

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 16th December 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

SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP

THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)

MR GRAHAM RUPERT SNEATH, QC, JP

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*Acting*)

MR DENIS CAMPBELL BRAY, JP

THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)

MR CHARLES PHILIP HADDON-CAVE, JP

THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP

COMMISSIONER OF LABOUR

THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP

DIRECTOR OF URBAN SERVICES

THE HONOURABLE JAMES JEAVONS ROBSON, JP

DIRECTOR OF PUBLIC WORKS

THE HONOURABLE DONALD COLLIN CUMYNN LUDDINGTON, JP

DISTRICT COMMISSIONER, NEW TERRITORIES

THE HONOURABLE JOHN CANNING, JP

DIRECTOR OF EDUCATION

DR THE HONOURABLE GERALD HUGH CHOA, JP

DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP

COMMISSIONER FOR RESETTLEMENT

THE HONOURABLE JACK CATER, MBE, JP

DIRECTOR OF COMMERCE AND INDUSTRY

THE HONOURABLE KAN YUET-KEUNG, CBE, JP

THE HONOURABLE WOO PAK-CHUEN, OBE, JP

THE HONOURABLE SZETO WAI, OBE, JP

THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP

THE HONOURABLE 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:—	
Interpretation and General Clauses Ordinance. Change of Title of Person	177
Prisons Ordinance. Prison (Amendment) (No 2) Rules 1970	178
Public Health and Urban Services Ordinance. Public Health and Urban Services (Amendment of Fourth Schedule) (No 2) Order 1970	179

Sessional Papers 1970-71:—

No 30—Accounts and Statements of the Grantham Scholarships Fund for the year ended 31st August 1970 (published on 16.12.70).

No 31—Report of the Brewin Trust Fund Committee on the administration of the Fund for the year ending 30th June 1970 (published on 16.12.70).

Oral answers to questions

Traffic congestion around the Central Market

1. MR Q. W. LEE asked:—

Is the Government aware of the traffic congestion during peak hours in the area around the Central Market and especially in front of the Central Fire Station, and is the Government taking any steps to improve the situation in particular to avoid delay or obstruction to fire engines coming in and out of the Fire Station?

MR J. J. ROBSON:—Sir, the question of traffic congestion in the vicinity of Central Market was raised in this Council on 11th March 1970 by Mr FUNG Hon-chu in respect of the routing of public light buses in Jubilee Street. The alternative then suggested by Mr FUNG of routing traffic further along Queen's Road Central was unacceptable and it was explained that there was no easy solution to the problem.

Congestion in this area is due to the need to provide facilities for lorries loading and unloading goods at Central Market and the activities

of public light buses in Jubilee Street. This location is one that is continually under close scrutiny but there seems very little that can be done in the immediate future to bring about an improvement. Public light buses contribute greatly to the congestion but to prohibit the activities of these buses in Jubilee Street will only transfer the problem to Queen's Road or Des Voeux Road. However, better utilization of the lorry waiting spaces in Jubilee Street and Queen Victoria Street will achieve some improvement and although enforcement will be extremely difficult, the traffic police have agreed to pay special attention to this area.

Although no improvement immediately can be envisaged, the widening of Connaught Road Central should have a favourable effect on the area. This project has recently started and is due for completion in mid-1972. When completed, it should attract traffic from Queen's Road Central and Des Voeux Road Central and reduce congestion around the Central Market. In addition, the completion of this project will enable some re-routing of traffic to improve circulation in the area generally.

My honourable Friend asks about delays caused to fire engines leaving the Central Fire Station. I am informed by the Director of Fire Services that this is very rare. The Fire Station is provided with overriding control of traffic lights in Des Voeux Road Central to facilitate the speedy movement of fire appliances from the station and this is generally effective. Nevertheless the location of this station is not ideal and consideration is being given to the possibility of moving the Fire Station elsewhere providing a suitable site can be found.

Crime in multi-storey car parks

2. MR SZETO WAI asked:—

Will Government introduce security measures in Government-operated multi-storey car parks against robbery with violence, several cases of which occurred recently?

MR D. R. W. ALEXANDER:—Sir, after a number of robberies at the Garden Road car park in May and early June, security arrangements there were considerably tightened up, while staff in other car parks were alerted to exercise increased vigilance. I hope that honourable Members will agree that it would not be in the public interest for me to state precisely what security measures are now in force, but I can assure them that, with the help of the Police, I shall continue to do everything possible to ensure that these car parks are rendered safe.

Oral Answers

MR SZETO:—Sir, would Government consider closing the subsidiary exit on the fourth floor of the Garden Road car park in order to stop any easy escape?

MR ALEXANDER:—This has already been taken care of, in part, Sir. It does close at a certain time, but we may have to consider closing it a little earlier, or completely.

Siu Lam Hospital

3. MR SZETO asked:—

What is the progress in the construction of the Siu Lam Hospital and when will it be opened for use by the public?

MR ROBSON:—Sir, I regret to say that progress on the Siu Lam Hospital for the mentally sub-normal has been unsatisfactory.

On the advice of the private architect appointed by Government for this project, the contract for the construction of the hospital was re-entered in April 1970 due to unsatisfactory progress by the contractor. At this time 40% of the work had been completed.

It was then necessary to appoint private quantity surveyors to measure the work so far completed and to prepare bills of quantities and new contract documents for the work remaining to be done. New tenders were then invited and on the 9th of this month the Central Tender Board recommended acceptance of a contract and subject to approval by the Finance Committee of this Council of the extra funds involved, this should result in completion of the work within the next 9 months.

Thus it is expected that the building will be completed ready for occupation by September 1971. I understand from my colleague, the Director of Medical and Health Services, that he hopes to bring the hospital into use very shortly thereafter.

Police stations in resettlement estates

4. MR OSWALD CHEUNG asked:—

Which of the resettlement estates do not at present have a police station? In view of the many crimes of violence being committed in resettlement estates, will Govern-

ment establish substantial police posts in each of the resettlement estates, pending the construction of police stations?

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—Sir, the answer to the first part of the question is that none of the 23 resettlement estates is provided with a police station of its own. They are served by police stations which also serve other sections of the community in the neighbourhood. The general policy of Government has been to integrate our resettlement estate communities into the general community rather than to segregate them, and police deployment should, I think, follow the same lines.

As regards the second part of the question, there is no evidence or indication, statistical or otherwise, that the crime rate, including the rate of violent crime, in resettlement estates is above the Colony average. Moreover there is evidence that members of the public still prefer to go to police stations even where police posts have been set up.

Nevertheless it is recognized that development in particular areas, whether by resettlement estates or more generally, may outstrip the police station building programme, and as a result, existing stations may become for a temporary period too distant. In such cases police posts are set up pending the completion of a proper sub-divisional station, as for instance at Chai Wan at the moment, and as, for instance, at Tsz Wan Shan where another post will be shortly established.

But it is the view of the Commissioner of Police, which I share, that policing and service to the public is more effectively provided by fully equipped and serviced sub-divisional police stations, supported by a network of mobile units, rather than by the dispersion of manpower and services required by small posts—save in the special and ephemeral circumstances which I have defined.

Industrial land in Tsuen Wan

5. MR WILFRED S. B. WONG asked:—

In view of the demand for industrial land in Tsuen Wan and in the light of the fact that many holders of letter "B" are not exercising their right to exchange land, has Government any plan to limit the period during which holders of these letters must apply for conversion?

MR D. C. C. LUDDINGTON:—Sir, perhaps I should start my answer to my honourable Friend's question by referring to my reply dealing with this subject on 4th June 1969 and reminding honourable Members

[MR LUDDINGTON] **Oral Answers**

that a letter "B" is a letter given to a landowner who surrenders his land when it is required by Government within planned layout areas in the New Territories. This letter, which is a negotiable document, entitles the owner to an exchange for the land surrendered subject to the payment of any appropriate premium. Public announcements of offers of newly formed land for exchange are made from time to time where engineering works are completed and the land is fit for modern development.

In Tsuen Wan, including in this context Kwai Chung, the position is that all the industrial land ready for development has already either been granted in exchange for such letters "B" or is the subject of current negotiations. Thus any reluctance of holders of letters "B" to apply for their exchange rights is not in any way holding up industrial development. The holders of letters "B" would only be in a position to prevent prospective developers from obtaining industrial land in Tsuen Wan if additional land was ready for development.

