

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 18th November 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
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 DENIS CAMPBELL BRAY, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN JAMES COWPERTHWAITTE, KBE, CMG, JP
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE DONALD COLLIN CUMYNN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
COMMISSIONER FOR RESETTLEMENT
THE HONOURABLE JACK CATER, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE RICHARD CHARLES CLARKE, ISO, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)
THE HONOURABLE KAN YUET-KEUNG, CBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE LO KWEE-SEONG, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RODERICK JOHN FRAMPTON

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:—	
Dutiable Commodities (Liquor) Regulations 1970.	
Licensing Board (Election) Notice 1970.....	160
Workmen's Compensation Ordinance.	
Workmen's Compensation (Amendment) (No 2) Regulations 1970	161
Workmen's Compensation Ordinance.	
Workmen's Compensation (Amendment) (No 3) Regulations 1970.....	162
Evidence Ordinance.	
Evidence (Hearsay) Rules 1970	163
District Court (Civil Jurisdiction and Procedure) Ordinance.	
District Court Civil Procedure (General) (Amendment) Rules 1970.....	164
Supreme Court Ordinance.	
The Rules of the Supreme Court (Amendment) (No 4) Rules 1970.....	165

Sessional Papers 1970-71:—

No 21—Annual Report by the Director of Civil Aviation for the year 1969-70 (published on 18.11.70).

No 22—Annual Summary by the Director of Education for the year 1969-70 (published on 18.11.70).

No 23—Annual Report by the Commissioner of Inland Revenue for the year 1969-70 (published on No 24—Annual Report by the Director of Medical and Health Services for the year 1969-70 (published on 18.11.70).

No 25—Annual Report by the Director of Broadcasting for the year 1969-70 (published on 18.11.70).

No 26—Annual Report by the Accountant General for the year 1969-70 (published on 18.11.70).

Oral answers to questions

Begging

1. MR WILSON T. S. WANG asked:—

Are any steps being taken by Government to discourage the practice of begging and to redirect beggars to useful forms of employment and to protect children from being exploited as beggars?

THE ACTING COLONIAL SECRETARY (MR D. R. HOLMES):—Sir, the Social Welfare Department investigates all reports of begging to see whether assistance can be given by way of food or cash payments, or clothing, medical attention, accommodation, vocational training or employment. In 1968 and 1969 two special campaigns were carried out with the aid of University students to make contact with beggars on the streets and offer them assistance, but in many cases this offer was refused. In 1968, out of 400 beggars approached in this way only 290 responded; in 1969, out of 242 beggars contacted only 101 responded. This is no doubt because begging, in certain areas and at certain times, is a profession and quite a lucrative one, as I am sure Members are aware.

Although the number of beggars in Hong Kong is relatively small I agree that we should not overlook any means of reducing their number. I propose to ask the departments concerned to study the problem afresh, in due course, in the light of forthcoming new arrangements for public assistance which may have some relevance.

As regards the reference to directing beggars into useful employment, no legal powers exist for the exercise of such direction and I personally would see objections to seeking such unusual powers.

With regard to the last part of the question, while the 1968 and 1969 surveys indicated that the incidence of child mendicancy was very low, it is our policy that the departments concerned should always pay particular attention to this aspect of this difficult problem.

Rickshaw carriers

2. MR WANG asked:—

Has Government any plan to suspend the issue of new licences to rickshaw carriers with a view to the gradual withdrawal of this obsolete type of transport from this busy city of ours and has any attempt been made to help them to find more productive employment?

Oral Answers

THE ACTING COLONIAL SECRETARY (MR HOLMES):—Sir, during the past six years no new rickshaw licences have been issued. The policy is to renew existing licences until the rickshaw puller concerned no longer wishes to continue his trade, but to issue no new ones. As a result the number of rickshaws has been steadily reduced. On 31st October 1969 there were 213 licensed rickshaws, whereas on the same date this year the number had fallen to 170.

Since the numbers are so small and are diminishing so rapidly it has not so far seemed necessary to take any special measures to accelerate this natural process or to devise special inducements to seek alternative employment.

Kowloon City and San Po Kong flyovers

3. DR S. Y. CHUNG asked:—

Will the Honourable Director of Public Works give a progress report on the Kowloon City and San Po Kong flyovers since he made the statement in this Council on 20th May this year?

MR R. C. CLARKE:—Sir, when Mr ROBSON reported on this matter in May this year he said that it was hoped to open the first flyover at the San Po Kong Interchange in July and complete the complex at this location in early 1971.

In the event this flyover was opened in June—a month ahead of time—and is now providing considerable relief to traffic at this location. Work on the remainder of the complex is progressing well and I anticipate that it will be completed in April or May next year.

Referring to the Kowloon City Interchange Mr ROBSON said in May that he hoped to open the Argyle Street to Prince Edward Road flyover across the roundabout in November—that is this month. However, due to the need to exercise particular care while working in close proximity to the live electric trunk substation at this point progress has been slower than originally anticipated. It is now expected that the flyover will be opened to traffic in about two months' time—that is in January 1971.

Work at ground level is progressing well and, except for that in Prince Edward Road, is substantially completed. It may still be possible to complete the whole of the Kowloon City Interchange by the end of 1971 as forecast in May this year but owing to the difficulties I have just described a more realistic date for completion is early 1972.

Sir, honourable Members will be aware that the volume of traffic passing through this junction is one of the highest in the Colony— indeed it is very large by world standards. Significant delays are occurring due to the inadequacy of the present arrangements, and the need to keep traffic flowing while reconstruction is carried out makes the work all the more difficult and time consuming.

Nevertheless the Highways Office is working to a very tight schedule and I would like to take this opportunity to express my appreciation to them and to the two main contractors concerned for the manner in which they have responded to the demands of the situation. I know they will do their best to complete the work on time.

Coinage

4. DR CHUNG asked:—

Will Government inform this Council whether it has considered the introduction of a 20-cent and/or a 25-cent coin into our currency system and, if the answer is in the negative, would Government give its reasons?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—Sir, the question of introducing a 20-cent or 25-cent coin has been considered from time to time in recent years. There would be some saving in the cost of the currency, but there are practical difficulties in fitting a new coin between the present 10-cent and 50-cent coins in a form which would be readily identifiable. I cannot go into all the pros and cons in answer to my honourable Friend's question, but they are fairly well balanced on the whole and in the absence of any real evidence of demand the question has been left in abeyance. The present simple system seems to meet needs reasonably well.

I may add that the advocates of 20-cent and 25-cent coins seem to be roughly equal in numbers.

DR CHUNG:—Sir, is my honourable Friend aware that in the pre-war years we had a 20-cent coin in circulation?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT):—I believe I am aware of that but I am not quite sure of its relevance to the present position.

Re-alignment of Queensway

5. MR WILFRED S. B. WONG asked:—

Has Government any plan to re-align the dangerous bend of 112 degrees on the main thoroughfare of Queensway near Naval Terrace?

