, Mr WOO, has said, the Chinese may have only one wife yet with his wife's consent he may take concubines. Who can say which of those two compromises is so much superior to the other that that other ought to be abolished and stamped out? Is this system of monogamy a complete success? Let me trouble you with some statistics. In the United Kingdom in 1968 there was one divorce for roughly eight marriages celebrated in the United Kingdom that year. In the United States in 1967, which is the latest year for which I can get statistics, there were two divorces for roughly seven marriages which were celebrated in that country in that year. To my mind that evidence suggests not that the system of monogamy as operated is a success, but that the whole system is creaking at the works.

I have the greatest respect for those who prefer monogamy—and let me assure my honourable Friend, Mrs LI, that, in the "dying struggle" which I am putting up now, I have no selfish motives whatsoever (*laughter*) because I opted into a monogamous marriage. I have not the least objection to anybody preaching the virtues of a monogamous marriage. Let the Church exhort; let the faithful follow; but what right have we to say that that system shall be the only one that shall operate and no other. The evidence in my respectful submission should not lead us to that conclusion. The Nationalist Government in China did enact, as my Friend said, that marriages should be monogamous, but at least the judges in the courts of that country had the sense to say that, if the wife consented, the man could take another member into his household.

I may say that not only did the People's Republic of China enact a law of monogamy in 1958, as my Friend Mr WOO has told us, India within recent years has opted for monogamy and Singapore has opted for monogamy. From time to time within the last two thousand years various Chinese emperors, with the cry of equality of the sexes, protection of women and the stoppage of abuse, have tried to abolish concubinage; with very little success. I am completely unpersuaded by the fact that the People's Republic has enacted a law for monogamy; completely unpersuaded by the fact that other large countries have chosen to opt for monogamy. Even if all the evidence of the last fifteen or twenty years points to the unqualified success of monogamy in those countries—and I have no evidence to suggest that monogamy has been a complete success—even if the evidence were so, in a matter

like this, in tampering with an institution which has been held honourable for upwards of two thousand years, I am completely unpersuaded that ten, fifteen or twenty years experience obliges us to change our laws.

I also share the views of my Friends that one unfortunate consequence of this bill would be that a large number of children may become bastardized where under the existing system, if born to a concubine they would be legitimate. I think it would be a retrograde step to introduce further illegitimacy in our law.

My Friend Mrs LI—I respect her conscience and I respect her efforts—for many years has urged for equal rights for women, has urged for the protection of women. Equally I am with her that the rights of women and children should be protected. But the great difference between my honourable Friend and I is that, whereas she would wish to protect the rights of one class of women, namely those fortunate enough to be principal wives, I would protect all women, including those that do not have that good fortune, who otherwise, if we pass this law, would be deprived of the opportunity of having an honourable and a recognized status.

For all these reasons, Sir, I regret to say that I feel unable to advise you, Sir, to enact this legislation.

THE ACTING COLONIAL SECRETARY (MR HOLMES): —Sir, I am grateful for the support which honourable Members have accorded to this important bill, even though it is not entirely unanimous, and I feel that it is possible that, with the degree of support which has been afforded, I need not take up too much of Members' time in a somewhat lengthy debate forming part of a somewhat lengthy sitting.

I think no comment is needed on my part on the observations of Mrs LI or of Mr WANG, but I would like to refer briefly to two points raised by Mr WOO, largely in the hope of preventing confusion being caused in Members' minds at this late stage in a matter which can, I must admit, without difficulty be made to seem confusing.

First, Sir, he referred to decisions of our courts whereby parties to what I have described as the variant forms of marriage have in the past been enabled to seek divorce under the provisions of the Matrimonial Causes Ordinance, and from this I think he inferred—if I have properly understood the honourable Member—that the provisions in the present bill relating to divorce virtually do no more than to repeat or to codify the law as it stands today. I think this could be misleading, for the marriages to which these judicial decisions relate are marriages which took place *in China*, whereas the bill before Council today will confer upon the parties to existing modern or open marriages, when

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they have been validated, the right of recourse to the Matrimonial Causes Ordinance; and I refer here, Sir, to marriages of this type which were celebrated *in Hong Kong*, and to this extent, Sir, the provision is new. Second, Sir, in the reference towards the end of his speech to the question of legitimacy, my Friend's remarks could be interpreted as meaning that the present bill, unless it be accompanied or followed rapidly by further legislation, may have the effect of bastardizing children who under the existing law are legitimate. I should like to make it clear that this is not so; on the contrary, the immediate effect will he to establish beyond doubt the legitimacy of a considerable number of children of modern marriages which, as the law stands today, may be technically open to question at present. I think perhaps, Sir, Mr CHEUNG has thrown some light upon this point in that the reference may be to what might be called a sort of putative bastardy of children who could not be born for perhaps two years from now. If there should be such problems in the future, I am able to add, Sir, the assurance to Mr WOO that amongst the legislation now under preparation in the field of personal law there is included a bill to deal specifically with questions of legitimacy, upon which it is thought that some change in the law is now needed. The immediate necessity for such changes is not related to the provisions of the present bill before Council.

And finally, Sir, if I may turn to Mr CHEUNG's remarks, of which I did not have notice—I mention this not, Sir, because it causes me difficulty or embarrassment but because it would be a matter for regret, I think, if they did not receive full coverage in the press, for I think they would have given rise to a very lively interest. I would not attempt for one moment, Sir, to characterize the views that Mr CHEUNG has expressed as being part of what Mrs LI called the "dying struggle of the few selfish males" who would like to retain their right to polygamy. Indeed, Sir, it will be within the recollection of many honourable Members that not so very long ago, after the publication of the Strickland Report, many thoughtful comments and views were expressed by very respectable and worthy citizens; views which very much accorded with the general spirit of Mr CHEUNG's remarks; views which indeed were to a great extent accepted. They were not perhaps even then quite so forthrightly expressed as Mr CHEUNG has expressed them today but nevertheless this was the general tenor of opinion which has held sway until quite recently. Even today, Sir, Mr CHEUNG is not of course alone. I recall that last year, after the present bill was published, I received a letter in my capacity as Secretary for Home Affairs from an individual citizen who commented—I think I can find it—who

counselled the Government against the dangers which might flow from what he called the "indiscriminate enforcement of monogamy". This, he said, was likely to lead to immoral practices of divorce, desertion and mistress-keeping. Well, Sir, I am sure we respect these views, but in my judgement, as I said when I moved this motion, I think we must accept that in the intervening years there have been changes, positive and comparatively rapid changes in public attitudes, public thinking and public practice; and in spite of the opinions so eloquently urged by Mr CHEUNG, I am of the opinion, Sir, that there is a very considerable force today of public opinion and support for the Government view, which is that the time has now come when legislation should be enacted to give effect to the reforms which are embodied in the present bill.