As the result of the recent sales of sites for the container terminal berths new areas of land will be made available as the hills are used for the reclamation of the container berths. This will produce some 80 acres of industrial land by about the end of 1974.

Finally, perhaps I should emphasize that although not much fresh industrial land is going to become available in Tsuen Wan and Kwai Chung, a very large area of flatted factory space is becoming available. Between 1st January and 30th September this year 1,164,000 *sq. ft.* gross of factory space or 960,000 *sq. ft.* of useable factory space has been available in 16 new factory buildings in the area. As on 30th September 1970, a total of 62 factory buildings were under construction and a further 67 plans for such buildings had been approved prior to construction. The development envisaged in most cases is over 10 storeys.

New industry involving foreign participation

6. DR S. Y. CHUNG asked:—

Will Government give the following statistics relating to new industrial establishments in Hong Kong involving foreign participation:

- (a) the number and size (in terms of investment and number of employees) in 1969 and in 1970;
- (b) the number of enquiries and investigations dealt with by the Commerce and Industry Department, and the number of successful cases during the past five years?

MR J. CATER:—Sir, the Commerce and Industry Department now has a record of 33 industrial establishments which are known to have a foreign investment interest and which commenced production in 1969. These factories represent a working force of 5,456 at the present time and an estimated total investment of just over HK\$50 million.

During 1970, the Commerce and Industry Department has recorded 19 new industrial undertakings with some degree of foreign financial participation. These factories employ 544 workers and represent an estimated \$10 million in total investment.

It will be seen from these figures that there has been a continuing interest by foreign investors in Hong Kong.

During the last five years, *i.e.* 1966 to 1970 inclusive, the Commerce and Industry Department has dealt with 228 firm enquiries from foreign companies interested in setting up some kind of manufacturing enterprise in Hong Kong. Action on some of these enquiries is not completed but it is known that twelve have resulted in factories being established successfully in Hong Kong.

Training of technical tutorial staff

7. DR CHUNG asked:—

Has Government adequate plans and facilities for the training of technical teachers and instructors in order to promptly meet the increasing and urgent demands in the 1970's for technical education at the lower levels such as that in technical institutes and vocational schools?

MR J. CANNING:—Sir, my honourable Friend will be aware that the Morrison Hill Technical Institute has a Department of Technical Teacher and Workshop Instructor Training, which at present provides full-time training for 20 students on a one-year course and 40 on a two-year course. The physical facilities are such that this rate of production of 40 teachers per year could if necessary be increased. Staffing of the Department has not been easy, but I do not anticipate any insuperable obstacles.

As my honourable Friend's question indicates, the extent of the need is dependent mainly on the development of Technical Institutes and schools having extensive practical facilities. So far as approved policy and projects are concerned, there is at present no justification for increasing the scale of this training. Of the 20 trainees who emerged from the first one-year course in 1970, only 16 have secured teaching positions; the first two-year course is not yet completed. It will be appreciated that serious over-production would not merely be a waste of public funds; it would also have an adverse effect on the

[MR CANNING] **Oral Answers**

morale of potential trainees, with possibly long-term consequences on the quality and numbers of applicants.

I can however give a firm assurance that my officers are very conscious of the need to gear such training to expected requirements as closely as possible, difficult as this is in an open-market situation; if and when there are grounds for adjusting the programme, I shall make the necessary recommendations without delay.

DR CHUNG:—Sir, my honourable Friend is no doubt aware that the polytechnic which is being planned will have a full time student body of 4,000 by 1974 and 10,000 by 1980. To balance this student body size, we should have in technical institutes and various vocational schools a total full time student size of about 15,000 in 1974 and 40,000 in 1980. With a generous student/teacher ratio of 20:1 it will mean a requirement of 2,000 technical teachers during the 1980s. Will my honourable Friend assure this Council that Government will be able to meet this increased demand if required?

MR CANNING:—I am not sure, Sir, that I caught all of that question. I am not certain that the expansion envisaged in the question will in fact occur at the time and date mentioned by my honourable Friend, but perhaps if he would like to put the question on another date, I will attempt to give a more detailed answer.

DR CHUNG:—Sir, what I am trying to obtain is an assurance from my honourable Friend. At the moment the facilities will be sufficient to teach or to produce 40 technical teachers a year. Will Government be able to move faster if the need arises for more than 40 teachers a year?

MR CANNING:—I did hope to have indicated in my answer, Sir, that we are watching the situation very closely and if it seems necessary to expand our present teacher training facilities, I would make the necessary recommendations as soon as this was necessary.

Government business
Motions

DEFENCE REGULATIONS (CONTINUATION) ORDINANCE

THE ATTORNEY GENERAL (ACTING) (MR G. R. SNEATH) moved the following motion:

—

It is hereby resolved, pursuant to section 6 of the Defence Regulations (Continuation) Ordinance, that the duration

of the said Ordinance be extended for the term of one year with effect from 1st January 1971.

He said:—Sir, I move the resolution in my name on the Order paper, to extend the duration of the Defence Regulations (Continuation) Ordinance for a further year, with effect from 1st January of next year.

This Ordinance, Sir, keeps in force a number of defence and finance regulations, which are still considered to be necessary, particularly for exchange control and import and export licensing and I therefore move accordingly.

Question put and agreed to.

ILLEGAL STRIKES AND LOCK-OUTS ORDINANCE

MR R. M. HETHERINGTON moved the following motion:—

It is hereby resolved, pursuant to section 8 of the Illegal Strikes and Lock-outs Ordinance, that the duration of the said Ordinance be extended for the term of one year with effect from 1st January 1971.

He said:—Sir, I move the resolution standing in my name on the Order Paper. The effect of this resolution will be to keep the Illegal Strikes and Lock-outs Ordinance in force until 31st December 1971.

When I moved a similar resolution last December, I said that we were awaiting the views of the Secretary of State for Foreign and Commonwealth Affairs on proposals for amending the Ordinance. These were subsequently received. After considering them, it was decided that it would be preferable to prepare new permanent legislation to deal with disputes in essential services which could replace the Illegal Strikes and Lock-outs Ordinance. A start has been made on the study of the problems involved. Meanwhile, until it is possible to complete this study and to draft appropriate legislation, it is desirable to keep the present Ordinance in force. The resolution accordingly does so.

DR CHUNG:—Your Excellency, we have frequently heard about the hardship suffered by the general public in England as a result of strikes in public utilities and servicing industries. The month-long strike of the garbage disposal workers, which ended only about six weeks ago, was followed last week by the work-to-rule strike of the electrical power station workers. This go-slow strike not only has plunged Britain into sporadic darkness for the last whole week but also has caused much social disruption and economic setback.

[DR CHUNG] **Illegal Strikes and Lock-outs Ordinance**

We, in Hong Kong, must safeguard ourselves against these undesirable strikes and irresponsible actions. One of the main objectives of the Illegal Strikes and Lock-outs Ordinance is to protect the public or national interest from strikes by employees and lock-outs by employers of a compelling nature in any of the services where a work stoppage or go-slow would inflict hardship and losses upon the community or would adversely affect the health and safety of the general public. Sir, I therefore have pleasure in supporting the motion before Council.

Question put and agreed to.

First reading

INTESTATES' ESTATES BILL 1971

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

Second reading

INTESTATES' ESTATES BILL 1971

THE ATTORNEY GENERAL (ACTING) (MR SNEATH) moved the second reading of:—
"A bill to amend the law relating to the distribution of intestates' estates."

He said:—Sir, three hundred years ago, in 1670, the Statute of Distribution laid down who inherited the property of a person who died without making a Will. This scheme of distribution is still the basis of the law in Hong Kong. It is not perhaps surprising that in the seventeenth century women fared somewhat badly in such a scheme, and it was particularly hard on a widow. The scheme was thorough in making provision for inheritance by the most remote relatives. Such thoroughness however was, perhaps, misguided. Although in rare cases a sole surviving remote relative might benefit at the expense of the Crown, to whom the estate would otherwise pass, it did mean that many residuary estates were impoverished, if not wholly swallowed up, by the expense of the protracted administration of the estate involved in searching out those distant relatives.