Oral Answers

MR CLARKE:—Sir, the answer is "Yes". There is an item in Category B of the Public Works Programme for the widening and re-alignment of Queensway which will effectively eliminate the existing double bend. From the traffic point of view I would like to start this work as soon as the Waterfront Road is completed—that is in 1972.

However, the realignment absorbs a part of the Old Naval Dock-yard and will require the demolition of a number of buildings presently occupied by various Government departments. The provision of alternative accommodation, when required, is currently under examination with a view to freeing the land for this purpose.

Dependent on the outcome of this examination, and on further review of other factors which may affect the timing of the works, action will be taken to advance the item in the programme and prepare the necessary detailed design.

Dangerous drugs in prisons

6. MR G. M. B. SALMON asked:—

Will Government confirm that court proceedings have been taken, and conviction obtained, against all prison warders who have been dismissed by the Commissioner of Prisons during 1970 for being involved in drug peddling offences in the prisons?

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS): — Sir, the Commissioner of Prisons has no power to dismiss a prison warder. However, during 1970, four warders have been convicted of offences against the Dangerous Drugs Ordinance. Three have since been dismissed by the Governor and the case of the fourth is still under consideration. I should point out that prosecution normally precedes dismissal and not vice versa as suggested by the honourable Member.

Programmes on Radio Hong Kong

7. MR H. J. C. BROWNE asked:—

Have Government any plans for obtaining outside views or setting up a Committee to advise on the general content of the Chinese and English programmes on Radio Hong Kong?

THE ACTING COLONIAL SECRETARY (MR HOLMES):—Sir, honourable Members may recall that the question of establishing committees to advise the Director of Broadcasting on Radio Hong Kong's programmes has been raised in this Council in the past, and the possibility is still under consideration.

However, the Government is at present inclined to the view that the information and guidance required might be better provided by regular audience research surveys, similar to those carried out at the end of 1968 for the Chinese Service, and in early 1970 for the English Service. A second Chinese Service survey is to be carried out early next year.

The use of audience surveys does not imply any change in the orthodox aims of a public broadcasting service, still less the acceptance of what has been called the "lowest common denominator". The policy of Radio Hong Kong remains the provision of balanced programmes, with some emphasis on information and public affairs, and with a duty to consider minority tastes. The surveys assist Radio Hong Kong not only in determining what general public attitudes are towards its programmes but also in identifying the type and strength of minority tastes. This information is essential to the planning of programmes and the advice of committees cannot be a substitute for it. It is true that committees might be helpful in the interpretation of the findings of such audience surveys, but their views would tend to represent no more than the subjective opinions of the committee members on the relative emphasis to be given in the programmes to the various competing public preferences, including the minority preferences. These are matters in which there is so much room for legitimate divergence of opinion and taste that we feel bound to have considerable reservations about the ability of such committees to provide the Director of Broadcasting with informed and useful advice and at the same time to represent fairly the widely differing and conflicting and often irreconcilable views which are to be found in our community.

An illustration of competing preferences is provided by the recent decision by Radio Hong Kong to cease the morning FM service which has caused some comment in the press. In this case the audience survey indicated a very small audience for the programme of serious music on the FM service while it was shown that there was considerable public demand for extending the hours of broadcasting in the early morning and late at night. Without increased expenditure it was not possible to meet both demands and it was decided, rightly or wrongly, that the FM service should be discontinued. If we were to consider a resumption of the service the increased expenditure would have to be balanced against the known number of listeners and the fact that 13.5% of Radio Hong Kong's output is still devoted to serious music—a percentage much in excess of the ratio of serious music listeners to

[THE ACTING COLONIAL SECRETARY] **Oral Answers**

Radio Hong Kong's audience as a whole. However, I understand that Radio Hong Kong is about to introduce a serious music programme later in the morning at the expense of some other types of programme. I hope this change will be well received, and no doubt it will be by some listeners, but one thing is certain, Sir, that in this field, as in many others, we cannot please everybody.

But apart from advice on programmes generally the Director of Broadcasting considers that there is a good case for advisory committees to deal with specialist fields of broadcast activity. There has been, for example, in existence for many years the Religious Broadcasting Advisory Committee, and this Committee's advice has been most useful to the Director. Whilst there are no other formal standing committees at the present time *ad hoc* groups are regularly formed to advise on specialist programmes, particularly on the Chinese Service, such as agriculture, social welfare, resettlement *etc.* It may be that a combination of audience research, formal standing advisory committees on specialized matters, and *ad hoc* groups formed as necessary, represent the best solution to the problem of ensuring that Government's broadcasting services are kept in touch with public opinion and advice.

Cooked food stalls in industrial areas

8. DR CHUNG asked:—

In view of the great demand for cooked food stalls in the industrial districts of Kwun Tong and San Po Kong, has Government any plans for providing land and other facilities such as bazaars for such cooked food stalls in these and other industrial areas; and if so how soon will such plans be implemented?

MR CLARKE:—Sir, the present planning standard for the provision of land for cooked food stalls in industrial areas is one stall of 150 *sq. ft.* for every 500 workers.

This standard has only recently been agreed and in the Urban Area only one allocation—of 5,000 *sq. ft.* at Kwun Tong—has as yet been made in accordance with it. Action is continuing with a view to providing more land to this scale but I am doubtful if it will prove possible to meet it in full in many areas.

At San Po Kong where planning did not provide for cooked food stalls no site for this purpose is at present available nor do I hold out much hope that any will be found. However, there are a number of

restaurants in the commercial area immediately adjoining the industrial zone and the need for cooked food stalls is perhaps not so pressing.

There are items in the Public Works Programme for the construction of cooked food bazaars in the new industrial towns of Tsuen Wan and Kwai Chung and at Yuen Long. I am not yet able to say when these projects will be implemented.

Sir, I would not wish honourable Members to gain the impression from any thing I have said that Government is committed to the allocation of large areas of Crown land for cooked food stalls other than on a temporary basis. There is, at present, a clear demand for such stalls particularly in the less central industrial districts where alternative facilities are not readily available. Because of low overheads and convenient location they are able to provide food cheaply and quickly and are well patronized.

No doubt while Crown land or the public streets can be used by stall operators free of rent and rates, and subject only to a small annual licence fee, such demand will continue and in the short term we are trying to provide for it. In the longer term, however, land economy, and the probability of more sophisticated demands, point towards the need for more permanent eating places and the provision of sites for restaurants throughout industrial zones is allowed for in our land use planning.

DR CHUNG:—Sir, my honourable Friend said in his reply to my question "At San Po Kong no site for this purpose is at present available". Is he aware that there is a site of about 22,000 *sq. ft.* available in the centre of San Po Kong near Ying Hing Street which can be temporarily allocated for a hawker bazaar to solve this undesirable on-street hawking?

MR CLARKE:—Sir, I am not quite sure of the site to which my honourable Friend refers, but there is certainly a site in San Po Kong reserved for a future market. This may be the site that is in question. An examination is taking place at the moment with a view to building a market on this site which could possibly have cooked food stalls on the ground floor with some form of parking above, but, if that is the site which my honourable Friend has in mind, it is fully occupied at the moment by a number of temporary users.