Question put and agreed to.

Bill read the second time.

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

HIS EXCELLENCY THE PRESIDENT: —I think honourable Members might care for a break at this point and I suggest perhaps that I will suspend the sitting of this Council until 4.15 p.m.

4.03 p.m.

4.16 p.m.

HIS EXCELLENCY THE PRESIDENT: —Council will resume.

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) BILL 1970

Resumption of debate on second reading (3rd June 1970)

Question again proposed.

MR SZETO: —Sir, in October 1968, my Colleague Mr. Wilfred WONG and I spoke in this Council about the unsatisfactory conditions of many of our multi-storey dwellings and the necessity for their compulsory effective management. Many of these buildings, though of post-war construction, are fast becoming colossal slums and a danger to the

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health and safety of their inhabitants. These multi-storey multi-unit buildings, often housing a population of that of a small town, have been both a sign of our growing prosperity and a stigma of our social ills.

The bill has been long awaited. It proposes to bring hope of a better life to the hundreds of thousands of inhabitants in these buildings and, therefore, has rightly aroused considerable public interest since its publication in draft form. Many of the valuable comments received since then have crystallized into amendments to the bill before Council today.

Arising from the discussions held last year at the City District Offices with kaifong leaders, at which I and many of my Colleagues participated, the most common comment on the draft bill was its complete exclusion of the tenants from the management committee. While it is realized that the legislation aims at the incorporation of the owners, the fact remains that for many years many of these buildings have been managed at all was mainly due to the efforts of their residents—tenants as well as owners—because absentee landlords generally tend to evade responsibilities; and this was particularly true with the cheaper class of accommodation. Many of the tenants' associations have reasons to be frustrated by the complete exclusion of their participation in the management of the buildings in which they live, and by the fact that legislation will leave their well-being in the hands of the owners in whom they have little trust. It is appreciated that some provision has been made in the present bill to enable the tenants' views to be heard by the management committee, but a representation once in every three months would certainly be interpreted as inadequate. While recognizing the Honourable Attorney General's reasoning that the decision regarding management must be made by the owners, since they alone shoulder the financial burden of management, I do not see any real objection to the inclusion of one or more tenants, according to their proportion in the building, on the management committee with a non-voting status.

The main purpose of the bill is to provide for the efficient management of multi-storey, multi-unit buildings, in particular the common parts of these buildings, to ensure a healthy and safe environment for their occupants. These common parts are described in the First Schedule which includes, among other elements, corridors, staircases, lobbies, lifts, light wells, roofs and outlets to the roofs as well as doors and gates giving access thereto. It is of common concern that these building elements be properly maintained, clean, unobstructed and in good repair to ensure they do not become hazards to health and safety.

But here, clashes may arise between the powers of the management committee and the rights and privileges as contained in the deeds of mutual convenant of the large number of individual units, as it is not uncommon for an owner to have acquired from the developer the exclusive use of a roof or of some other common areas resulting in the blocking or locking-up of fire escapes to the roof or other exits. Also not uncommon is the leasing of a staircase exit on the ground level to a small shopkeeper, so that the statutory stair width is reduced by his goods and displays. Not infrequently are statutorily-required car-parking spaces under and around these multi-storey buildings converted into other uses, resulting in the elimination of the amentities that were originally provided. Such assignment of common areas of a building should never have been permitted, and deeds of mutual convenant containing such exclusive rights which contravene safety regulations should never have been allowed to be registered.

The success or failure of a corporation depends much on the cooperation of the owners and their readiness in contributing to its general and contingency funds to meet the costs of the multifarious items of building maintenance and other expenditures. The experiences of many existing management associations point to the great difficulties in collecting these contributions which often lead to disputes, failures to meet payments and finally disruptions of utilities and services. Public comments therefore welcome the bill's provisions for a corporation to recover contributions owed by an owner from his tenant or an occupier of his flat. Although the owner who fails to pay his share of contributions can be sued in the ordinary way for debt, court procedures of this nature being generally time-consuming and costly would discourage their adoption, and recourse to deduction from rent is a good remedy. However, clause 23(4)(*a*) as it is worded would prevent payment of money by a tenant which his landlord, the owner, fails to pay, and have the same deducted from his rent. The unscruplous owner would no doubt see to it that suitable terms will be incorporated in the tenancy agreement which will effectively prohibit the tenant from making such payments on his behalf and then claiming deduction from the rent.

There appears to be a disparity between clauses 30 and 31. The latter enables the Court to dissolve a management committee and appoint an administrator in its place upon application made to it by a single owner or a single registered mortgagee of an owner's flat. It seems to me that undue reliance is placed on one owner or a mortgagee particularly in respect of large buildings in which the owners may number hundreds. For the performance of a similar act, clause 30 requires a general meeting of the corporation to be convened in accordance with para. 1 of the Third Schedule, and such meeting is only convened at the request of not less than 5% of the owners. Also

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in clause 4(1), the Court may only order a meeting of the owners to be convened for the purpose of appointing a management committee upon the application made to it by owners of not less than 20% of the shares in a building.

I am also puzzled by the fact that notwithstanding the vast powers vested in an administrator by virtue of clause 32, there is complete absence of the qualification requirements of such a person on whom the efficient management of a building depends.

Sir, with these observations, I support the bill.

MR WILFRED S. B. WONG: —Sir, the problem of multi-storey buildings will continue to multiply if the Government does not take a strong hand. It is a recent phenomenon which outgrows legislation. People must be educated to enjoy modern amenities. There is a give-and-take proposition where harmonious living together is concerned. The so-called "co-operative" apartments today is an abuse of the word. The promoters sold their apartments and ran away with their responsibilities. Some owners are a scattered and selfish lot. A few are operators in disguise. What we have are tenement slums. How many apartment buildings today are free from dubious business activities? All these abuses are at the expense of *bona fide* home-makers, for they are in the minority and are constantly at the mercy of the operator-owners. The wide range of problems from sanitation to peaceful enjoyment of the premises would require legislation to govern its planning, house rules, management council, complaints procedures, *etc*., *etc*.