The bill now before Council is based largely on the provisions of Part IV of the Administration of Estates Act of 1925, as it has subsequently been amended. It seeks to abolish the inequality between

men and women, and also to simplify the administration of the estate of an intestate by restricting the classes of relatives who inherit. But, Sir, I hasten to add that the intention here is not to enrich the Crown by increasing the chances of such estates becoming the property of the Crown by *bona vacantia*; indeed, the bill expresses a clear indication that in such a case the Crown should use the property which has devolved on it for the purpose of making provision for dependents and also for persons for whom the intestate might reasonably have been expected to make provision if he had executed a Will. The third major change, Sir, proposed by the bill is a modification of the English scheme of distribution by taking into account Chinese customary law.

Before referring in detail to some parts of the bill I think it would be appropriate to trace its history in outline. The enactment of legislation along these lines was recommended by our Law Reform Committee in 1959. A bill was published in 1969 and it included special provisions relating to unions of concubinage and the issue of such unions. This bill, Sir, was given extensive publicity, and in March of this year copies of the text of the bill were made available in Chinese. There has been little public comment, and I think it is fair to say that what reaction there has been has not been unfavourable.

Honourable Members may recall that earlier this year my honourable Friend, the Secretary for Home Affairs, speaking on the second reading of the Marriage Reform Bill, mentioned that it was hope to introduce legislation dealing with other connected matters of personal law—especially intestate succession. The bill now before Council differs in some detail from that which was published last year, and I will refer to these differences in a few moments.

I do not however, Sir, propose today to speak about the way in which the bill proposes that such estates should be distributed. The explanatory memorandum is an unusually long one—running as it does to some five pages in the printed version of the bill. Paragraph 3 contains a summary of the proposed scheme.

Turning again, Sir, to the parts of the bill which make provision for concubines and their children; I can summarize the position by saying that their children are treated on an equal footing with children of what the bill calls "a valid marriage", and that a concubine is to receive a share of the estate which is, in most cases, equal to one third of the amount received by the widow.

I would like, Sir, to emphasize that these provisions are necessarily of a temporary nature because no legal union of concubinage may be entered into after the Appointed Day which is to be gazetted under the Marriage Reform Ordinance of this year.

[THE ATTORNEY GENERAL (ACTING)] **Intestates' Estates Bill— second reading**

I mentioned, just now, some changes in the bill as published last year: these are concerned with those provisions designed to accommodate Chinese law and custom, and I can summarize them as follows:—

first—where a woman dies intestate, her stepchildren by her husband's former marriage are entitled to inherit as if they were her own children;

next—although adopted children are treated as children of the blood, this is now limited to children adopted here in Hong Kong under our Adoption Ordinance and to those adopted elsewhere in circumstances recognized as creating a valid adoption by our own Ordinance;

thirdly—only children of a common father are to be treated as brothers and sisters for the purposes of sharing in the distribution;

finally—in the definition of "valid marriage" the category of marriages contracted outside Hong Kong has been widened to include all such marriages which are valid under the law of the place where the ceremony is performed. Previously, Sir, only monogamous marriages were included in this category.

I should perhaps also mention that if the estate includes any land in the New Territories to which Part II of the Ordinance applies— and where such land has not been exempted from the provisions of the New Territories Ordinance—then this bill will not apply and that land will pass on intestacy as at present.

In conclusion, Sir, may I state the obvious, but with the excuse that the obvious is sometimes overlooked, that this proposed legislation applies only where someone dies without having made a Will, and that it remains open to everybody to dispose of his or her property as they see fit by executing a Will.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Explanatory Memorandum

This Bill seeks to provide for the introduction of new rules governing the distribution of the residuary estates of persons dying intestate. The proposed rules are based largely on

Part IV of the Administration of Estates Act 1925 as amended by later Acts.

2. The present scheme for the distribution of personal estate on intestacy, which is based mainly on the Statute of Distribution 1670, is considered unsatisfactory chiefly in three respects—

- (a) females, particularly the widow of an intestate, are placed in an unequal position compared with males;
- (b) it allows next-of-kin of the remotest degree to succeed; this sometimes results in great complexities in the administration with consequent delays and heavy costs, which in small estates would use up the entire residuary personal estate; and
- (c) no account is taken of Chinese customary law.

This Bill provides for a scheme of distribution which will abolish most of the inequality between males and females and simplify the rules of distribution by the exclusion of kindred of a remoter degree than first cousins and their issue. Although the Bill is mainly based on the English Administration of Estates Act 1925, these provisions have been modified to take account of Chinese customary law—

- (a) in clause 2(2)(b), whereby the issue of a female intestate include children of a marriage to which her husband and another female were parties (i.e. her step-children by his former marriage); and
- (b) in clause 2(4), by which only children of a common father are regarded as "brothers and sisters" (children of a common mother but of different fathers are not regarded as brothers and sisters for the purpose of the Bill).

3. The proposed scheme for distribution is set out in clause 4 and is as follows—

- (a) Where the intestate leaves a spouse but no issue, parent, brother or sister or issue of a brother or sister the residuary estate goes to the surviving spouse.
- (b) Where the intestate leaves both a spouse and issue, whether or not other relatives also survive, the residuary estate stands charged with the payment of \$25,000 plus interest from the date of the death, to the surviving spouse, who also takes half of the remainder whilst the other half is held on the statutory trusts for the issue.
- (c) Where the intestate leaves no issue but leaves a spouse and one or more of the following, that is to say, a

Intestates' Estates Bill—second reading*[Explanatory Memorandum]*

parent, brother or sister or issue of a brother or sister, the residuary estate stands charged with the payment of \$100,000 plus interest thereon from the date of the death to the surviving spouse who also takes one half of the remainder whilst the other half is held—

- (i) if one or both parents survive the intestate, on trust for that parent or, as the case may be, for both parents in equal shares, absolutely; or
 - (ii) if no parent survives the intestate, on the statutory trusts for the brothers or sisters.
- (d) If the intestate leaves issue but no spouse the residuary estate is held on the statutory trusts for the issue.
- (e) If the intestate leaves no spouse nor issue but both parents they take the residuary estate in equal shares.
- (f) Where the intestate leaves no spouse and no issue but one parent that parent takes the whole of the residuary estate.
- (g) If the intestate leaves no spouse, no issue and no parent, the residuary estate is held in trust for the following persons living at the death of the intestate in the following order and manner—
- (i) on the statutory trusts for the brothers and sisters of the intestate;
 - (ii) for the grandparents of the intestate;
 - (iii) on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters of a parent of the intestate.
- (h) In default of any person taking an absolute vested interest under the above provisions the residuary estate passes to the Crown as *bona vacantia*.
- (i) A husband and wife shall for the purposes of distribution or division under clause 4 be treated as two persons.
- (j) Where the intestate and the intestate's husband or wife die in circumstances rendering it uncertain which of them survived the other clause 4 shall have effect as if the husband or wife had not survived the intestate. At present there is no legal presumption as to the order in which deaths take place in such circumstances and this may give rise to inconvenience and uncertainty in determining the rights of persons on distribution. This

rule is adapted from section 46 of the Administration of Estates Act 1925 as amended by the Intestates' Estates Act 1952.

4. Clause 3 defines valid marriage by reference to the Marriage Ordinance and the Marriage Reform Ordinance 1970 and includes in the definition marriages entered outside the Colony and recognized as valid marriages in the place of performance.

5. Clause 5 sets out the terms of the statutory trusts for the purposes of clause 4. The statutory trusts in favour of the issue of the intestate are for the children of the intestate and the issue of deceased children of the intestate, living or (by virtue of clause 2(2) *en ventre sa mère*, at the intestate's death, who attain the age of twenty-one years or marry under that age. The children take in equal shares and remoter issue take *per stirpes*. The statutory power of advancement and the statutory provisions relating to maintenance and accumulation of surplus income (which are set out in the Trustee Ordinance) are applicable and a married infant can give valid receipts for income and past accumulations.

6. Where property held on the statutory trusts is divisible into shares (owing to the fact that two or more children or their issue survive the intestate) any money or property paid or settled for the benefit of any child by the intestate is, in the absence of any contrary intention, expressed or appearing from the circumstances of the case, to be brought into account in the distribution.

7. Under clause 5(2), if the statutory trusts in favour of the issue fail by reason of no children or other issue attaining an absolutely vested interest, the residuary estate is to be distributed as if the intestate died without leaving issue living at his death.

8. Subclauses (3), (4) and (5) of clause 5 provide that the provisions of subclauses (1) and (2) shall also apply with modification to the statutory trusts in favour of classes of relations other than the issue of the intestate. The provisions for bringing any money or property into account in the division do not apply in this case.