DR CHUNG:—Sir, will my honourable Friend undertake to investigate further the maximum use of this site which I mentioned and report to this Council about the findings?

MR CLARKE:—Certainly it is our object, Sir, to make maximum use of sites. I will certainly look into the point.

Oral Answers

Business Profits Tax

9. MR SZETO WAI asked:—

As regards Business Profits Tax, would Government give details of

- (a) the amount collected and the number of prosecutions pursued during the last financial year
and (b) what results have been achieved since Government intensified its measures against evasions?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE):—Sir, I am not sure what period my honourable Friend refers to, as action against evasion has been intensified over a number of years. Possibly he refers to the increased powers given to the Commissioner by amending legislation in June 1969. But I think it would be most illuminating if I gave the figures for Business Profits Tax for the last three and a half years.

<i>Year</i>	<i>No of cases investigated</i>	<i>Understated income</i>	<i>Additional Tax and Penalty charged</i>
1967-68	24	\$ 5.4 million	\$1 million
1968-69	34	\$ 9.6 million	\$1.7 million
1969-70	40	\$13.6 million	\$1.8 million
1970-71 (7 months).....	23	\$ 8.3 million	\$2.6 million

As to prosecutions in the year 1969-70, none were completed but considerable preparations were made for legal proceedings in three cases, one of which has since been completed.

For a fuller account of recent investigation work, I refer my honourable Friend to paragraphs 47 - 50 of the Commissioner's Report for the year 1969-70 which has been tabled today.

MR BROWNE:—Sir, may I ask a supplementary question? Could I ask the Honourable Financial Secretary whether he now feels that the Inland Revenue Department is up to strength on these special investigations and fully staffed?

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAITTE):—Sir, the department is not yet up to strength. It has, I think, three posts yet unfilled but I understand that good progress is being made in filling them with competent and experienced officers.

Statement

WORKMEN'S COMPENSATION (AMENDMENT) (NO 2) REGULATIONS 1970

WORKMEN'S COMPENSATION (AMENDMENT) (NO 3) REGULATIONS 1970

MR R. M. HETHERINGTON: — Sir, the Workmen's Compensation (Amendment) (No 2) Regulations 1970 and the Workmen's Compensation (Amendment) (No 3) Regulations 1970 are among the papers laid upon the table this afternoon. The first set of regulations was made on 10th November 1970 by the Governor in Council under section 49(1) of the Workmen's Compensation Ordinance. The second set was made on the same date by me under section 51 of the same Ordinance. They arise from questions asked by my honourable Friend, Mr Woo, and the answers which I gave in reply at the sitting of this Council on 11th February this year.

About a year ago, the Workmen's Compensation (Amendment) Ordinance was passed into law by this Council and all its provisions, except for those in Part IV relating to compulsory insurance, came into effect on 1st January 1970. This amending Ordinance extended the liability for compensation to a much wider range of employers than hitherto. Mr Woo enquired about the necessity for this wider range of employers to make annual returns to the Commissioner of Labour. I replied, in part, as follows:—

"... the department has not insisted for many years on returns from employers it is not considered necessary that employers should be required to make returns, under regulation 8, in respect of 1969. Before any possible obligation could arise in respect of 1970, I hope to recommend that a new regulation should replace regulation 8."*

The Workmen's Compensation (Amendment) (No 2) Regulations 1970 meets the undertaking which I then gave. Amended regulation 8 imposes an obligation on employers to make returns only when they are carrying on a business or industry specified by me in a notice in the *Government Gazette*. There is no present intention to make any such notices. The obligation imposed on an insurer to make annual returns is retained but the date by which they must be made in respect of the previous calendar year is extended from 31st January to 31st March so as to allow more time for their preparation.

It seemed to me that it would be appropriate, at the same time, to examine the existing forms on which annual returns are made.

* 1969-70 Hansard, page 315.

[MR HETHERINGTON] **Statement**

They have not changed since they were first devised in 1953. New forms more suitable for the statistical information which is now required have been prepared and the Workmen's Compensation (Amendment) (No 3) Regulations 1970 substitutes them for the old forms.

Government business

Motion

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

It is hereby resolved that the Pleasure Grounds (Amendment) By-laws 1970, made by the Urban Council on the 3rd day of November 1970, be approved.

He said:—Sir, the Pleasure Grounds (Amendment) By-laws 1970 made by the Urban Council on the 3rd of this month will enable that Council to charge a fee for public entertainments organized by it in public pleasure grounds, and will also provide for a percentage of the proceeds to be paid to the Urban Council if the exclusive use of a pleasure ground (or part of a pleasure ground) is granted to any person and an admission fee is charged by that person for the public to enter. Provision is also made for a reduced rate applicable to organizers of religious, charitable, cultural, or educational activities, who are recommended by my colleagues the Honourable Secretary for Home Affairs or the Director of Education, and for the reduction, waiver or remittance of any fees which may be payable.

Question put and agreed to.

First reading

**DISTRICT COURT (CIVIL JURISDICTION AND PROCEDURE)
(AMENDMENT) BILL 1970**

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

Second reading

**DISTRICT COURT (CIVIL JURISDICTION AND PROCEDURE)
(AMENDMENT) BILL 1970**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of:—"A bill to amend the District Court (Civil Jurisdiction and Procedure) Ordinance."

He said:—Sir, clauses 2, 3, 6 and 8 of this bill amend the principal Ordinance by substituting for references to the Code of Civil Procedure references to the Rules of the Supreme Court, which replaced the old Code of Civil Procedure in 1967.

The remaining provisions of the bill, which are of a technical or procedural nature, have the support of the Law Society of Hong Kong. The Hong Kong Bar Association has also been consulted and has raised no objection to them.

Clause 5 repeals 7 sections of the Ordinance which deal with the commencement of civil proceedings in the District Court, the framing of issues, summary judgment, dates of trial and notices of special defence. These are procedural matters which are more appropriately dealt with by rules than in an Ordinance. They will be included in the District Court Civil Procedure General Rules, which are being prepared and which will be brought into force on the same date as this bill becomes law, if it is enacted.

Clause 7, which is based on one of the English County Court Rules, enables a District Court to enter what is called a non-suit. This means that the action cannot proceed, but does not bar the plaintiff from subsequently bringing a second action based on the same facts. Such a power is useful where a plaintiff appears in person and his action is likely to fail because of his unfamiliarity with the rules of procedure or the laws of evidence. If the judge enters a non-suit, the plaintiff will be able to start again in the future, though he will not normally be permitted to do so unless he has paid any costs due to the defendant in the first action.

Clause 10 amends section 45 of the Ordinance so as to enable the Registrar of the District Court, in actions for forfeiture, to order possession of land when judgment is entered in default of defence. At present such an order has to be made by a District Judge and it is felt that it would be appropriate for a formal order of this nature to be left to the Registrar.

At present there is no power to make rules governing the administration of suitors funds, which are held in the District Court and they have to be dealt with administratively. Clause 11 therefore empowers the Chief Justice to make rules for this purpose.

Question proposed.

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

Question put and agreed to.