The above are the words which I used in my speech in the Urban Council in 1961. Since that date my colleagues in the Urban Council and I have raised the problem of multi-storey buildings six times in eight years. In 1967 I asked a question in the Legislative Council on the drafting of legislation on the multi-storey building management. In 1968 I spoke at the adjournment debate on multi-storey building legislation and was supported by my honourable Friend Mr SZETO Wai.

During the early part of this year what one might call the companion bills of Crown Rights (Re-entry and Vesting Remedies) Bill 1970 and Crown Rent and Premium (Apportionment) Bill 1970 were passed into law.

With the apportionment of Crown rent and premium established so that it bears the same proportion to the principal Crown rent as the area of the section bears to the area of the lot and the rights of re-entry upon

lands or tenancy having accrued to the Crown enforceable, the difficulties in the management of the common parts of the buildings are considerably reduced.

This Multi-storey Buildings (Owners Incorporation) Bill gives legal status to a body which can act on behalf of all the co-owners of the co-operative flats and this body can sue and be sued. By this means the corporation has teeth in carrying out the management of the buildings.

Although in theory this bill provides for the establishment of corporations for managing the affairs of multi-storey buildings and it was the product of many discussions and examinations by Government departments and other public organizations, the law itself is not a panacea. It still depends on co-operation among the landlords and tenants to render the provisions of law a benefit to themselves.

At the present time many multi-storey buildings do have management committees but most of the holders of offices in these organizations only enjoy the title they hold but do little in the management the buildings. This state of affairs should be rectified.

It is hoped that the measure of self government in multi-storey buildings so created would be effective in the event of any owner who, if he fails to pay his share of expenses of the corporation, can be sued in the ordinary way of debt. Alternative recourse is provided when an owner fails to pay his sum due under the deed of covenant.

There are also other provisions whereby the corporation can recover any amount due from the owner who does not occupy the flat in the building. In spite of the fact that there are still shortcomings in the bill, as the maintenance of hygiene in multi-storey buildings requires authority and legal process in recovering money due to the corporation is still tedious. I still have faith that this bill will succeed in achieving its purpose in enabling the corporation to solve many problems of hygiene and disorder in multi-storey buildings.

However as I have pointed out in my previous speeches, although multi-storey buildings are located on private property the extent of these multi-storey buildings is such that it may be justifiable for us to approach the problem in the same manner as certain streets became public after estates were developed. There are good examples of this development in both Hong Kong and Kowloon. The only difference is to change our concept from horizontal to vertical. After all, a large multi-storey building is in essence equal to a village of olden days and should be treated as such with its same problems of population and hygiene, not to speak of harmonious living. When corridors of multi-storey flats are up in the air, do they in fact serve as public lanes in the sense as those on the ground?

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In the event that these public lanes should one day become the responsibility of Government, consideration may be given for recompensing Government's expenses in cleaning these areas by a small increase in rates. In fact I have interviewed quite a number of co-operative owners of multi-storey buildings who have expressed willingness to pay a reasonable increase in rates in lieu of what they are paying to the present management committees. But this is just a thought for the future.

Though somewhat belated I welcome the enactment of this important piece of social legislation and have much pleasure in supporting this bill.

DR CHUNG: —Your Excellency, I welcome the introduction of the Multi-storey Buildings (Owners Incorporation) Bill 1970 as it will greatly help improve the standards of management which are so necessary in many of the multi-storey buildings in Hong Kong.

Since a draft bill was published in May last year for the purpose of eliciting comments and suggestions from those people and organizations having an interest in this particular subject, some of my honourable Colleagues, such as Mr SZETO and Mr Q. W. LEE, and myself, on behalf of UMELCO and through the kind arrangement of the various City District Officers, have had a number of meetings with a very large number of representatives of multi-storey building owners-tenants associations both on the Hong Kong island and the Kowloon peninsula.

The most severe criticism we heard at all these meetings was, without exception, directed to the exclusion of tenants in the composition of management committees. All those representatives present at the meetings, owners and tenants alike, voiced very strong objections to the Second Schedule paragraph 1 sub-paragraph (*b*) and paragraph 2 sub-paragraph (*a*). These two sub-paragraphs of the Second Schedule of the proposed bill restrict the rights and freedom of the owners to appoint tenants, or for that matter any other persons other than owners, to become members of management committees.

The general consensus of opinion at all these meetings is that the owners, if they wish, should have the rights and freedom at a meeting convened under section 3 or 4 to appoint tenants or other persons as members of management committees. The analogy between the proposed bill and the Companies Ordinance as described in section 33 of the proposed Ordinance was frequently cited during my discussion

with the representatives of the various interested associations. It is felt that a meeting of the owners to appoint a management committee under section 3 of the proposed Ordinance is similar to a meeting of share-holders to elect a board of directors in the Companies Ordinance, and that the management committee in an owners corporation is equivalent to the board of directors in a company. Since the Companies Ordinance allows the share-holders of a company to elect, if they choose, any person who is not necessarily a share-holder to become a member of the board of directors, I incline to agree with the view expressed that it is difficult for an ordinary member of the public to understand the logic and reason in the proposed bill of not permitting the owners of a multi-storey building owners corporation to appoint, again, if they choose, tenants or other persons who are non-owners as members of the management committee.

At these meetings held in August last year, the representatives of many owners-tenants associations argued that if the reason of not permitting the owners to appoint any other person except an owner to be a member of a management committee was to protect the interests of the owners, then it would be difficult for them to accept the provisions in Part V of the proposed bill. Sections 30 and 32 in Part V enable the owners present at a meeting of the corporation to dissolve a management committee and to appoint instead an administrator, who shall have all the powers and duties of a management committee and of the chairman and secretary thereof. Despite the vast powers vested in an administrator, like my honourable Friend, Mr SZETO, I for one am puzzled by the fact that there is no qualification whatsoever specified in the proposed bill for the post of an administrator. The owners have complete freedom to appoint any firm or any person who may be neither an owner nor a tenant to be an administrator.

There therefore appears some ambiguity in the provisions of the proposed bill because on the one hand the owners are not allowed to elect, even at their own wishes, any tenant or any person except an owner to be a member of the management committee, but on the other the owners can, at their own wishes, dissolve the whole management committee and lawfully appoint any person, whomsoever he is, to be an administrator who shall have all the powers and duties of a management committee including its chairman. It is generally wondered why, if Government can permit the owners to appoint any person to have all the powers of a whole management committee, in the same bill the owners are not allowed to appoint a tenant, or for that matter any person, to be a member of a management committee.