9. Clause 6 empowers the personal representatives to raise the statutory lump sum payable to the surviving spouse on the security of the residuary estate.

10. Clause 7 provides that the surviving spouse may require the personal representative in writing to appropriate any personal chattel towards the satisfaction of all or part of the

Intestates' Estates Bill—second reading

[*Explanatory Memorandum*]

statutory lump sum payable to the surviving spouse. This right must be exercised within six months from the first grant of administration. Notice of the intended appropriation must be served on all persons entitled to share in the residuary estate who may within six weeks of such service apply to the court to prohibit the appropriation.

11. By clause 8, where there is a partial intestacy the provisions of the Ordinance shall, subject to the provisions of the will, have effect as regards that part of the property which is undisposed of by the will. It provides that in such case any beneficial interests acquired by the surviving spouse under the will shall be brought into account against his or her statutory lump sum, which shall be diminished by the value of such beneficial interest; any beneficial interests acquired by any issue of the deceased under the will shall be brought into account under clause 5.

12. Clause 9 makes the personal representative a trustee of the residuary estate for the persons entitled under the Ordinance unless it appears from the will of the deceased that he is to take beneficially.

13. Clause 10 deals with the construction of references to any Statutes of Distributions in instruments *inter vivos* and in wills. Clause 11 provides that certain land to which Part II of the New Territories Ordinance applies shall not be affected by the Ordinance. Clause 12 amends the Schedule to the Application of English Law Ordinance and the Schedule to the Imperial Enactments Extension Ordinance so as to repeal old English statutes which at present govern the distribution of the estates of intestates.

14. Clause 14 and the Schedule contain transitional provisions which apply to the parties and children of unions of concubinage entered before the date of the day appointed under the Marriage Reform Ordinance 1970.

15. By paragraph 2 of the Schedule, children of a union of concubinage are to be treated under the Ordinance in the same way as children of a valid marriage.

16. Limited provision for parties to a union of concubinage is contained in the various sub-paragraphs of paragraph 4 of the Schedule. The method followed is to deal in turn with the various possible situations in the same order as they are dealt with in clause 4 of the Bill. If a man leaves more than

one concubine those who survive him will share in equal shares the same total interest which one concubine would receive. If the concubines' interest is a life interest, it will be shared amongst the survivors of the concubines until the last one dies. The life interest of a concubine will cease if she marries or commits an act of sexual intercourse. If the interest is an absolute one, it will be shared among the concubines living when the intestate dies.

17. Under paragraph 4(1), if the intestate leaves a wife and no children, one third of the estate will be paid to the concubine. The rest of the estate goes to the wife.

18. Under paragraph 4(3), if the intestate leaves a wife and children, the income from one third of the wife's half share of the residuary estate will be paid to the concubine during her lifetime.

19. Paragraph 4(5) applies where the intestate leaves a wife, no children but a parent, brother or sister, nephew or niece. In this case the concubine is to receive one third of a half share of the residuary estate, that is to say one-sixth of the estate after the wife has first received \$100,000. The concubine's share is to come from that of the parent, brother or sister, nephew or niece, as the case may be.

20. Where an intestate leaves no wife but does leave children, paragraph 4(7) provides for the income from one third of the estate to be paid to the surviving female or male partner of a union of concubinage.

21. Where an intestate leaves no wife and no children, paragraph 4(9) provides for one third of the estate to go to the surviving female or male partner of a union of concubinage.

**PUBLIC TRANSPORT SERVICES (HONG KONG ISLAND)
(AMENDMENT) BILL 1970**

Resumption of debate on second reading (2nd December 1970)

Question again proposed.

MR SZETO:—Sir, when the two resolutions abolishing the special rates in fuel duty and bus licence fees and the Kowloon Motor Bus Company's royalty respectively were passed by Council on the 8th April this year, it was anticipated that a similar action would be required in regard to China Motor Bus Company's royalty soon after in order to put the two bus companies on the same footing, and to remove

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resumption of debate on second reading (2.12.70)**

the inequity that bus users on the Island are required to pay an indirect tax, in the form of royalty, while their counterparts in Kowloon and portion of the Mainland are not. The present bill is therefore a welcome step if only in this context. However, the bill does not specify the extent of royalty adjustment and therefore the anomalous situation may not be completely removed since the financial states of the two companies and the circumstances under which they operate are not similar. But as bus travellers are now not given any preferential treatment in regard to fuel duty and bus licence fees over ordinary road users, there is no good reason of their still being required to pay an indirect tax. If royalty must be retained as a regulator of excessive profits in the case of CMB, there are other ways of achieving it, and one of them, as proposed by the Transport Advisory Committee when KMB's royalty was considered, was the creation of a reserve fund from excessive profits of any year to be utilized to improve the operator's finances in a year when revenue from bus operations falls short of being reasonably remunerative and thereby averts the need for frequent fare increases. Whilst this proposal offered no solution to KMB's financial position its application may be appropriate to CMB.

Of the two bus companies it may be said that CMB has given a more satisfactory performance in recent years, and this is largely due to the much less pressing problems it has compared with those of KMB whose service routes and their mileage, vehicle capacity, annual passengers carried, *etc.*, are many folds of those of CMB's due to very rapid expansion in traffic requirements and franchise area. Although from 1962-1967 CMB has achieved an average yearly increase in its carrying capacity of 16%, this growth was adversely affected by the events in 1967 when it dropped by 2.3% and had not recovered until 1969. Last year's growth rate was 7% and this has been maintained in the first half of this year when its carrying capacity reached 35,244 as at the end of last month. During this period there were also 30 buses on order with an additional capacity of 2,056. However, this is not to say that the Company is providing an adequate and efficient service as required by the terms of its franchise; its over-crowded vehicles, many of them old and dilapidated lumbering up our inclined roads, and the often discourteous attitude of its bus crews give rise to many public complaints. Clearly then, the Company's services must be considered still far from acceptable standards; and any sizable reduction in its royalty should be conditional on their improvement.

Sir, since the exact royalty reduction has not been specified in the bill, the public is concerned with and not unnaturally speculates on its extent which Government would propose, and it is important

that in its determination Government must exercise close scrutiny of the Company's accounts of recent years, particularly in regard to justifiable expenditures and set-off a royalty adjustment that would give the Company a fair return for the services it provides. The Transport Department should look into closely the Company's organization. Whilst it is equitable for an efficiently-run public transport undertaking to be reasonably remunerative, the same tenet should not be applied if the undertaking fails to live up to its franchise requirements. Because of the urgency in the present case, for reasons given by my honourable Friend, the Financial Secretary, this Council is being asked to make a decision on it today though between last April and now there was ample time for the matter to have been studied in great detail, and it is regrettable that the Transport Advisory Committee was not asked for its views.

When assessing the proportion of royalty to be adjusted for the Company's current accounting year and for any accounting year during its franchise, I trust Government will only take into consideration the effect of rising costs and wages and the loss of preferential treatment of fuel duty and licence fees and not the loss of traffic which the Company claimed to have suffered from the competition by public light buses. It will be recalled, Sir, when the bill legalizing the minibuses was introduced last year, several of my Unofficial colleagues and I opposed strongly then the entertainment of such claims by Government. Our stand remains unchanged today. Although public light bus operation on the Island has grown considerably since their legalization, CMB has yet to prove that it has discharged its franchise obligations and that it has the carrying capacity to meet the traffic demand which it claimed to have been lost to the public light buses. Finally, Sir, may I repeat what I emphasized on the previous occasion that section 29 of the principal Ordinance provides Government with the power to make arrangement with any other person for the commencement and maintenance of an efficient service on all or any of the routes in CMB's franchise area without compensation in the event of the Company's failure to provide same.

MR G. M. B. SALMON:—Sir, this is I think an occasion when something more should be said about public light buses and road congestion, and I must declare an interest as a Director of Hong Kong Tramways.