**District Court (Civil Jurisdiction and Procedure) (Amendment) Bill—
second reading**

Explanatory Memorandum

Clauses 2, 3, 6, 8 and 9 delete references to the Code of Civil Procedure (which was repealed in 1967) and substitute references to the Rules of the Supreme Court.

Clause 4 provides that section 15 of the principal Ordinance, which contains the procedure to be followed when an action is transferred from the Supreme Court to the District Court, shall also apply to the transfer of an action from the District Court to the Supreme Court.

Clause 5 repeals sections 27 to 33, since the substance of these sections will be included in the District Court Civil Procedure (General) Rules.

Clause 7 adds a new section 38A which will enable the District Court to enter a nonsuit. A nonsuit does not prevent a plaintiff from bringing a subsequent action on the same facts. The power of nonsuit is considered a useful one, particularly where a party is appearing in person and does not understand the rules of procedure or the law of evidence.

Clause 10 amends section 45 so as to empower the Registrar, in actions for forfeiture, to order possession of land when judgment is entered in default of defence.

Clause 11 adds a new section 49, based on section 39 of the Supreme Court Ordinance, which will empower the Chief Justice to make rules relating to suitors' funds. At present no such specific rule-making power exists.

PREVENTION OF BRIBERY BILL 1970

Resumption of debate on second reading (21st October 1970)

Question again proposed.

MR Y. K. KAN:—Your Excellency, the need for effective action against corruption is manifest. While this Council has from time to time been reminded of the "high standard of service, conduct and morality"* in the public service, and the "unjust and irresponsible criticism"† which tends to be levelled against it, the fact remains, as my honourable Friend, the Attorney General, has pointed out, that

* 1969 Hansard, page 201.

† 1966 Hansard, page 233.

"corruption does exist here to an extent which not only justifies, but demands, that the utmost efforts be made to eradicate it from our public and business affairs".

The Unofficial Members therefore give their full support in principle to the bill as a significant step forward in the fight against corruption. When the bill reaches the Committee stage we shall be proposing certain amendments to it, and I need not go into these at this stage.

I would like, however, to say something about what is perhaps the most controversial point at issue—the question whether the effort to combat corruption should be left in the hands of the Anti-Corruption Branch (18.11.70).

Branch of the Royal Hong Kong Police Force. There can be no doubt that a very large section of the community holds the view that it should not be, and the Unofficial Members are of the opinion that ideally there should be a separate and independent body to deal with anti-corruption.

That "the setting up of a new organization would show a very serious lack of confidence, both in the Anti-Corruption Branch and in the Royal Hong Kong Police Force as a whole" is, with great respect to my honourable Friend, the Attorney General, not a point which will carry much weight with the man in the street, who may well feel the Government should not refrain from taking effective action against corruption on the ground that this would affect police morale. In this connexion let me remind my honourable Friend that immigration and hawkers control and the licensing and control of motor vehicles were in the hands of the Police not very long ago but are now in the charge of entirely separate departments.

There are, however, matters much more to the point.

First of all, it must be borne in mind that corruption is inextricably interwoven with crime detection which is a specialized task that requires specialist personnel. A new anti-corruption organization could not hope to be effective if it were staffed not by people with expert knowledge in dealing with crime, but by ordinary people.

At the same time, there would be very limited significance in the creation of a new organization if it were run by more or less the same personnel who are now operating the Anti-Corruption Branch. A person's efficiency and honesty do not change merely because the organization for which he works is given a different title or, of course, if he discards or changes his uniform.

Although, therefore, the Unofficial Members share the public feeling that the fight against corruption should not be left in the hands of a branch of the Police, they realize that this cannot be done until a practical solution to the difficulties involved is found. Meantime

[MR KAN] **Prevention of Bribery Bill—resumption of debate on second reading (21.10.70)**

they agree that the Anti-Corruption Branch should continue to be entrusted with its work for a specified period of time, say three years, with, however, one important proviso.

The present Target Committee of senior police officers should be replaced by a Supervisory Committee consisting of persons of unimpeachable integrity and stature from both within and outside the Government. This Committee should be entrusted with the task of ensuring that Government's aim in enacting the bill, that is to say to eradicate corruption, is fulfilled and for that purpose it should have overall supervision of the work of the Anti-Corruption Branch.

We would also propose that at the end of the interim period of three years, Government should review the whole situation and make concrete proposals to this Council.

Finally, I must emphasize that Unofficial Members are most anxious that the bill should turn out to be not just another piece of legislation but a determined and important move towards the elimination of corruption. In combating corruption Government rightly expects the utmost co-operation and assistance from the public, but this co-operation and assistance will not be readily forthcoming unless the public is convinced that Government is resolute in its determination to stamp out this evil from our midst.

MR P. C. WOO:—Sir, I agree with my honourable Friend, the Attorney General, that utmost efforts should be made to eradicate corruption in Hong Kong and to discount the customary belief to pay money or any other benefits to public servants. I therefore support this bill.

However, in some clauses, in my opinion the scope is too wide and may be employed as an umbrella to cover whatever may only be regarded as suspicion rather than actual corruption.

I am particularly concerned with the definition of "advantage" in clause 2 subclause (d), and my Unofficial Colleagues agree with the general public that this particular part of the definition of "advantage" is too wide, which includes whatever form of entertainment, *e.g.* "discussion over a cup of coffee". The words "entertainment" and "benefit of any description" will cause great concern and anxiety to the public. Is it necessary to make such a wide definition of the word "advantage" by including these words?

My honourable Friend, the Attorney General said that under clause 3 there will be a circular issued by the Governor as to what is permitted and what is not. However as regards the general public this cannot

be used as criteria for testing what amounts to "entertainment" or "benefit" of any description. I suggest that it would be much better to delete these words inasmuch as "any other service" or "favour" will cover where a person is lavishly entertained with a view to obtaining some service or favour from him. In other words, if these words are retained the onus of proving whether there is any advantage lies upon the person who receives and the person who gives and they will only be excused if they can prove that there is lawful authority or reasonable excuse in doing so.

In English criminal law it is a fundamental principle that a person is presumed to be innocent until he is proved guilty and it would be quite unfair in this particular case to shift the onus of proof from the Crown to the accused. I propose with the support of my Unofficial Colleagues at the committee stage to propose an amendment to delete the words "entertainment" and "benefit" of any description from subclause (d) of clause 2.

I think the provision in clause 13(2)(b) is obscure. Is it to enable a person authorized by the Attorney General to make enquiries from a banker as to whether the person to be investigated has any bank account or deposit account with him or is it to cover the question of investigation and inspection under subclause (1)(a) and (1)(b)? I see no objection if, in asking a banker as to whether a person to be investigated has any account with him, the law provides that he may do so without producing the authorization of the Attorney General; but on the other hand if it covers investigation and inspection to my mind the person so authorized must on request produce his authorization to the banker. Furthermore, there should be a safeguard to prevent any person from falsely representing to have any authorization from the Attorney General in making enquiries when in fact he has not. I would ask the Attorney General to clarify this point and to make it an offence for a person who falsely represents that he has authority from him.