Honourable Members will note the vast and rather incomprehensible difference of requirements between the appointment of a member of a management committee and the appointment of an administrator.

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According to section 3 subsection 2(*b*) a member of a management committee can only be appointed by a resolution of the owners of not less than 50 per cent of the shares. The appointment of an administrator, however, is governed by different provisions of the proposed bill. Section 30 subsection (1) empowers the owners at a general meeting to appoint an administrator and thereafter dissolve the management committee in accordance with the provisions of the Third Schedule. Now in the Third Schedule, paragraph 5 sub-paragraph (*a*) specifies that 20 per cent of the owners will form a quorum of a general meeting for the purpose of appointing an administrator and dissolving the management committee. Paragraph 3 sub-paragraph (3) of the same Schedule stipulates that all matters of the owners corporation shall be decided by a majority of votes of the owners present and voting. Therefore, an administrator who has all the powers of a whole management committee, could, technically speaking, be appointed by a resolution of the owners of only ten per cent of the shares. If some of the owners present in the quorum do not vote, the appointment of an administrator could be made by a resolution of the owners of even less than 10 per cent of the shares.

Both my Colleague, Mr LEE, and I consider that the case raised by the representatives of the various multi-storey building owners-tenants associations is important and deserves serious and careful consideration by Government. I therefore strongly recommend that Government should take a second and more impartial look at this particular issue and, if appropriate, make suitable amendments to the proposed bill.

With these remarks, Sir, I support the motion before Council.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I am grateful to the honourable Members who have spoken on this bill for putting forward a number of helpful and pertinent comments, and I am glad to have the opportunity to try to clarify one or two of its provisions which may have given rise to some doubts.

As the Honourable Mr WONG said, he and other unofficial Members have been stressing the need for legislation of this kind for a number of years and I think it can be fairly said that the interest of unofficial Members of this Council in promoting a bill of this kind which is before Council today has been one of the important factors which has influenced the Government in its decision to legislate.

The Honourable Dr CHUNG has pointed out that the Second Schedule to the bill is at present so worded as to prevent owners from electing to a management committee anyone except an owner and has urged that they should, if they so wish, be able to elect tenants or other persons to the management committee.

By way of analogy, he cited the position of directors in a limited company. So far as public companies are concerned, although a person who is not a shareholder may be appointed as a director, the Articles of Association usually provide that a director shall acquire a minimum number of shares within a certain period. This I think is a sensible requirement, since a person whose own money is involved in a business is likely to give it his best attention. Dr CHUNG rightly states that the bill enables the owners to dissolve a management committee and appoint an administrator, even though they cannot elect a tenant. Although this is an argument of substance, I nevertheless believe that a distinction can properly be drawn in this context between a tenant and an administrator. The latter is operating on behalf of the management committee and his task is to represent, as best he can, the interests of owners. A tenant, on the other hand, if he is appointed to the management committee, would naturally be inclined to act for the benefit of tenants rather than of owners and the interests of these two groups are by no means always the same.

It must not either, I think, be forgotten that the bill is not intended in any sense to be a bill for the protection of tenants; its object is to provide a framework within which owners can administer their own affairs more efficiently. However, I concede that the bill is unduly restrictive in that it prohibits the election of tenants or other persons to a management committee in any circumstances whatsoever. I shall therefore, at the Committee Stage, move amendments to the Second Schedule so as to permit tenants and other persons to be appointed to a management committee if the deed of mutual covenant so provides. It is, of course, open to the owners to amend the covenant to allow for this if they wish to do so.

Perhaps I might add that, although it is not very easy to follow some of the provisions of the bill on the subject, it is only at a meeting convened for the purposes of the first appointment of a management committee that a resolution of the owners of 50% of the shares is necessary. The election thereafter of members of the management committee only requires a quorum of 10% of members, and 20% must be present at a meeting at which a resolution under section 30 to dissolve the management committee and appoint an administrator is passed.

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I agree with the Honourable Mr SZETO that in many multi-storey buildings common parts are assigned to individual owners and that sometimes these assignments are unlawful, perhaps because they offend a Crown lease or perhaps because they result in fire hazards. However, the definition of "common parts" in clause 2 of the bill excludes from the jurisdiction of the management committee any parts of the building, which would otherwise be "common parts" if they are reserved for the exclusive use of an individual owner, since obviously he alone should have to pay for the upkeep of something which is for his own use.

I have received further representations about clause 22 of the bill from the Law Society of Hong Kong which has suggested that it should be re-drafted so as to make it clearer that the amount to be contributed by each individual owner, towards the fund which is established to meet the expenses of the corporation, must be governed by any provision of the deed of mutual covenant on the subject and should only be decided according to the shares of the owners to the extent to which this is not dealt with in the deed of mutual covenant and I shall therefore move, at the Committee Stage, that clause 22 should be replaced by a new clause to this effect. This new clause will also contain an additional subclause, providing for a certificate, signed by the chairman of a management committee and stating the amount to be contributed by any particular owner, to be admissible in evidence and it is hoped that this will shorten any proceedings which may have to be taken by the management committee to recover sums due from an individual owner.

The Law Society has also asked that clause 24 be amended to meet the practical difficulty of recovering contributions from persons in occupation of flats whose identity is apparently in large buildings often unknown to the management committee. I shall therefore move, at the Committee Stage, that a new clause 24 should be included, containing a subclause empowering a corporation to refer, in any proceedings, to "the person in occupation of a certain flat", without having to identify that person by name. This provision, which goes further than usual, will be watched carefully to ensure that it doesn't in practice prove to be capable of any abuse; and if this proves unhappily to be the case, steps will be taken to amend the legislation to prevent it.

I agree that the dissolution of a management committee and the appointment of an administrator can be achieved by an individual owner or registered mortgagee under clause 31 in a much simpler manner than is possible under clause 30. Clause 31, however, is intended to

be used only in rare instances where it can be shown that, for example, a minority of owners have had their interests ignored and their efforts to obtain the appointment of an administrator under clause 30 unreasonably blocked. Although the Ordinance does not specify what considerations should be borne in mind by a court before it exercises its powers under clause 31, I should have thought it likely that the court would be slow to exercise its powers under clause 31 unless it were satisfied that the other methods available under the bill had not already been tried and failed.

I appreciate the Honourable Mr SZETO's point that no qualifications for an administrator have been prescribed. This is something which may well be possible in the future, but the profession of housing and property management is, as I understand it, not yet formalized in the way as most other professions are. Nor do we yet know how many administrators will be necessary nor whether, if we were to restrict them to a limited class of persons, the supply would equal the demand.