Nothing was said by my honourable Friend, the Financial Secretary, when he spoke on 2nd December on the impact of the China Motor Bus Company of legalized competition from public light buses, but this clearly must be considerable and very damaging to CMB. In addition to carrying a great many people who would otherwise have travelled by bus or tram, these yellow menaces, which must be the

[MR SALMON] **Public Transport Services (Hong Kong Island) (Amendment) Bill—
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craziest form of public transport in congested city conditions however popular they may be, must also have caused an equally damaging effect on the Bus Company's services, slowing down the buses on their routes and disrupting their schedules. For example, observations made at the busy Wyndham Street/Queen's Road Central intersection on two weekdays between 8.30 *a.m.* and 10 *a.m.* reveal that, on an average, 40 light buses passed in each 5 minute period, the average number of passengers in each being 6. While it is obvious that they shed half their load at the Chartered Bank or elsewhere *en route*, is it not rather ridiculous to have this sort of congestion in a busy street at a busy time when, at least in theory, 3 double deckers could be carrying the people in 40 light buses? I suggest that the cost in terms of city street congestion caused by public light buses far outweighs the benefits they provide, and that the problem of moving large numbers of commuters can be solved only by improving mass media. It may, of course, be said that trams also cause congestion, but at least they travel along a straight line and I for one have always thought they should be protected whenever possible on either side to avoid accidents and so that they can move faster. However this debate is not on trams, and in any event congestion seems to be at its worst in Kowloon where there are no trams, and I only hope meantime there is no question of increasing the number of light buses on our roads.

As a temporary measure. I would support a proposal to reduce the royalty of CMB. But it seems to me that in the changed conditions that have arisen because of the introduction of light buses, and so that mass transit media can be encouraged and developed with a reasonable return, there is a case for the removal of royalty from land transportation companies altogether, now that they have to meet competition that did not exist when their franchises were negotiated and settled, and I would ask that this be considered.

THE FINANCIAL SECRETARY (ACTING) (MR C. P. HADDON-CAVE):— Sir, the bill as it stands and which the Council is now considering is concerned with simplifying the procedure by which the rate of royalty payable by the Company may be amended. I can assure my honourable Friend, Mr SZETO Wai, that when considering an application from the Company for a reduced rate (and such an application ought to be lodged with the Commissioner for Transport as early as possible in any financial year) the Government will bear in mind the Company's undoubted obligation under the Ordinance to provide an efficient and adequate service; and certainly, the state of the Company's buses, the schedule of services offered and the management of the Company's

affairs generally are subject to continual scrutiny by the Transport Department and on occasions by the Transport Advisory Committee.

It is not the Government's intention, and never has been, to fix a rate of return and then adjust the rate of royalty after the event to achieve this. Much less is it our intention to establish an equalization fund for the purpose of adjusting the Company's profits retrospectively at the end of each year. A guaranteed return eliminates any managerial incentive to do better and puts a premium on inefficiency. Rather, it is our intention after considering the Company's prospects, to fix the rate of royalty in advance—or as far in advance as possible—in order to give the Company an opportunity (and no more than an opportunity) to earn a reasonable rate of return, given a certain efficiency in management policies. I would remind the honourable Member that, having restored the tax position of the bus companies and bus travellers to parity with that of other road users (having removed, in other words, the hidden subsidies represented by the preferential rate of fuel duty and the nominal licence fees) the question of the appropriate rate of royalty in any year can be considered in its own right and in relation to the appropriateness of the fare structure at the time.

My honourable Friend, Mr SALMON, will remember that as long ago as the 18th of June 1969 the Attorney General stated in this Council that the removal of public light buses from the bus companies' exclusive franchises amounted to a significant derogation from those franchises. He went on, Sir, and I quote: "Although in law they would have no claim for compensation ... the Government recognizes that the bus companies do have a moral claim to be recompensed for loss which results from such operation of public light buses as would amount to an infringement of their present rights". So far, the companies have not put in claims for compensation for they have been unable to quantify the losses suffered, or being suffered, and so the negotiations envisaged by the Attorney General have not been entered into. I shall have a little more to say, Sir, on this point when dealing with the rate of royalty payable by the China Motor Bus Company in the year ending the 30th of June 1970 at the Committee stage of this Bill.

As regards my honourable Friend's several points about public light buses in relation to their individual carrying capacity and traffic conditions: at present between 800 and 900 public light buses are operating on Hong Kong Island and carrying about 300,000 passengers a day. The China Motor Bus Company, operating 148 double and 345 single decker buses, is carrying about 500,000 passengers a day; and the trams are carry about 450,000 passengers a day. It is not intended at present to licence further public light buses, but their role in the public transport system and the obvious demand for the particular service they offer as measured by the number of their patrons, must be, I suggest, Sir, recognized. Some drivers of public light buses may not be noticeably

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well mannered (they are of course not alone in this), but it is not the Government's view that these vehicles represent at present an unacceptable source of congestion. One estimate has put a light bus, from a road use point of view, at the equivalent of only 1.5 private cars and so, in terms of passengers conveyed, the light bus hardly deserves to be singled out for particularly adverse comment.

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.

ROYAL HONG KONG REGIMENT 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 36 and the Schedule were agreed to.

ROYAL HONG KONG AUXILIARY AIR FORCE BILL 1970

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

Clause 1 was agreed to.

Clause 2.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—I beg to move that clause 2 be amended as set forth in the paper before honourable Members.

Whereas details of pensions and other grants in respect of disablement or death for members of the regular army are laid down in a "Royal Warrant", the very similar provisions relating to members of

air forces are contained in an "Order by Her Majesty". In order to avoid confusion over the different rank structure in the two services, it is preferable that pensions for the Royal Hong Kong Auxiliary Air Force should be based on the Order by Her Majesty rather than the Royal Warrant.

Proposed Amendment

Clause

- 2 (1) That the following definition be added after the definition of "officer"—
"Order by Her Majesty" means the Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the air forces during the 1914 world war and after the 2nd September 1939;".
- (2) That the definition of "Royal Warrant" be deleted.

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clauses 3 to 14 were agreed to.

Clause 15.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER):—I beg to move that clause 15 be amended as set forth in the paper before honourable Members. The amendments to this clause are merely consequential upon the amendment to clause 2 of the bill which has already been accepted.

Proposed Amendment

Clause

- 15 That the words "Royal Warrant" be deleted wherever they appear and be replaced by the words "Order by Her Majesty".

The amendment was agreed to.

Clause 15, as amended, was agreed to.

Clauses 16 to 34 were agreed to.

LAW REFORM (MISCELLANEOUS AMENDMENTS) BILL 1970

Clauses 1 to 3 and the Schedule were agreed to.

LAW REVISION (MISCELLANEOUS REPEALS) BILL 1970

Clauses 1 and 2 and the Schedule were agreed to.

PREVENTION OF BRIBERY 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 P. C. WOO:—I move that clause 2 be amended as set forth in the paper before honourable Members. The proposed amendment and those which I shall move presently are based on the proposals made by my Unofficial colleagues and myself in the debate on the second reading of this bill. Reasons in respect of the proposed amendments have already been given and I have nothing to add.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH):—Sir, I should like, if I may, to say a few words on two of the amendments which have been agreed with my honourable Friend and which I support.

The first amendment to this clause will have the effect of removing "entertainment" from the definition of advantage. This will mean that it will not be a criminal offence to accept entertainment, even if this is both offered and accepted for corrupt reasons.

The Government has agreed to this change because of the widespread fears of the business community, of the Kaifongs, and of the Heung Yee Kuk, that to make the acceptance of entertainment into a criminal offence is to interfere unreasonably with the normal conduct of business life. It has also been argued, and with some justification, that such a prohibition would tend to cut down social contacts between government servants and members of the public, and to encourage an undesirable degree of separation between them.

I would, however, Sir, like to make it clear that the acceptance of entertainment by government servants will be governed by Establishment Regulations, as it is at present. These regulations prohibit the

acceptance of lavish entertainment or entertainment in circumstances likely either to cause embarrassment to a government servant in the discharge of his official duties, or else to bring the public service into disrepute. Any government servant who offends against these regulations is liable to disciplinary proceedings which could, in appropriate cases, lead to his dismissal.

The second proposed amendment—namely the new definition of "Director"—gives me an opportunity to expand on the marks made by the Attorney General during the second reading.

As he indicated, it was the government's intention that the Anti-Corruption Office should remain part of the Royal Hong Kong Police Force for a period of three to five years, when the position would be reviewed. It has, however, been represented that there should be greater certainty in the matter, and that the promised review should start when the Anti-Corruption Office has been operating the Ordinance for three years. After a careful reconsideration of this matter, the government is prepared to accede to this request.