Clause 17(1) gives power to the Attorney General or to the Director that if there is reasonable cause to believe that in any place other than an office, registry or other room of or used by a public body there is any document or thing containing any evidence of the commission of an offence under the Ordinance, the Attorney General or the Director may, by warrant directed to any police officer, empower such police officer to enter such place, by force if necessary, and there to search for, seize and detain any such document or thing. However by clause 17(2) a warrant is rendered unnecessary if, by reason of the delay likely in obtaining a warrant under subsection (1), the object of the search is likely to be frustrated, any gazetted police officer may exercise in and in respect of such place all the powers mentioned in subclause (1) in as full and ample a manner as if he were empowered to do so by warrant issued under that subsection. To my mind subclause (2)

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directly negates the safeguard of requiring a warrant to enter into any premises, and the words "the object of the search is likely to be frustrated" are too wide and may well lead to abuse of power. Surely the obtaining of a search warrant is a matter of hours only. In the circumstances I will in the committee stage move an amendment by the deletion of subclause (2).

Clause 28 provides that "Where a person is acquitted after trial before the Supreme Court or the District Court for an offence under Part II the court may award to that person such costs as may seem just and reasonable to the court, but not in any case exceeding ten thousand dollars, and such costs shall be paid from moneys provided by the Legislative Council." With due respect I think that a person who has been acquitted should not be restricted to recover his costs against the Crown to ten thousand dollars only. The hearing of a corruption case sometimes lasts not only days but months and in such a case the legal costs would sometimes be quite an enormous amount, much larger than ten thousand dollars. If we follow the English law of taxation the costs follow the event, and the person acquitted should be entitled to taxed costs and not merely a limit of ten thousand dollars. Furthermore, I think that such costs should be paid out of general revenue and not paid from moneys provided by the Legislative Council.

I understand that my honourable Friends, Mr CHEUNG and Mr SALMON, will make observations on the other clauses of the bill and I can say that their views, which are known to me, will have my full support.

MR OSWALD CHEUNG:—Sir, like my honourable Friend, Mr WOO, I think perhaps certain sections of the Ordinance are drafted a little too widely and sometimes, perhaps, inadvertently. May I first refer you, Sir, to clause 10 of the bill which in fact provides that any public servant who maintains a standard of living above that which is commensurate with his official emoluments, or a public servant who is in control of pecuniary resources or property disproportionate to his official emoluments, shall be guilty of an offence unless he gives a reasonable explanation. I wonder whether the words "public servant" have been used inadvertently rather than the words "public servant" as defined in the Ordinance, meaning somebody who is in the employment of the Government. Certainly, the phrase "official emoluments" suggests to me that the more limited definition was intended. When I was an active private in the Defence Force (*laughter*) I received official emoluments of 80 cents an hour for going on parade in the evening and \$8.00 a day if I went out for training over the weekend. It would have been difficult even in those days for me to show that I was not

maintaining a standard of living commensurate with those official emoluments. That source of income is now lost to me. My present official emoluments are nil (*more laughter*) and as I am alive and, as some would also say, kicking, it has become impossible—and not merely difficult—for me to show that I am not living above a standard commensurate with my official emoluments. These observations apply to all who serve Government—who spend a lot of time serving Government—as public servants as defined by this Ordinance in an honorary capacity, and I hope that at the Committee stage it will be possible to correct what appears to me, at any rate, to be an oversight in drafting.

Nevertheless, I have my personal doubts about the advisability of enacting clause 10 at all, even if you limit it to "Crown servants" as defined in the Ordinance. I myself would have been content with the existing provisions of clause 12 of the Anti-Corruption Ordinance, to the effect that in criminal proceedings a Court may take into account possession by the accused of resources disproportionate to his known sources of income. There must be in Her Majesty's service a large number of officers with private means, and I am inclined to think that an officer in the Coldstream Guards would suffer violent, if imperceptible, shock if he were told he was expected to live on his Army pay. I also think that a large number of officers in the Foreign Service would have one eyebrow permanently arched if told the same thing. There was a time in the not so distant past when it was not possible to join certain sections of the public service unless the candidate did have private means, and although such conditions have largely passed, it is my belief that there are wealthy, honourable and independent men whom it would be advantageous for the public service to employ, and that the existence of clause 10 would tend to discourage recruitment. For my own part I would be happier if we did not go into the uncharted seas which that section opens up in front of my eyes, but if my learned and honourable Friend, the Attorney General, after further consideration still deems it right to enact that section, I would not press my opinion upon him to the point of dissent.

Apart from principle, however, there is one other detail of clause 10 that calls for further examination, and that is the provision in subclause 2 which gives a person under investigation an opportunity of making representations in writing to the Attorney General when it is alleged that he is maintaining a high standard of living, or having excessive pecuniary resources. The intention of the safeguard given by clause 10 that no prosecution should be commenced or instituted without the consent of my honourable Friend, I think, would be enhanced if it should be enacted that any written representations made to the Attorney General under the provisions of subclause 2 should not be admissible in evidence if a prosecution is subsequently lodged, unless the accused consents.

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I turn now if I may, Sir, to clause 26 which as drafted would enable the prosecution to comment on the failure of the accused to give evidence on oath at his trial. I think that is going a little too far. The present rule is that a Court or judge may comment either to himself or to a jury if the accused does not give evidence on oath on his own behalf; it is an effective rule and I should have thought that it would be sufficient if the present rule were maintained. If my learned Friend agrees with me there, perhaps clause 26 could be dropped altogether as without it the Common Law rule would apply, namely, the Court can comment on the failure of the accused to give evidence.

I touch next if I may upon section 31, which by subclause 2 gives the Police power to arrest a person, notwithstanding that the consent of my learned Friend has not been obtained to the institution of a prosecution, and it further gives the Police power to detain in custody such a person for 7 days. It has been thought generally when enacting laws of this kind to limit the time of detention to 48 hours but, recognizing the consent of my learned Friend may have to be sought over weekends and holidays, I would suggest certainly for his peace of mind and his convenience that the power to detain in custody should be limited to 3 days.

I now come to—forgive me—some lawyer's law. (*Laughter.*) I won't be long. The existing Anti-Corruption Ordinance makes it an offence to corruptly give or corruptly receive, which means giving or receiving with some improper motive. The word "corruptly" has received judicial interpretation in many parts of the Commonwealth where Ordinances similar to our Anti-Corruption Ordinance exist, and it is a word the meaning of which is known to lawyers, much time and money having been spent in Court in elucidating its meaning. To abandon it and to put in its place clause 4, the phrase "without lawful authority or reasonable excuse" would be, I think, to abandon most of that effort and make us lawyers start afresh in the Courts in elucidating the meaning of this phrase. So far as I am aware no case, except one, in Hong Kong has been decided against the Crown because the Crown failed to show that a gift was corruptly received—that is to say with an improper motive—but should the circumstances of that particular case, of which my learned Friend is aware, arise again, it would be amply covered by the provisions of clause 3 of the bill, where the Crown does not have to prove any corrupt intent or improper motive and where, if the Crown proves simply that a Crown servant has accepted any advantage, that Crown servant is guilty of an offence. I would ask my learned Friend to accept at the Committee stage an amendment to restore the word "corruptly" to its rightful place in clause 4.

