

30th June, 1927.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR (SIR CECIL CLEMENTI, K.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL C. C. LUARD, C.B., C.M.G.).

THE COLONIAL SECRETARY (HON. MR. W. T. SOUTHORN, C.M.G.).

THE ATTORNEY-GENERAL (HON. SIR JOSEPH HORSFORD KEMP, KT., K.C., C.B.E.).

THE COLONIAL TREASURER (HON. MR. C. MCI. MESSER, O.B.E.).

HON. MR. E. R. HALLIFAX, C.M.G., C.B.E. (Secretary for Chinese Affairs).

HON. MR. H. T. JACKMAN (Acting Director of Public Works).

HON. MR. E. D. C. WOLFE (Captain Superintendent of Police).

HON. SIR SHOU-SON CHOW, KT.

HON. MR. R. H. KOTEWALL, C.M.G., LL.D.

HON. MR. D. G. M. BERNARD.

HON. MR. A. C. HYNES.

HON. MR. J. OWEN HUGHES.

HON. MR. W. E. L. SHENTON.

MR. E. W. HAMILTON (Deputy Clerk of Councils).

MINUTES.

The minutes of the previous meeting of the Council were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by command of H.E. The Governor, laid upon the table:—

Resolution under section 7 of the Tramway Ordinance, 1902, on 23rd June, 1927.

FINANCE COMMITTEE REPORT.

THE COLONIAL SECRETARY moved that the report of the Finance Committee No. 7, dated 23rd June, 1927; be adopted.

THE COLONIAL TREASURER seconded, and this was agreed to.

CHARGES OF THE YEAR 1926.

THE COLONIAL SECRETARY moved the second reading of a Bill intituled, An Ordinance to authorize the appropriation of a Supplementary Sum of \$1,083,892.42 to defray the Charges of the year 1926.

THE COLONIAL TREASURER seconded, and the Bill was read a second time.

Council went into Committee to consider the Bill clause by clause. No alterations were made in Committee. Upon Council resuming,

THE COLONIAL SECRETARY moved the third reading.

THE COLONIAL TREASURER seconded, and the Bill was read a third time and passed.

TO PROTECT THE REVENUE.

THE ATTORNEY-GENERAL moved the second reading of a Bill intituled, An Ordinance to protect the revenue of the Colony.

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

Council went into Committee to consider the Bill clause by clause. No alterations were made in Committee. Upon Council resuming,

THE ATTORNEY-GENERAL moved the third reading.

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

ILLEGAL STRIKES AND LOCK OUTS.

THE ATTORNEY-GENERAL moved the first reading of a Bill intituled, "An Ordinance to declare and amend the law relating to illegal strikes and lock-outs, to amend the law relating to intimidation and to breaches of contracts of service in certain special cases, to promote the independence of trade unions established within the Colony, and for purposes connected with the aforesaid purposes." In doing so, he said—The Bill, Sir, has three main objects. One is to declare, and slightly to amend, the law relating to certain illegal strikes and lock-outs; the second to prevent intimidation in the course of industrial disputes; the third is to prevent Hong Kong trade unions from being under the dominance of trade unions and other organisations outside of the Colony.

In carrying out the first object the Bill follows very closely the provisions of the Trade Disputes and Trade Unions Bill which is at present before Parliament in England. In carrying out the second object—prevention of intimidation—this Bill is founded partly on some English legislation which dates back to 1875 and partly on

some amendments to that old legislation which are being made by the Bill now before Parliament. In attempting to carry out the third object the Bill strikes out a new line.

Various amendments have been proposed to this Bill and it is intended to move some of them in Committee next week. It is hoped to publish the Bill, showing these proposed amendments, in the *Government Gazette* which will appear this week. If, however, I may be allowed to do so I will indicate, in the course of dealing with this Bill, what these proposed amendments are.

The main section dealing with the first object of the Bill is Section 3. It declares that—

Any strike is illegal which has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged and is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community or any substantial portion of the community.