It will also, I think, Sir, be of interest to honourable Members, and to the general public, if I were to announce the terms of reference of the Target Committee, which have now been approved by the Governor. They are as follows—

- (1) To receive and consider, directly or through the Director of the Anti-Corruption Office, all complaints of bribery, whether against Crown servants, public servants, or other persons.
- (2) Subject to the statutory powers of the Attorney General, to instruct the Director as to which complaints of bribery shall be investigated and in what priority.
- (3) To require from the Director reports, at such intervals as the Committee may decide, as to the action taken by his Office to investigate complaints of bribery.
- (4) To report to the Governor, at such intervals as the Governor may require, on the work of the Office and the incidence of bribery in Hong Kong.
- (5) To determine what information about complaints of bribery shall be passed on to the Establishment Secretary or to other Government Departments or to other branches of the Police Force.
- (6) The exercise of the above supervisory functions shall not affect the responsibility of the Director for the manner in which the investigation of a particular complaint is to be carried out.

[THE ATTORNEY GENERAL (ACTING)] **Prevention of Bribery Bill —committee stage**

One other matter, Sir, that has aroused considerable interest is the membership of the Target Committee, and it has been urged that there should be a non-government presence on the Committee. This is a matter on which opinions differ, but I am able to inform honourable Members that the Governor has agreed that before the Ordinance is brought into force one or more persons who are not government servants will be appointed to the Target Committee—provided always that someone suitable can be found to accept this onerous and time consuming responsibility.

Sir, I support these amendments.

Proposed Amendment

Clause

- 2 (1) That the definition of advantage be amended in paragraph (d) by deleting—
"entertainment, favour or benefit of any description" and substituting—
"or favour (other than entertainment)";
- (2) That the definition of "Director" in subclause (1) be deleted and the following substituted—
""Director" means the person appointed by the Governor to be in charge of the Anti-Corruption Office;
"entertainment" means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provision;"
- (3) That the definition of "public servant" in subclause (1) be amended by adding the following after "unpaid"—
", but the holding of a share in a company which is a public body shall not of itself constitute the holder a public servant".

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clauses 3 to 7 were agreed to.

Clause 8.

MR WOO:—I move that clause 8 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

8 That subclause (1) be amended by deleting "public" and substituting "Crown".

The amendment was agreed to.

Clause 8, as amended, was agreed to.

Clause 9.

MR WOO:—I move that clause 9 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

9 That clause 9 be amended by adding the following new subclause (4)—

"(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting or accepting of any advantage by his agent shall, without prejudice to the generality of the defence of lawful authority or reasonable excuse, constitute a reasonable excuse."

The amendment was agreed to.

Clause 9, as amended, was agreed to.

Clause 10.

MR WOO:—I move that clause 10 be amended as set forth in the paper before honourable Members.

THE ATTORNEY GENERAL (ACTING) (MR SNEATH):—Sir, may I comment on these amendments.

During the discussions of this clause in the second reading debate, the Attorney General expressed the opinion that as previously drafted it would enable an ex-Crown servant to be prosecuted and convicted for an offence committed by him under clause 10 while he was a Crown

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servant. However, it is realized that this answer did not fully cover the points raised by honourable Members, and what is wanted is to enable a prosecution to be brought against a Crown servant who lived on a lavish scale after he had left Crown service unless, that is, he can satisfy the Attorney General, under clause 10, that the sources of his present wealth were not corrupt ones.

The redrafted clause 10(1), combined with the proposed new clause 10(5) should remove any doubt.

Sir, I support these amendments.

Proposed Amendment

Clause

10 (1) That subclause (1) be deleted and the following substituted—

- "(1) Any person who, being or having been a Crown servant—
- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
 - (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.";

(2) That the following new subclauses (4) and (5) be asked—

"(4) Any representations in writing made by a person to the Attorney General under subsection (2) shall not, without the consent of that person, be admissible in evidence in any proceedings against him for any offence.

(5) In this section, "official emoluments" includes a pension or gratuity payable under the Pensions Ordinance."

The amendment was agreed to.

Clause 10, as amended, was agreed to.

Clauses 11 and 12 were agreed to.

Clause 13.

MR WOO:—I move that clause 13 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

13 That clause 13 be amended—

- (a) in subclause (1) by inserting after "authorization", where it first occurs—
", to exercise the following powers on the production by him of the authorization";
- (b) in paragraph (b) of subclause (2) by deleting "Such a requirement as aforesaid" and substituting—
"A requirement under paragraph (a)";
- (c) by adding the following new subclause (4)—
"(4) Any person who falsely represents that an appropriate authorization has been given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year."

The amendment was agreed to.

Clause 13, as amended, was agreed to.

Clause 14 was agreed to.

Clause 15.

MR WOO:—I move that clause 15 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

15 That subclause (5) be deleted and the following substituted—

- "(5) In this section "legal adviser" means counsel or a solicitor.
- (6) The protection conferred by this section on a legal adviser shall extend to a clerk or servant of or employed by a legal adviser."

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The amendment was agreed to.

Clause 15, as amended, was agreed to.

Clause 16.

MR WOO:—I move that clause 16 be amended as set forth in the paper before honourable Members.

*Proposed Amendment**Clause*

16 That paragraph (a) of subclause (2) be amended by deleting "wilfully" and substituting "without reasonable excuse".

The amendment was agreed to.

Clause 16, as amended, was agreed to.

Clause 17.

MR WOO:—I move that clause 17 be amended as set forth in the paper before honourable Members.

*Proposed Amendment**Clause*

17 That subclause (2) be deleted.

The amendment was agreed to.

Clause 17, as amended, was agreed to.

Clauses 18 to 25 were agreed to.

Clause 26.

MR WOO:—I move that clause 26 be amended as set forth in the paper before honourable Members.

*Proposed Amendment**Clause*

26 That clause 26 be amended by deleting "prosecution and the".

The amendment was agreed to.

Clause 26, as amended, was agreed to.

Clause 27 was agreed to.

Clause 28.

MR WOO:—I move that clause 28 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

28 That clause 28 be deleted and the following substituted—

"Costs on acquittal. **28.** 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 costs to that person, such costs to be taxed and paid out of the general revenue."

The amendment was agreed to.

Clause 28, as amended, was agreed to.

Clauses 29 and 30 were agreed to.

Clause 31.

MR WOO:—I move that clause 31 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

31 That subclause (2) be amended—

- (a) by deleting "or subsection (2) of section 10, a person and substituting—
"a person may be charged with an offence under Part II (other than an offence under section 10) and may be arrested therefor.";
- (b) by deleting "seven" and substituting "three".

The amendment was agreed to.

Clause 31, as amended, was agreed to.

Clauses 32 to 36 and the Schedule were agreed to.

**DISTRICT COURT (CIVIL JURISDICTION AND PROCEDURE)
(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 6 were agreed to.

Clause 7.

MR CHEUNG:—I move that clause 7 be deleted as set forth in the paper before honourable Members.

Proposed Amendment

Clause

7 That clause 7 be deleted, and clauses 8 and 9 be renumbered as clauses 7 and 8 respectively.

The amendment was agreed to.

Clause 7, as amended, was agreed to.

Clauses 8 and 9 were agreed to.

Clause 10.

MR CHEUNG:—I move that clause 10 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

10 That clause 10 be deleted and the following substituted—

"Amend-
ment of
section 45.

9. Section 45 of the principal Ordinance is amended in subsection (1)—

(a) in paragraph (a), by inserting after "rent in arear" the following—

", together with such sum as would have been payable as rent if there had been no re-entry or forfeiture,";

(b) by deleting paragraph (b) and substituting the following—

"(b) if the action does not cease as aforesaid and the Court

at trial, or the Registrar in the case where an application is made to enter judgment in default of defence, is satisfied that the lessor is entitled to enforce the right of re-entry or forfeiture, the Court or the Registrar shall order possession of the land to be given to the lessor at the expiration of such period, not being less than four weeks from the date of the order, as the Court or the Registrar thinks fit, unless within that period the lessee pays into court all the rent in arrear, together with such sum as would have been payable as rent if there had been no re-entry or forfeiture, and the costs of the action as endorsed on the writ or as may be fixed by the Court or the Registrar;"

- (c) in paragraph (c), by inserting, after "rent in arrear" wherever they occur, the following—

" , together with such sum as would have been payable as rent if there had been no re-entry or forfeiture," ."

The amendment was agreed to.

Clause 10, as amended, was agreed to.

Clause 11.

MR CHEUNG:—I move that clause 11 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

- 11 That clause 11 be renumbered as clause 10.

The amendment was agreed to.

Clause 11, as amended, was agreed to.

**LI PO CHUN CHARITABLE TRUST FUND (AMENDMENT)
BILL 1970**

Clauses 1 to 4 were agreed to.