Whilst on that subject I confess I am somewhat astounded that except in the definition of the word "Director" in clause 2, the word "corruption" is nowhere used in the Ordinance. I am slightly staggered by it, as it is an Ordinance which is aimed not only at bribery but at corruption whether it be in Crown servants or in public servants.

Finally, like the rest of my Unofficial Colleagues, I fully support what already has been said by my honourable Friend, Mr KAN, as to the proper body to deal with matters involving corruption.

I would leave the investigation of corruption in the hands of the Anti-Corruption Branch of the Police, certainly for the period of 3 years which has been referred to by my honourable Friend, but as a start I would amend the definition of the word "Director" in clause 2 of the bill, where he is referred to as the person for the time being in charge of the Anti-Corruption Branch of the Royal Hong Kong Police Force. I would as a start amend that definition to say that the "Director" means the person for the time being appointed by the Governor to be in the charge of the Anti-Corruption Office without in any way limiting the holder of that office to a member of the Royal Hong Kong Police Force. The success of this proposed bill when enacted, Sir, will depend in large measure on the co-operation of the public and, from the many sources of information which are open to my Unofficial Colleagues and myself, it is our firm belief that public opinion in support of this bill would be secured if a supervisory body of the kind indicated by my honourable Friend, Mr KAN, were established.

This is not a matter on which I feel the Royal Hong Kong Police Force need think goes to confidence in them; after all, the Police Force must act in accordance with the orders of the Government, and whether these orders are conveyed through the Secretariat or through a supervisory body of the kind indicated by my learned Friend cannot in my belief be a matter of moment. Sir, with those remarks I would support the bill.

MR SALMON:—Sir, I wonder how many of us sitting in this Council, in spite of all our many and varied duties elsewhere, have personally come across bribery at first hand. We all have heard reports and rumours that it is widespread here and rampant there; that detectives in the police force take bribes, that the Fire Service won't give permits without being rewarded, that building plans don't get passed until the right man in PWD has been accommodated, that there is only one way to get a telephone installed quickly, that Power Company engineers have to be looked after, and so on. Even the Star Ferry and Peak Tramways have been put in the Schedule included in the bill, so I can only

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suppose the advantage of getting a few free rides is something also to worry about. But as my honourable Friend, the Attorney General, has said, it is impossible to assess the extent to which society in Hong Kong is afflicted with corruption, and do any of us really know whether we live in a thoroughly corrupt community or whether the problem is over-emphasized? I personally believe, naive though some may feel this to be, that a badly corrupt community will not prosper, and that Hong Kong does prosper is in some measure due to the absence of widespread serious corruption.

I myself in another country, and many years ago, have been accused of taking what is termed an advantage. This was in connexion with passage tickets which I controlled from Malaya to India, at a time when there was such a shortage for the huge numbers who wanted to travel in the post war period that a black market inevitably sprang up and tickets sold by my office were changing hands for sums as much as twenty times their value. I must admit I had a real chance to clean up. One day, I was called to the office of the Chief of Police to be questioned on a report that I had been taking money. A sergeant was summoned to qualify his report with some evidence which I am glad to say he was quite unable to do, and finally admitted that there was no more substance to his report than because I was in the choice position of having all the tickets in my hands, I must therefore be taking large sums for myself. I suppose he really could not believe that anyone in that position would fail to do so, and this was enough for him to report me. After I told the Chief of Police what I thought of him and his lousy police sergeant, I got an apology.

I have told this little story to illustrate that in addition to the traditional belief that it is not necessarily objectionable to secure a favour from a public servant, the belief may also exist fairly widely that those in a position to take bribes are sure to be taking them. Our society in Hong Kong is not as rotten as that and I believe, whole-heartedly in agreement with my honourable Friend, the Attorney General, that the great majority of public servants, both in Government and out of it, are honest men. But a few rotten apples in the basket contaminate good apples, and corrupt men contaminate honest men, and I welcome this bill subject to the amendments that are to be prepared in an effort to eradicate corruption at all levels. The powers of investigation as detailed in clauses 13 and 14 are severe, though I do not quarrel with them and my honourable Friend, the Attorney General, will not authorize such investigations lightly nor decline to authorize such investigations lightly. We need to go after not just the small fry giving or taking a few bucks for a small favour, but to put into the

net the big shots, who we are told have made large sums by bribery in past years, whoever they may be and wherever they are found, and whatever their position.

Sir, the success of the measures contained in the bill lies not only with the Anti-corruption Bureau, who will need to win the confidence of the public by what they achieve and how they go about their task, but also, as has already been said, by the whole community. I hope the support of all will be forthcoming and share the view of my honourable Friend, Mr Y. K. KAN, that after a period of 3 years or so there should be a further review so that if what is proposed in the bill has not worked out satisfactorily, new measures may be considered by this Council.

THE ATTORNEY GENERAL (MR ROBERTS):—Sir, I fully appreciate the force of the points made by the Honourable Mr WOO about the wide scope of the bill which, due to the extensive meaning of the word "advantage", seeks to control all forms of benefit which may be given or received with corrupt motives.

The problem is to ensure that the law shall prohibit all the common forms of bribery, without, if possible, interfering with innocent transactions. This is not an easy task and to exclude any class of activity may have the effect of defeating the whole object of the bill. If I might take an example, if for instance loans were excluded from the definition of "advantage" it would be likely that many bribes would be disguised as loans, thus enabling the recipient to evade the penal sanctions of the bill. These considerations should, I suggest, make us cautious to narrow the definition of "advantage" in such a way as to leave escape routes for the corrupt.

The suggestion has been made that entertainment should not be regarded as an advantage and thus, whatever the motives of the person providing or accepting it may be, not subject to the bill at all. I accept the fact that entertainment is an integral, and even unavoidable, part of commercial life, that a substantial amount of business is done during, or is induced by, entertainment and that it is often given as a token of thanks for business received.

On the other hand, the entertainment of public servants on a lavish scale is something which can easily become a public scandal and should surely be strongly discouraged, though I recognize that a modest interchange of hospitality between public servants and members of the public is necessary and even desirable.

One way of trying to reconcile these conflicting considerations might be to amend clause 9, which is the clause most likely to affect the acceptance of entertainment by persons who are not Crown servants, so

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as to provide that an agent who accepts an advantage, which would include entertainment, with the consent of his principal shall be deemed to have a lawful excuse for so doing.

However, such an amendment is not without its dangers, because its effect would be to enable principals, by giving their consent, to legalize transactions by their agents which are essentially corrupt and which operate to the detriment of those with whom the agent is doing business with, even though they may not prejudice the principal.