The Honourable Mr WONG has suggested that corridors and staircases of large buildings might be treated in the same way as public roads, which would mean that they would have to be taken over as public property. Such a step would obviously constitute a severe interference with private ownership and would involve the government in very heavy expenditure unless this was to be recovered from the various owners in the buildings. For these reasons, I do not feel that the suggestion should be pursued at present, though it is certainly one which the Government will bear in mind in the future if a fresh approach to the problem of multi-storey buildings proves to be necessary.

This bill is of course a somewhat normal approach to a very awkward problem, and it may prove in practice to be inadequate or in some respect unworkable. If this is so, then the Government will consider in due course making such amendments as have been shown by experience to be desirable.

Question put and agreed to.

Bill read the second time.

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

Committee stage

Council went into Committee.

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) BILL 1970

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

Clauses 1 to 21 were agreed to.

Clause 22.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that clause 22 be amended as set forth in the paper before honourable Members for the reasons which I have already explained.

Proposed Amendment

Clause

22 To be deleted and the following substituted—

"Recovery of contributions from owners.

22. (1) The amount to be contributed by an owner towards the amount determined under section 21 shall be—

(*a*) fixed by the management committee in accordance with the deed of mutual covenant; and

(*b*) payable at such times as the management committee may determine.

(2) If there is no deed of mutual covenant, or if the deed of mutual covenant does not provide for the fixing of contributions, the amount to be contributed by an owner towards the amount determined under section 21 shall be fixed by the management committee in accordance with the respective shares of the owners.

(3) The amount payable by an owner under this section shall be a debt due from him to the corporation at the time when it is payable.

(4) A certificate in writing signed by the chairman of the management committee stating the amount to be contributed under this section by an owner and when it is payable shall be admissible in evidence in any proceedings as *prima facie* evidence of the facts stated therein without further proof. ".

The amendment was agreed to.

Clause 22, as amended, was agreed to.

Clause 23 was agreed to.

Clause 24.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that clause 24 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

24 To be deleted and the following substituted—

"Distress for contributions. (Cap. 7.)

24. (1) Subject to the provisions of this section, the Distress for Rent Ordinance shall apply to an amount payable under section 22 or 23 as if the amount were rent payable to the corporation as landlord of the owner's flat.

(2) A corporation may name as the defendant in any distress under this section "the person in occupation of" a flat, without specifying in the application or in the warrant the name of any person in occupation of the flat. ".

The amendment was agreed to.

Clause 24, as amended, was agreed to.

Clauses 25 to 43 and the First Schedule were agreed to.

Second Schedule.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that the Second Schedule be amended as set forth in the paper before honourable Members.

Proposed Amendment
Second Schedule
Paragraph

1 That paragraph 1 be amended in sub-paragraph (*b*) by deleting "owners" wherever it occurs and substituting in each case the following—

"persons".

Multi-storey Buildings (Owners Incorporation) Bill—committee stage

Proposed Amendment

Second Schedule

Paragraph

2 That paragraph 2 be amended by—

(*a*) inserting in paragraph (*a*) after "from amongst themselves," the following—

“or in accordance with the deed of mutual covenant,”;

(*b*) deleting in paragraphs (*b*) and (*c*) the word "owners" and substituting the following—

"persons".

4 Paragraph 4 is amended in sub-sub-paragraph (*e*) of sub-paragraph (2) by inserting, after "owner", the following—

“, if appointed in his capacity as an owner, or ceases to be qualified to be a member according to the deed of mutual covenant".

6 Paragraph 6 is amended in sub-paragraph (1) by deleting "by the appointment of an owner".

The amendments were agreed to.

The Second Schedule, as amended, was agreed to.

The Third Schedule was agreed to.

MERCHANT SHI1PPING (AMENDMENT) BILL 1970

Clauses 1 to 5 were agreed to.

ROAD TRAFFIC (AMENDMENT) (NO 2) BILL 1970

Clauses 1 to 3 were agreed to.

INLAND REVENUE (AMENDMENT) BILL 1970

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

Clauses 1 to 12 were agreed to.

SAND (AMENDMENT) BILL 1970

Clauses 1 to 5 were agreed to.

IMPORT AND EXPORT BILL 1970

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

Clause 1 was agreed to.

Clause 2.

MR SORBY: —Sir, I propose to move certain amendments to clause 2 as set forth in the paper before honourable Members, but before doing so, with your permission, Sir, I should like to make a few comments which have general application to the eleven clauses to be amended out of the some forty clauses in this bill.

When I introduced the bill, I said it was complicated—both a consolidation and at the same time something different from anything we have had before. In short, it was new legislation geared to the realities of the day maintaining the banner of liberal trade, but prescribing for the essential limitations that make free trade practicable in a much more fast-moving world than that of 1915 when the present law was enacted.

Two weeks ago, my honourable Friend, Mr CHEUNG said in effect that the new Import and Export Bill in a few respects leans too far towards the "essential limitations" and not enough towards the "banner of liberal trade". He was in particular concerned with the principle of non-interference with genuine transit cargo and with the impact that larger and faster ships were having on documentation.

My honourable Friend certainly had some good points, which these amendments recognize. I am most grateful to him for raising them.

As to the amendments in clause 2, the changed definition of "authorized officers" is consequential *first*, on *deletion* of clause 4 which will in turn entail some consequential amendments to clause 31; and *second*, *substitution* of a new clause 4. I would therefore prefer, again with your permission Sir, to deal with amendments to clauses 2 and 4 after the amendments to all clauses before clause 31 have been taken.

If I could have clause 2 postponed, Sir, dealing with it after clause 31.

Import and Export Bill—committee stage

HIS EXCELLENCY THE PRESIDENT: —Certainly. We will defer the motion on clause 2 until after the end of the other clauses. We go on now then to clause 3.

Clause 3.

MR SORBY: —Sir, I move that clause 3 be amended as set forth in the paper before honourable Members. This amendment is purely for clarification.

Proposed Amendment

Clause

3 That clause 3 be amended in subclause (1) by inserting after the word "licence" the word "required".

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clause 4.

HIS EXCELLENCY THE PRESIDENT: —We will defer then the motion on clause 4. That is correct, is it?

MR SORBY: —Yes, Sir.

HIS EXCELLENCY THE PRESIDENT: —The motion on clause 4 is deferred.

Clauses 5 and 6 were agreed to.