**PUBLIC TRANSPORT SERVICES (HONG KONG ISLAND)
(AMENDMENT) BILL 1970**

Clause 1 was agreed to.

Clause 2.

THE FINANCIAL SECRETARY (ACTING) (MR HADDON-CAVE):—Sir, I rise to move that clause 2 be deleted and replaced by the clause set forth in the paper before honourable Members.

When moving the second reading of the bill on the 2nd December, the Financial Secretary explained to honourable Members why it was necessary, on procedural grounds, to add a proviso to the new subsection (3) of section 8 of the principal Ordinance setting the rate of royalty in the Company's financial year ending on the 30th June last. This proviso sets the rate of royalty for that year at 20% of net profits before tax. The opportunity has also been taken of clarifying a possible obscurity in the meaning of the new subsection: the intention has always been that the retrospective effect of changes in the rate of royalty shall be limited to the beginning of the financial year in which the resolution is passed. The revised wording of the new subsection puts this intention beyond doubt.

On this occasion, Sir, although invited to do so on several occasions, the Company did not submit a formal application for a reduction in the rate of royalty payable in 1969-70 until two weeks after the close of its financial year. In deciding whether a reduction for that year should be put to honourable Members for their approval, the Government has had regard to the following considerations: in the first place, we always anticipated that an application for an offsetting reduction of royalty would follow upon the elimination of the preferential rate of duty on diesel oil and the nominal licence fee with effect from the 8th April last. Secondly, even if the Company had submitted its application shortly before the 30th June it might not have been possible to decide upon an appropriate reduction (if any) before that date in view of the detailed examination required of the Company's accounts to determine allowable receipts, expenses and provisions in the calculation of net profits and to establish the value of assets employed for the purpose of calculating the rate of return achieved. Honourable Members may recall, Sir, that, in reply to a question put to me by Mr FUNG

Hon-chu during the debate on the resolution to adjust the rate of royalty payable by the Kowloon Motor Bus Company last April, I stressed that the accounts of that company are subject to a close scrutiny by our cost accountants. The same applies to the accounts of the China Motor Bus Company. On the Company's own reckoning, the rate of return achieved in 1969-70 was only 4.8%, but this figure has been adjusted upwards by our cost accountants to 7% since the provision shown in the profit and loss account for major overhauls exceeded the amount actually spent by some \$676,000 and the value of average net fixed assets employed has been over-stated by \$1.111 million in respect of outstanding payments of premium on land purchased by the Company. Thirdly, whilst the Government has accepted that the levies and fees payable should be such as to enable an efficiently run bus company to achieve a certain rate of return on assets employed, we cannot accept that a company is entitled to such a rate. Much less can we accept that a company should be given an undertaking that public funds will be used to achieve such a rate after the event (by way, for example, of a refund of royalty already paid—whether credited to general revenue or special account is not particularly material). If, at any time, the China Motor Bus Company does not believe its services will be reasonably remunerative in accordance with section 19(1)(a) of its Ordinance, then it has the right to apply for a variation of fares. Such an application can then be considered in the light of all relevant factors, including the Company's operating prospects and the rate of royalty applicable. However, Sir, 1969-70 was rather a special year: the removal of public light buses from the Company's exclusive franchise in September 1969 amounted to a derogation from that franchise and it was recognized at the time, as I have already said, that the Company's business might be adversely affected. The extent and the permanence of any damage suffered is not, of course, easily assessable but, in passing, honourable Members may wish to note that, despite an increase in capacity of 7% during 1969-70 traffic receipts fell by 3% and the prospect is for a further deterioration in 1970-71.

In all these circumstances, and despite the general undesirability of retrospective changes (precluding as they do other courses of action) and despite, also, the fact that a reduction in the rate of royalty payable in respect of 1969-70 will involve a refund of royalty already paid, the Government has decided that a reduction should be made and has tried to base it on specific and identifiable factors deserving of special consideration. The factors considered have been the additional cost of the higher rate of duty on diesel oil and the higher licence fees from the 8th April; the cost of the wage award made with effect from the 1st March; the treatment of interest and dividends received in the calculation of the actual amount of royalty payable; and the effect on traffic receipts of the legalized competition of public light buses. This latter factor has been allowed for despite the difficulty of

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quantifying the impact of mini-bus competition on the Company's operations and despite the even greater difficulty of deciding what proportion of any decline in traffic should be regarded as due to an infringement of the Company's previous rights rather than, for example, to a failure to offer to the travelling public an adequate and efficient service.

As a result of these various calculations, the Government has concluded that a fair and reasonable settlement of the Company's position in 1969-70 would be effected if the rate of royalty payable were to be reduced from 46% to 20% on net profits before tax. This will give the Company a rate of return on assets employed in that year of nearly 10%. This rate of return, I might add, does not compare unfavourably with the average rate, calculated on a comparable basis, which the Company achieved during the four years 1965-66 to 1968-69.

DR CHUNG:—Sir, the three main parties directly concerned with the rate of royalty payable and the net profit made by the China Motor Bus Company are the Company itself, the Government and the travelling public. I think it is reasonably fair to all the three parties if the Company be permitted to make a net profit after royalty and tax equivalent to 10% return on net fixed assets employed provided, of course, the Company is operating efficiently.

According to the Inland Revenue Ordinance and after the various adjustments as mentioned by the Honourable Acting Financial Secretary, the net profit before royalty and tax for the fiscal year 1969-70 is, I understand, about \$5.8 million. This profit figure is derived purely from the operation of the bus franchise and does not include interest income. Deducting the 46% royalty and the 15% corporation profit tax, the net profit after royalty and tax is \$2.66 million. With average net fixed assets of \$34.7 million, this profit level represents a return of 7.7%.

However, according to the Company's own accounting system, the corresponding net profit before royalty and tax, again deducting interest income, is only about \$4.9 million and net profit after royalty and tax only \$1.75 million or a return of 5.2% on average net fixed assets. The honourable Acting Financial Secretary now proposes that a reduction be made in the rate of royalty payable in 1969-70 from 46% to 20% (that is, from \$2.67 million down to \$1.17 million). This means an increase of net profit after royalty and tax on bus operations (excluding interest income again) from \$1.75 million to \$3.25 million and an improvement of return on net fixed assets based on the Company's accounting system from 5.2% to nearly 10%.

Honourable Members will now realize that there are two different standards of net profit. By the Government standard, the net profit on bus operations before the 46% royalty and 15% profit tax is \$5.8 million and after royalty and tax is \$2.66 million for the fiscal year 1969-70. However, according to the Company's own standards, the corresponding net profit is \$4.9 million before and \$1.75 million after royalty and tax. There is, as one can see, a difference in net profit of about \$1 million between the two standards.

At present, Government is using its own standard of net profit to calculate both the royalty and the profit tax but using the Company's own standard of net profit to estimate the Company's return on net fixed assets. In my humble opinion, such an inconsistency is harmful and unfair to the travelling public which, as I said earlier, is one of the three main parties directly concerned with both the rate of royalty received by Government and the level of net profit made by the Company.

Despite the Company's efforts in improving productivity, it is evident that with the introduction of fuel duty and licence fee, the fast rising wages and the increasing competition from public light buses, the profit margin of the Company will be further reduced in future years. Therefore, it will only be a matter of time when bus fares increase becomes necessary. With the Government standard of net profit, the proposed reduction of the rate of royalty payable in 1969-70 to 20% will give the Company a return on net fixed assets of \$4.16 million or 12% and not, as my honourable Friend indicated, \$3.25 million or 9.7%. Accordingly, I think it is only fair to the travelling public that the Government standard of net profit calculation be consistently used to assess the percentage return on assets employed. As the matter stands, it appears that Government is only protecting its own and the Company's interests but neglecting the interests of the travelling public.

My second point, Sir, is about the 20% residual royalty which is payable by the Company to Government in 1969-70. This amounts to about \$1.2 million, which is a substantial sum of money and which is not public funds—as my honourable Friend puts it—and in fact belongs to the travelling public. In this respect I want to expand further the proposal of my honourable colleague, Mr SZETO, and therefore suggest that such a residual royalty be put aside as a "Development Fund" in a manner similar to that in the "Scheme of Control" which Government has imposed on the China Light and Power Company since 1964. Government is, no doubt, fully conversant with the functions and operation of such a Development Fund. However, for the convenience of some honourable Members, I would say that, very briefly, the Development Fund would have the following two main features. First, it helps the Company to obtain funds at a prescribed interest rate to finance expansion plans. The interest on the Development Fund will be a charge

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made against the permitted return of the Company and credited back to the Development Fund. Second, it serves as a regulator on Company's profits. Any difference between the net profit and the permitted return in any one year is to be transferred to or from the Development Fund.