Another method would be to exclude entertainment from the definition of "advantage" in clause 2 which was I think the solution proposed by the honourable Mr WOO. If this were to be done it would be necessary, in my view, to devise a suitable definition of the word "entertainment", which would not be easy. Merely to remove the word "entertainment" from paragraph (d) of the definition of "advantage" would leave it uncertain as to whether or not entertainment falls within one of the other terms in that definition. Furthermore, if entertainment were removed in this way, it would be necessary, in my view, to provide that the acceptance of entertainment by a Crown servant should be subject to control and that he would be liable to disciplinary proceedings if he accepted entertainment on such a scale or in such circumstances as to bring the public service into disrepute.

This is a problem, as I think I have indicated, of some considerable difficulty and I cannot, at this stage, commit the Government to supporting the amendments to clause 2 which have been proposed by the honourable Mr WOO, but I do undertake to discuss them with him before the Committee Stage is reached in two weeks time to see whether we can between us come to a satisfactory form.

Also, perhaps I might mention in relation to clause 2, it has been pointed out that the definition of "public servant" is so framed at the moment that a shareholder of one of the companies listed in the Schedule would rank as a public servant for the purposes of the bill and this was certainly not intended, and I agree that the definition should be amended at the Committee Stage to put this beyond doubt.

The honourable Mr CHEUNG has mentioned clause 4, and there are also other clauses in Part II of the bill, where it is provided that an accused shall be guilty of an offence if he does certain things without lawful authority or reasonable excuse. It has been argued that these clauses ought to be amended so as to delete this phrase and to substitute the term "corruptly", which appears in other legislation and has from time to time been interpreted by the courts.

I am worried lest the adoption of this proposal would significantly weaken the scope and effect of Part II of the bill, since it would oblige the Crown, before an accused had a case to answer, to establish that the soliciting or acceptance of a bribe was attributable to a corrupt motive. Unfortunately, past experience has been that this is difficult, and many accused persons have not been charged, and some have been charged but acquitted, because the prosecution was not able to establish that a payment of money in suspicious circumstances was corrupt but had to leave it to the court to draw an inference of corruption, which it was sometimes reluctant to do.

As the bill is now drafted, the Crown will need to prove only a payment to the public servant, or agent, or other person. It will then be for the accused to show that he received it for reasons which are unconnected with bribery and I do not think that this places an unreasonable burden upon an innocent man. I therefore believe that the adoption of the honourable Member's suggestion would reduce the effectiveness of Part II to an undesirable degree.

The contexts of both subclause (1) of clause 8 and of clause 10 do show that these provisions should be confined to Crown servants, and should not extend to public servants in the wider sense of the term, and I would therefore support amendments to this effect. However, to remove the clause altogether would, in my view, be unfortunate since I believe that the deterrent effect of its presence will be of substantial value in the future.

The question has been asked, with regard to the operation of clause 10, as to whether a Crown servant, who has committed an offence against the clause, could still be convicted of it if he subsequently resigned from Crown service before he is charged or tried.

I myself consider that an ex-Crown servant would remain liable to conviction for an offence committed by him under clause 10 while he was a Crown servant. If I may give an analogy, it would not be a defence to a charge of assaulting a police officer that the officer was no longer a member of the Force when his attacker was tried for the offence. Nevertheless, the matter should be put beyond doubt and I will re-examine the clause before the Committee Stage is reached.

Concern has been expressed that Crown servants would be reluctant to offer an explanation to me under clause 10, for fear that what they said would be used against them in a subsequent prosecution. I would like to assure honourable Members that the opportunity given by the clause to make representations is intended to be a protection to the Crown servant and not a trap. Consequently, such representations would not be put in evidence by the Crown, unless the Crown servant

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so agreed. However, I would have no objection to a specific provision to this effect in clause 10 being included at the Committee Stage as suggested by the Honourable Mr CHEUNG.

I agree that clause 13 requires some clarification and that a police officer or other Crown servant acting under an authorization from me should produce the authorization to any person from whom information is required, when he is acting under subclause (1) of clause 13. Further, I see no objection to the addition to clause 13 of a subclause making it an offence for a person to falsely represent that he has an authorization of the Attorney General under that clause.

On reconsideration, I agree that it will very seldom happen that the delay in obtaining a warrant under subclause (1) of clause 17 will be such as to frustrate the object of a search. Consequently, I would support the deletion of subclause (2) of clause 17, so that the powers conferred by clause 17 will not be exercisable unless a warrant has been issued under subclause (1).

The deleting of the reference to the prosecution in clause 16 would restore the common law position, which is that the Court may comment on the failure of the accused to give evidence on oath but the prosecution may not. I concede that to allow the prosecution to do so could be said to sanction a practice which might cause unreasonable prejudice to the accused. I would prefer to achieve the objective of the Honourable Mr CHEUNG in this way rather than by a deletion of the entire clause.

Clause 28 is not, of course, intended to provide for the automatic award of costs to any accused person who is acquitted. It merely confers on the courts a power to award them. If the usual practice is followed, they are likely to be awarded only if the court is satisfied that it was unreasonable for the Crown to have brought a prosecution against the accused. Because it is thought that few awards are likely to be made, the Government is agreeable to the limit of \$10,000 being removed, provided that, as proposed, the amount of them is taxed.

I agree that clause 31 should be amended so as to ensure that a person may not be charged with an offence under clause 10 unless my sanction is first obtained. Also that a person may be remanded in custody or on bail after being charged for a maximum of 3 days, instead of seven, unless my consent is obtained to a prosecution under Part II.

I now turn to that aspect of the bill which has provoked more discussion than any other, both in this Council and outside, namely,

the question of whether or not the administration of its provisions should be entrusted to the anti-corruption branch of the police.

I think that I should remind those who urge that there should be a separate office that the exercise of a significant proportion of the powers contained in the bill is subject to my direction and that consequently a considerable degree of control over the enforcement of the bill will rest with persons from outside the branch. I have already referred to the increased success enjoyed by the branch in the past two or three years and the Government does not accept the suggestion that the record of the branch is such that a change is required for this reason. And I think that it is pertinent to mention the fact that the initiative for the reform of the present somewhat unsatisfactory law on corruption came from the branch itself.

Nevertheless, it is apparent that a residue of concern remains, among many members of the public, that whether the present anti-corruption branch, or some other organization, is responsible for the operation of this bill, there should be some further involvement of persons who are not police officers.

As I indicated when moving the Second Reading, the Government has already recognized the existence of this feeling by its decision to provide for the permanent presence within the branch of a Principal Crown Counsel as my representative. However, it has become apparent from the reactions of members of the public as well as from the speeches of honourable Members that some further provision needs to be made for the participation of persons other than police officers in the administration of the bill. The Government's recognition of this must not be taken to indicate that it has any lack of confidence in the zeal or integrity of the anti-corruption branch, but only that it realizes that its attitude is not universally shared.

The Government therefore intends to follow the recommendations of the Advisory Committee on Corruption which, in its report on this bill early in 1969, advised that the Anti-Corruption Branch should remain part of the Royal Hong Kong Police Force for a period of three to five years and that the composition of the Target Committee should be widened.