Clause 7.

MR SORBY: —Sir, I move that clause 7 be amended as set forth in the paper before honourable Members. My honourable Friend, Mr CHEUNG suggested during the debate that if a defendent could prove that he had no reason to suspect that an article was of a prohibited nature, this should be a defence to a charge that a person under obligation to retain possession of the article has released it without a valid import licence being produced. The Government is agreeable to this amendment.

Proposed Amendment

Clause

7 That clause 7 be amended by inserting the following subclause after subclause (2) —

"(3) It shall be a defence to a charge under paragraph (*a*) of subsection (1) if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article.".

The amendment was agreed to.

Clause 7, as amended, was agreed to.

Clauses 8 and 9 were agreed to.

Clause 10.

MR SORBY: —Sir, I move that clause 10 be amended as set forth in the paper before honourable Members. The reasons for this amendment are the same as those for the amendment to clause 7. But, in this case, the clause is concerned with the export of goods.

Proposed Amendment

Clause

10 That clause 10 be amended by inserting the following subclause after subclause (2) —

"(3) It shall be a defence to a charge under this section if the defendant proves that he did not know and could not with reasonable diligence have known that the article to which the charge relates was a prohibited article. ".

The amendment was agreed to.

Clause 10, as amended, was agreed to.

Clause 11 was agreed to.

Clause 12.

MR SORBY: —Sir, I move that clause 12 be amended as set forth in the paper before honourable Members. This clause is concerned with the inspection and storage of prohibited articles. Subclauses (1) and (3) as at present drafted require the owner of such articles on

[MR SORBY] **Import and Export Bill—committee stage**

request to produce them for inspection or store them in specified places. It is considered more appropriate that that requirement should be on the person in actual possession or control of the article rather than the owner.

Proposed Amendment

Clause

12 That clause 12 be amended in subclauses (1) and (3) by deleting therefrom the word "owner" and substituting therefor the following—

"person in possession or control".

The amendment was agreed to.

Clause 12, as amended, was agreed to.

Clauses 13 and 14 were agreed to.

Clause 15.

MR SORBY: —Sir, I move that clause 15 be amended as set forth in the paper before honourable Members. This amendment is to conform with existing practice.

Proposed Amendment

Clause

15 That clause 15 be amended by inserting after "master" the following—

"or agent".

The amendment was agreed to.

Clause 15, as amended, was agreed to.

Clauses 16 and 17 were agreed to.

Clause 18.

MR SORBY: —Sir, I move that clause 18 be amended as set forth in the paper before honourable Members. It is proposed to make it a defence to a charge of importing unmanifested cargo if the owner of a vessel, aircraft or vehicle can prove that he could not reasonably know that the cargo was unmanifested.

Proposed Amendment

Clause

18 That clause 18 be amended—

(*a*) by being renumbered as subclause (1); and

(*b*) by inserting therein the following subclause (2) —

"(2) It shall be a defence to a charge under this section against the owner of a vessel, aircraft or vehicle, if the owner proves that he did not know and could not with reasonable diligence have known that the cargo was unmanifested. ".

The amendment was agreed to.

Clause 18, as amended, was agreed to.

Clauses 19 to 26 were agreed to.

Clause 27.

MR SORBY: —Sir, I move that clause 27 be amended as set forth in the paper before honourable Members. The Government has been able to meet my honourable Friend, Mr CHEUNG's point that a vessel seized in connexion with an offence should not be forfeited unless it has been also used in connexion with the contravention.

Proposed Amendment

Clause

27 That clause 27(1) be deleted and the following substituted—

"(1) There shall be liable to forfeiture—

(*a*) any article which has been seized by a member of the Preventive Service or an authorized officer in connection with the contravention of any provision of this Ordinance;

(*b*) any vessel not exceeding two hundred and fifty gross tons and any vehicle so seized and used in connection with the contravention of any provision of this Ordinance,

whether or not any person has been convicted of an offence in respect of such contravention.".

The amendment was agreed to.

Clause 27, as amended, was agreed to.

Clauses 28 to 30 were agreed to.

Clause 31.

Import and Export Bill—committee stage

MR SORBY: —Sir, I move that clause 31 be amended as set forth in the paper before honourable Members. The amendment to paragraph (*ac*) of subclause (1) corrects the wording of the paragraph.

The Government can now also see its way to the Director foregoing his right under the existing Ordinance to require a money deposit as a condition for issuing a licence to import or export, but new paragraphs (*ad*) and (*ae*) will empower the Governor in Council to make regulations restoring this right in such circumstances and in such conditions as may seem necessary at the time.

The new subclause (3) expresses positively that penalties may be prescribed for contraventions, rather than by implication as in the bill.

Subclause (4) prescribes that (*a*) regulations imposing pecuniary penalties for failure to lodge import and export declarations in time, and for waiver or refund of payments on declarations, and (*b*) regulations concerning the deposits I have just referred to and their forfeiture—such regulations made by the Governor in Council—would require the approval of this honourable Council before they come into operation.

Proposed Amendment

Clause

31 That clause 31 be amended—

(*a*) in subclause (1) —

(i) in paragraph (*ac*) by inserting after the words “imposed under” the following—

"regulations made under";

(ii) by deleting paragraphs (*ad*) and (*ae*) and substituting the following—

"(*ad*) empowering the Director to require an applicant for a licence to deposit with him, before the issue of a licence, such sum of money as the Director may specify;

(*ae*) providing for the forfeiture to the Crown by a magistrate of all or any of the sum of money deposited under regulations made under paragraph (*ad*);

(*af*) prescribing any thing which is to be or may be prescribed under this Ordinance; and

(*ag*) generally for the better carrying out of the provisions and purposes of this Ordinance.";

(*b*) by deleting subclause (3) and substituting the following subclauses—

"(3) Regulations made under this section may prescribe that a contravention or breach thereof shall be punishable by a fine not exceeding one hundred thousand dollars and imprisonment for a term not exceeding two years.

(4) No regulation made under paragraph (*aa*), (*ab*), (*ac*), (*ad*) or (*ae*) shall come into operation until it has been approved by resolution of the Legislative Council. ".

The amendment was agreed to.

Clause 31, as amended, was agreed to.

Clauses 32 and 33 were agreed to.

Clause 34.

MR SORBY: —Sir, I move that clause 34 be amended as set forth in the paper before honourable Members.

The amendment is designed to facilitate proof of source or destination of articles in court proceedings, a matter raised by my honourable Friend Mr CHEUNG during the debate.