Furthermore, the Kowloon Motor Bus Company is no longer paying any royalty since April this year and it is also socially desirable that fares for public transport be made as low as possible. Accordingly, like my honourable colleague, Mr SZETO, I see no justification that Government should discriminate against the omnibus users on Hong Kong Island and continue demanding a royalty payment from the China Motor Bus Company.

In the first place, the bill was introduced without adequate notice and on the suspension of Standing Orders and, secondly, we are going through both the resumption of second reading debate and the Committee stage in one sitting. It is also recognized that, in view of the limitation imposed by the Companies Ordinance, there is no possibility to postpone the decision. I therefore do not wish to press my honourable Friend to the extent of voting against his proposed amendment of this Clause but I would like to have an assurance from Government that it will promptly, seriously and carefully consider these two points namely, the dual accounting standards and the residual royalty and, in due course, make a statement of its findings and decisions.

MR H. J. C. BROWNE:—Sir, I am in favour of this bill, but I may say I am somewhat confused as to just what the Government's underlying philosophy is. Both the Financial Secretary and Dr CHUNG have spoken of a satisfactory return of about 10% to the company, but I wonder really whether this is enough in our *laissez faire* economy. I would hope that the company would be allowed to make a greater profit— perhaps even up to 15%—to give them more incentive to be efficient while at the same time keeping fares at their present level.

THE FINANCIAL SECRETARY (ACTING) (MR HADDON-CAVE):—Sir, I appreciate my honourable Friend, Dr S. Y. CHUNG's willingness to support the passage of this bill. He has put his points in his usual vigorous and convincing manner and he has made a number of very important comments when making these points; I feel I should try to answer him now.

His arithmetic is more or less, and as far as it goes, correct, but I cannot accept his main contention which is that for the purpose of

measuring the results of the Company's operations year by year figures of net profits calculated on the basis of the Inland Revenue Ordinance should be used. Otherwise, he concludes, the interests of the travelling public are being neglected.

But, for this purpose—for the purpose of measuring the result of the company's operations—the use of Inland Revenue figures would not produce very consistent results. There is no reason indeed why they should, because there are legitimate differences between a tax view of profits and a commercial view. These differences stem from the treatment of depreciation allowances and provisions for such purposes as insurance, staff benefits and other forms of deferred expenditure. Prudent companies try to smooth out excessive variations in actual expenditure over a given period of years (for example, in the case of depreciation allowances, over the life of an asset; and, in the case of anticipated deferred commitments, annual provisions are made with a view to spreading the incidence of the expenditure involved). It can be shown that, even if the Company made the same profit each year before providing for royalty and tax, depending upon which view of profits is taken, the return on assets employed would differ considerably year by year. The difference would not always be in the Company's favour in the sense of a lower rate of return (with the concomitant implication that the rate of royalty should be reduced). For instance, at the beginning of a period of re-equipment the Commissioner of Inland Revenue would apply a 20% initial allowance which would have the effect of reducing the figure for net profit below the figure shown in the Company's accounts. By contrast, in the following year the Company's provision would exceed the Inland Revenue allowance and, in the Company's view, its net profit would be less than the figure used for tax purposes. As a matter of fact, only in two of the last six years have profits on Inland Revenue basis exceeded those calculated on the Company's basis after adjustments have been made. It would be quite illogical, therefore, for the purpose of judging the Company's results in terms of the rate of return achieved year by year and hence its ability to pay the rate of royalty laid down, to adopt the Inland Revenue view of profits in preference to the commercial view.

There are, Sir, two other points to be made: first, in normal circumstances the rate of royalty payable must be settled in advance and it would be difficult to calculate an Inland Revenue figure for net profit from estimates of income and expenditure. Secondly, there is no provision in the Ordinance governing the Kowloon Motor Bus Company's affairs similar to section 8(2) of the China Motor Bus Company's Ordinance enabling the Financial Secretary to have access to the Commissioner of Inland Revenue's calculation of net profit; and thus, if Inland Revenue figures were used for the China Motor Bus Company, a comparison of the results achieved by each of the two companies would not be possible.

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Turning now to the honourable Member's suggestion that royalty payments should be credited to a fund from which the China Motor Bus Company could borrow to finance the purchase of new buses and which the Government could use as a regulator of profits: I think I should say that this suggestion, Sir, overlooks the underlying purpose of royalty which is linked to the franchise enjoyed by the Company under the Ordinance. The purpose of royalty is not to provide the Company with a non-market source of capital; and I have already stressed in both my reply to my honourable Friend, Mr SZETO Wai, at the second reading and in my first speech in Committee that the Government cannot accept the idea of royalty being used to adjust the rate of return after the event, despite what is now proposed for the special year 1969-70. Furthermore, with receipts falling and costs rising, royalty payments at 20% or at any other rate are unlikely to be very substantial in the future.

Finally, Sir, I do not understand, I am afraid, the honourable Member's charge that the Government is discriminating against bus travellers on the Island by charging a 20% royalty in the year ending 30th June 1970: royalty payable by the Kowloon Motor Bus Company in the year ending the 14th of February 1971 has been abolished and fares were subsequently raised from the 1st July; in the case of the China Motor Bus Company, royalty stays on, at a reduced rate and fares remain unchanged for they cannot be adjusted retrospectively. The elimination of royalty for the year we are concerned with would have raised the rate of return from 9.7% to 13% at the quite unjustifiable expense of the taxpayer.

Finally, Sir, in reply to Mr BROWNE's suggestion that the 10% return of assets employed is an inadequate encouragement to shareholders, I can only say first that we are concerned with a retrospective adjustment in this particular case. We do not consider that this is an unreasonable settlement for the particular year we are concerned with. Secondly, in a situation in which we are forecasting the company's prospects, we do have in mind a rate of return which is somewhat higher than 10%, but it is a rate of return which the company must aim to achieve, having regard to such rate of royalty this Council may determine should be paid. That higher rate—if I may stress this point again—that higher rate is a target to be aimed at; it is not a rate to which the company is entitled after the event.

DR CHUNG:—Sir, a point of clarification about royalty. What I said is this, royalty is not paid by the company but by the travelling public.

*Proposed Amendment**Clause*

- 2 That clause 2 be deleted and the following substituted—
 "Amend- 2. Section 8 of the principal Ordinance is amended by
 ment of adding at the end thereof the following—
 section 8. "(3) The Legislative Council may, by resolution,
 (Cap. 317.) amend the rate of royalty specified in subsection (1), or
 amend that rate for any accounting year of the Company; and
 any resolution under this subsection may have retrospective
 effect to the commencement of the accounting year of the
 Company in which the resolution is passed:
 Provided that the rate of royalty for the accounting year
 of the Company commencing on the 1st July 1969 shall be
 twenty *per cent.*."

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clause 3 was agreed to.

Council then resumed.

Third reading

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER) reported that the Royal Hong Kong Regiment Bill 1970 had passed through Committee without amendment and that the Royal Hong Kong Auxiliary Air Force Bill 1970 had passed through Committee with certain amendments 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 ATTORNEY GENERAL (ACTING) (MR SNEATH) reported that the Law Reform (Miscellaneous Amendments) Bill 1970 and the Law Revision (Miscellaneous Repeals) Bill 1970 had passed through Committee without amendment and that the Prevention of Bribery Bill 1970 and the District Court (Civil Jurisdiction and Procedure) (Amend-

ment) Bill 1970 had passed through Committee with certain amendments 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 SECRETARY FOR HOME AFFAIRS (ACTING) (MR D. C. BRAY) reported that the Li Po Chun Charitable Trust Fund (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.

THE FINANCIAL SECRETARY (ACTING) (MR HADDON-CAVE) reported that the Public Transport Services (Hong Kong Island) (Amendment) Bill 1970 had passed through Committee with one 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:—Before I adjourn Council may I wish all honourable Members a very happy Christmas and a prosperous New Year, and in accordance with Standing Order No 8(5) I will now adjourn the Council until 2.30 *p.m.* on Wednesday, 6th January.

Adjourned accordingly at five minutes past four o'clock.