With regard to the first of these recommendations, I will support, at the Committee Stage, an amendment designed to alter the definition of "Director" to mean the person appointed by the Governor to be in charge of the Anti-Corruption Office. This will, I hope, demonstrate that the Government does not discount the possibility that, at the end of the period of three to five years, when the position will be reviewed, a decision might be taken to establish a new anti-corruption organization, independent of the police force. Furthermore, the new definition

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will show that the post of Director, the holder of which will be appointed by the Governor, is in a special category.

However, to avoid misunderstanding, I should say that although this new definition will be in such terms as to empower the Governor to appoint as Director a person who is not a member of the Royal Hong Kong Police Force, or even someone who is not a police officers, it is the intention that the appointment of Director shall, for the present, be made from among serving officers of the force.

I must, I think, briefly describe the history and role of the Target Committee, to which I have just referred. This Committee should not be confused with the Advisory Committee on Corruption, which is composed mainly of unofficials, under the chairmanship of Sir Cho-yiu KWAN, is appointed by the Governor and advises him on general questions of policy in this field.

The Target Committee, which was set up by the Commissioner of Police in 1961, consists of a Deputy Commissioner of Police, the Director of Criminal Investigation, the Director of the Anti-corruption Branch and a representative of the Establishment Secretary. The terms of reference of the Target Committee are to assess information on corruption and to decide which allegations shall be investigated and in what priority by the anti-corruption branch. It also determines what information shall be passed to other Government departments or to other parts of the police force (for example, to the CID or to the Commercial Crime Office) and is responsible for keeping the Commissioner informed of the incidence of corruption generally and of any important cases of this kind.

The Advisory Committee on Corruption has recommended that the composition of the Target Committee should be widened, so as to achieve a majority of members who do not belong to the police force. This recommendation has been accepted in principle by the Government, which recognizes that a number of changes in the composition and functions of this Committee will be necessary to enable it to discharge more effectively the heavier burdens which will fall upon it by virtue of this bill.

I should perhaps stress that the Target Committee is set up administratively and is not mentioned either in any existing legislation or in the bill which is before Council. It is, however, recognized that the existence and composition of this Committee is a matter of legitimate public interest, and that public confidence in the Committee will be an important factor in the successful operation of the legislation we are considering.

For these reasons, the Government has decided that a number of important changes should be made with regard to the personnel and functioning of the Target Committee. Its composition will be altered so as to provide that a majority of its members will not belong to the police force. It is intended that a Principal Crown Counsel, the Establishment Secretary or his representative and an independent Head of a Government Department—the Director of Audit has been suggested—should all sit on it and the addition of other persons will be considered.

Secondly, the Director of the Anti-corruption Office (as it will be called if the amendment of the definition of "Director" in clause 2 is accepted) will not be a member. It will be his duty to place before the Committee all complaints of corruption which reach him. The Committee will decide which shall be investigated and in what priority. The Director of the Office will be obliged to report to the Committee as to what action he has taken with regard to the matters which he has been directed to investigate by the Committee, which can thus be properly described as exercising a supervisory function.

Thirdly, facilities will be provided so as to enable members of the public to address complaints of bribery directly to the Committee, since some members of the public may, for a variety of reasons, some of which are creditable and some discreditable, be reluctant to lodge complaints at a police station.

Fourthly, the Committee will in future be appointed by the Governor, which will, I believe, demonstrate the importance which is attached to its work and to the selection of its members.

These measures have already been decided in principle, and I believe that they should go a long way towards satisfying those members of the public who, while they give their support to the objectives of the bill, also believe that confidence in its firm and effective administration will be strengthened by an impartial influence.

In due cause, if this bill is enacted, it will be for the Governor in Council to reach a decision as to whether or not non-official members should be appointed to the Target Committee and whether its present somewhat ominous name should be replaced. It will also be for him to decide to what extent the terms of reference of the existing Committee are adequate to its new role. However, in considering this, the difficulties must be borne in mind which would follow if it were changed from a body which decides what shall be investigated into one which itself investigates, a task which a part-time committee composed mainly of persons who are not professional investigators cannot undertake effectively. Furthermore, any major changes in its jurisdiction would need to avoid any conflict with my own constitutional and statutory

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responsibilities for the institution and control of prosecutions, and those of the Commissioner of Police for the prevention and detection of crime.

In conclusion, I would like to express my appreciation of the careful attention and thought honourable Members have brought to their consideration of this bill. It will, I believe, be much improved by those amendments which may be made to it as a result of their suggestions.

I do not pretend, and indeed it would be folly to expect, that the enactment of this bill will root out corruption. Nevertheless, I hope and believe that it will, in the course of time, prove to be a substantial deterrent to bribery and justify the confidence of those of us who see it as a significant step towards the achievement of decent standards in public and business life in Hong Kong.

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).

HAWKER CONTROL FORCE (AMENDMENT) BILL 1970

Resumption of debate on second reading (4th November 1970)

Question again proposed.

Question put and agreed to.

Bill read the second time.

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

Committee stage

Council went into Committee.

URBAN COUNCIL (AMENDMENT) (NO 2) BILL 1970

Clauses 1 to 9 were agreed to.

MEDICAL REGISTRATION (AMENDMENT) BILL 1970

Clauses 1 to 7 were agreed to.

RESETTLEMENT (AMENDMENT) (NO 3) BILL 1970

Clauses 1 was agreed to.

Clause 2.

DR CHUNG:—Sir, the main purpose of the Resettlement (Amendment) Ordinance No 25 of 1966 was to give Government the necessary power, firstly, to install circuit breakers in individual factory premises for localizing electrical breakdowns to the individual factory premises concerned and, secondly, to charge the tenant of such premises the cost of the installation.

At that time, it was thought that such circuit breakers exclusively used by individual tenants would be installed on or in individual factory premises. However, for some reason, such circuit breakers were installed outside, and not in or on, the actual premises. In these circumstances, Government has no power to charge the tenant the cost of such circuit breakers. It is understood that the main and, in fact, the only purpose of this bill is to put right this apparent drafting error.

However, the wording of clause 2 of the present bill may introduce another drafting error in that it empowers Government to charge the tenant not only the cost of circuit breakers which are for his exclusive use but also the cost of other circuit breakers which serve the whole floor or which even are for the whole resettlement block. I believe Government has no intention to charge the tenant the cost of circuit breakers other than those specially and exclusively for his use.

Sir, I therefore suggest that my honourable Friend, the Commissioner for Resettlement, either make appropriate changes on the wording in clause 2 of the present bill, or at least give this Committee his assurance that no charges will be levied on circuit breakers which are not specially or exclusively used by a particular tenant. Unless this proposal is accepted, Sir, I regret that I cannot support this clause.

MR PAUL K. C. TSUI:—Sir, I can assure this Committee that a tenant of a resettlement factory will be charged only for a circuit breaker that serves his own factory. He will not be charged for circuit breakers that serve other factories as well as his own.

Clause 2 was agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Urban Council (Amendment) (No 2) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

DR G. H. CHOA reported that the Medical Registration (Amendment) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

MR TSUI reported that the Resettlement (Amendment) (No 3) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Order No 8 I now adjourn the Council until half past two o'clock on Wednesday the 2nd of December.

Adjourned accordingly at two minutes past Four o'clock.