Proposed Amendment

Clause

34 That clause 34 be amended by renumbering it as subclause (1) and adding the following new subclause—

"(2) For the purposes of this section, the provisions of Part IIA of the Evidence Ordinance (which relates to the admissibility of hearsay evidence in civil proceedings) shall apply as if proceedings under this Ordinance were civil proceedings. ".

The amendment was agreed to.

Clause 34 as amended, was agreed to.

Clauses 35 to 40 and the Schedule were agreed to.

Clause 2.

MR SORBY: —Sir, I now move that clause 2 be amended as set forth in the paper before honourable Members.

[MR SORBY] **Import and Export Bill—committee stage**

The amended definition of "authorized officer" is consequential on the amendment to clause 4 which I should also like to see amended.

The amendments to the definition of "import" and "export" and of "cargo" and the introduction of a definition of "article in transit", when read together, have the effect of excluding transit cargo from being licensable; that is to say, cargo which is destined to leave the Colony in the same vessel, aircraft, or ship as it enters the Colony, and is in fact so taken out. If this clause as amended is enacted, such cargo will not be licensable. Nor will failure to include it in the manifest or airway bill constitute an offence under Hong Kong law.

Sir, I have given very careful thought to this matter which I have said was of some difficulty, but I am now satisfied that the general powers of search conferred by the bill, or, given the goodwill of masters or agents, the powers provided under clause 15 are adequate to permit surveillance, if need be, over prohibited articles in transit with a view to preventing their being smuggled out of vessels or aircraft.

Proposed Amendment

Clause

2 That clause 2 be amended—

(*a*) by inserting after the definition of "aircraft" the following new definition—

"article in transit" means an article which—

(*a*) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and

(*b*) remains at all times in or on the vessel, aircraft or vehicle in or on which it is brought into Hong Kong;";

(*b*) by deleting the definition of "authorized officer" and substituting the following—

"authorized officer" means a person authorized by the Director under section 4;";

(*c*) in the definition of "cargo", by deleting "and" at the end of paragraph (*d*) and paragraph (*e*);

(*d*) by deleting the definition of "export" and substituting the following—

"export" means to take, or cause to be taken, out of Hong Kong any article other than an article in transit;";

(*e*) by deleting the definition of "import" and substituting the following—

"import" means to bring, or cause to be brought, into Hong Kong any article other than an article in transit;".

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clause 4.

MR SORBY: —Sir, I now move that clause 4 be amended as set forth in the paper before honourable Members. This amendment arises from a change, a more positive way for the Director to prescribe authorized officers. And in its place we have a new clause which deletes the clause to which my honourable Friend had some objection, (about the Director being empowered to require money deposits for licences and for their forfeiture), substituting a power of the Governor in Council to make such regulations. And also the new clause permits the Director to appoint authorized officers which are then defined in the interpretation.

Proposed Amendment

Clause

4 That clause 4 be deleted and the following clause substituted therefor—

"Power of Director to appoint authorized officers.

4. The Director may authorize in writing any public officer and any police officer of the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance. ".

The amendment was agreed to.

Clause 4, as amended, was agreed to.

The Schedule was agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Multi-storey Buildings (Owners Incorporation) Bill 1970 had passed through Committee with certain amendments and that the

Merchant Shipping (Amendment) Bill 1970

Road Traffic (Amendment) (No 2) Bill 1970

had passed through Committee without amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) reported that the

Inland Revenue (Amendment) Bill 1970

Sand (Amendment) Bill 1970

had passed through Committee without amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

MR SORBY reported that the Import and Export Bill 1970 had passed through Committee with certain amendments and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

ADJOURNMENT

Motion made, and question proposed. That this Council do now adjourn—THE ACTING COLONIAL SECRETARY (MR HOLMES).

5. 10 p.m.

Nurses' Pay

MRS LI: —Sir, when the announcement was made some weeks ago that women teachers and women police in preventive services were granted equal pay, Government's oversight to mention its intention regarding the nurses' pay ignited a great deal of critisism from the public and justifiable frustration and protest among the nurses.

Public sympathy and support for the nurses' just cause have been phenomenal. So far the nurses have shown that they are reasonable and responsible people who have the interest of their patients at heart. They have upheld the trust placed in them by the public and the vow they took to put the patients' welfare above all else. By so doing they have gained the respect and support of the whole community in the same way the women teachers gained theirs in their patience and calmness.

The Government, on the other hand, has accepted the responsibility to give this question serious attention. Sir Charles HARTWELL's appointment is an interesting turn of event and some even regard the move as a delay tactic. However, since Sir Charles has been the Chairman of the Public Service Commission for some years and has a great deal of experience in this field, he is the most qualified person to give this question his undivided attention from now on until he goes on leave in mid-July. We must now place our trust in Sir Charles for him to find a satisfactory solution and a reasonable proposal acceptable to all concerned.

Perhaps there is justification in the Nurses' intended refusal to accept an interim payment in the meantime, since they are fighting for a principle, not just a matter of money. However, I am sure the offer of an interim payment by the Government is meant to be a gesture of good-will and not a peace offering to keep them quiet or to shut them up, and so perhaps can be accepted in the spirit it is made.

In his deliberation, I am sure Sir Charles will take into consideration the two principles or objectives involved in this pay issue. In the first place, the main issue is equal pay for equal work. At present, the inequality comes from the fact that in most cases women get 25% less than men and in the case of the nurses, men get 25% more than women. Whether this is the result of subtracting 25% from men's pay for women or adding 25% to women's pay for men is immaterial. The fact remains that men and women are not receiving the same pay for equivalent work or work of equivalent value. We should now forget the question of which scale should apply, but concentrate on the question of "adequate pay for the job" no matter whether it is a man or a woman on the job. Right now, the nurses feel that the men's pay should be the right pay for the job and Government promises that male nurses would not suffer a reduction in this connexion. Logically, therefore, where can the nurses' pay go but go up?

The second principle involved is the question of comparable pay between professions. Up to the present, a graduate woman teacher and a graduate nurse get about the same basic pay of about $740. Eventually, the women teachers will receive by 1975 the equivalent of men's pay starting at about $1,004, according to the present scale. The nurses

[MRS LI] **Nurses' Pay**

expect to be awarded at least the same level of pay as the teachers, in order to maintain the dignity of their profession. In fact, they feel that they are entitled to a higher pay scale than the teachers, taking into consideration their longer years of training, their irregular hours of duty and their restricted and shorter holidays.

Personally I am extremely sympathetic to their views in this respect. I have expressed in this Council more than once the view that the nursing profession is highly respected all over the world but grossly underpaid, in view of the very exact and very trying duties they are expected to perform.

We are confident that Sir Charles, with his vast experience and fairness of mind, will not overlook these two points. Let us give him a fair chance to work on the nurses' behalf with a free hand and a clear mind without undue pressure from all sides. With the knowledge and confidence that the whole community is behind the just cause of equality, I hope that our nurses will continue to maintain their dignity by keeping their blood warm, their spirit high but their heads cool.

At the same time I would like an assurance from Government that when Sir Charles' recommendation is received it will be dealt with as a matter of top priority.

THE ACTING COLONIAL SECRETARY (MR HOLMES): —Sir, I think I must confine my reply here to the general nurses, with whom I believe Mrs LI is chiefly concerned. They constitute, of course, the major part of the profession, and other connected problems largely hinge on what is decided for them.

This is, of course, a complicated matter but I would like to refer first of all to certain aspects which are simple and about which there is no doubt.

There is no doubt that nurses will achieve equal pay scales for both sexes in the profession, in accordance with the many assurances they have already had, once the basic questions have been resolved. There is no doubt that the nurses' pay is due for an upward revision. Finally, there is no doubt whatever about the high esteem and admiration in which the Government, and, I am sure, the community, hold the nursing profession in Hong Kong. We are proud of their record here, and we are proud of the reputation which has been built up for the nurses and for Hong Kong by those of them who have seen service in countries overseas.

But I must point out, Sir, that equal pay for equal work of the same value means precisely that and no more. Having agreed on the principle

of equal pay, it still remains to decide the question of equal pay at what level. This level, obviously, should be at the level of the correct pay for the job. In general the male scales in the public service *are* the appropriate scales of pay for the job, and most female scales have in the past been arrived at by a proportionate reduction of these male scales. In all such cases, there is no argument but that if equal work of the same value is being done by the women in the same grade as the men, then they proceed onto the male scale to achieve equal pay. It is not quite so simple, of course, if the male scale itself is under review, as was the case with teachers, but that was a special case. The normal rule remains, that the equal pay scale should be at the level of the approved and accepted scale for the job.

The difficulty in the case of the general nurses, of whom I am told nearly 90% are women in the Government sector and about 99% are women in the subvented sector, is to decide whether the male scale is, in their case, in fact the pay for the job. That men have been paid in the past at a higher rate than women, by no means necessarily proves this. Certainly, to say the least, the female nurses scales were not arrived at by a simple proportionate reduction of the male scale: the two scales were established by much more complex processes.

The nurses' view is that the male scale *is* the pay for the job; I myself will say no more today than that this question, Sir, is open to legitimate difference of opinion. This is the question upon which Sir Charles HARTWELL has been asked to advise us independently; and we now await this advice, which is likely to be available, I am told, before the end of the month. This matter is thus, in a sense, sub judice and I do not think I should say more, except perhaps to add that our anxiety is both to be fair to the nurses and also to do our duty to this Council. This duty requires us to examine fully all proposals for public expenditure before submission here, and to be able to support them with cogent and logical argument. We would be wrong if we allowed ourselves to be deflected from this obligation, just as we would be wrong to accept any solution that was less than fair to the nurses themselves.

In short we cannot clear up this question until the nurses' argument that the male scale is the proper scale for general nurses, the pay for the nursing job in fact, has been tested and settled, one way or the other. In fairness to the nurses and their view of the matter we have sought an independent opinion. But at the same time I am glad to give Mrs LI the assurance she asks for, namely that as soon as Sir Charles HARTWELL's advice has been received on the important point on which we have sought his assistance, the revision of the nurses' pay scale is a matter to which we shall give the highest priority.

Question put and agreed to.

Tribute to Dr Teng, Mr Tse and Mr Watson

HIS EXCELLENCY THE PRESIDENT: —Honourable Members, before I adjourn the Council I would just like to mention that this is the last meeting of this Council as at present constituted, since all the seats in the Council fall vacant on 30th June. I would, if I may, like to take this opportunity to thank all Members very sincerely for their help and their assistance during their term of office. I am deeply grateful to you all.

I should however like to say a special word of thanks to those Members present who I know will not be serving again when the Council is reconstituted.

Dr TENG has served on this Council now continuously since 1963, the year in which he became Director of Medical and Health Services, a post that he has occupied, as I am sure all honourable Members will agree, with much ability and distinction. He is due to proceed on leave on 2nd July prior to retirement but we in Hong Kong shall not be losing him, I am glad to say, since he will be taking up a fresh appointment in the Colony and will continue to be active in fields concerned with public health. I am sure all honourable Members, Dr TENG, will be with me and join with me in wishing you a very happy retirement.

Mr TSE has also informed me that he would prefer not to serve a further term. He has served on the Council for the past six years and feels that the time has now come for him to retire from public life and, accordingly, I would very much like to take this opportunity to express to him my very sincere thanks for his contribution to the work of this Council, particularly perhaps for the very keen interest he has taken in the field of social welfare. Thank you very much, Mr TSE.

Mr WATSON has also informed me that he would prefer not to serve further. He served on the Council since 1964 and has taken a very close interest in all our problems. I would like to thank him too, very much indeed, for the many stimulating contributions he has made to our deliberations and also for much help and support outside the work of this Council.

I now have to inform honourable Members, with my apologies, that the reconstitution of the Council on this occasion presents some rather unusual procedural difficulties. It may happen that, for obvious reasons connected with the forthcoming General Election in the United Kingdom, I shall not receive the Secretary of State's instructions on membership of this Council until after the election: and indeed I may even—and it is only *may*—I may not receive these instructions until after the Council is due to hold its next meeting. Since, of course, substantive appointments to the Council cannot be made until the Secretary of State's

wishes in the matter are known, those who are newly appointed may only receive notification of their substantive appointments discourteously late, just before the next meeting, or I may even have to make all appointments provisional in the first instance in order to tide matters over. As I say, this is more a procedural difficulty than a practical one but, if the device of provisional appointments has to be employed, I can only ask for honourable Members' indulgence during the, I hope, very brief interval before the position can be regularized.

Again, I do apologize for this situation but it is one which is out of my control. Again I would like to thank all Members for their help and advice during this last period of their appointments.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 8th July 1970.

Adjourned accordingly at twenty-five minutes past Five o'clock.

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