There is a similar declaration as regards lock-outs. The view taken by the Government in England is that that section is declaratory. It does not amend the law or impose any liabilities which did not exist before, although any declaratory section must, by being more exact and clearly defined, take a slightly different course in defining the exact boundaries of an offence. But speaking broadly what is declared to be an offence here is already an offence at Common Law.

It may perhaps be just as well to point out that this section—the declaratory section declaring certain strikes illegal—does not make sympathetic strikes, as such, illegal. It is quite possible to have a perfectly legal sympathetic strike, and it will be still possible after the Bill becomes law. There are two requirements necessary that a strike may be illegal under this declaration. One is that it must have "some object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged." It must have some object other than an alteration of the conditions of that particular trade. That is not enough alone, however. If that were enough alone it would make every sympathetic strike illegal unless it was a strike of workers all engaged in the same trade. The second requirement necessary to make a strike illegal is that it must be a strike designed or calculated, that is deliberately intended or likely, "to coerce the Government either directly or by inflicting hardship upon the community or any substantial portion of the community." I think, Sir, one may safely say that no genuine industrial trade dispute strike we have ever had in Hong Kong would have come within the words of this section. The strikes which would have come within these words were strikes which were not genuine industrial strikes at all, but strikes inspired by political and very often anti-British and communistic motives.

The object of this Bill is not to interfere in any way with a genuine industrial strike which is intended to alter and better the conditions of the workers, but to prevent and render more clearly illegal the strikes which are not genuine industrial strikes, but strikes which are political and communistic and, of course, also those sympathetic strikes which do not confine themselves to ordinary industrial pressure but seek to achieve their end by coercion of the Government.

The provisions of these sections—sections 3 and 4—are taken almost word for word from the English Bill. There is one slight alteration to be made in sub-section (3) of clause 3. That clause now reads "For the purposes of sub-section (1) a trade dispute " It should read "For the purposes of this section a trade dispute "

Clause 5 of the Bill deals with the second main object of this legislation—prevention of intimidation. I do not think it is necessary to say much about this clause because most of it is based on what has been law in England since 1875, and what is new is taken from the Bill which is at present before the English Parliament.

Clause 6 deals with a subsidiary object of this legislation and makes it an offence to break a contract of service in certain special cases. That does not make a strike in these particular services illegal, but it makes illegal a lightning strike. For example, the clause refers to certain special services dealing with the supply of electric current, gas, or water (which comes under public control) or with maintaining any public tramway, bus service, public ferry, telephone or sanitary service. The clause also covers all cases of persons employed under the Crown. In these cases the breaking of the contract of service is made illegal and criminal if the person who breaks this contract of service "knows or has reasonable cause to believe that the probable consequence of his so doing would, failing the adoption of extraordinary measures, be to hinder or prevent the discharge of the functions of the Government" or "to deprive the inhabitants of the Colony, or a substantial number of them, wholly or to a great extent, of their supply of water, or electric current, or gas or of the ordinary facilities of transport" and so on.

This clause—clause 6—is also based on English legislation. Part of it is based on legislation dating back to 1875. Sub-clause (1) dealing with service of the Crown is based on a section of the Bill which is at present before the English Parliament. Sub-clause 2—dealing with essential services—which, as I say, is based on the legislation of 1875 in England has been extended beyond the scope of the English legislation but I do not think the principle has really been extended.

Clause 7 is intended to prevent Hong Kong trade unions from being dominated by trade unions or other organisations outside the Colony. We know from experience how necessary
t h i s l e g i s l a t i o n i s .

The way in which the clause attacks the problem is to prohibit, except with the consent of the Governor-in-Council, any trade union established within the Colony being affiliated or connected with any trade union or other organisation outside the Colony in such a manner as to place the trade union in the Colony, or any of its members, under the control of the trade union or organisation outside. The history of recent years will readily supply arguments for the adoption of this clause.

It is proposed to amend the clause slightly. It is proposed to amend the first two lines of sub-section (1) so that they will read

"Except with the consent of the Governor-in-Council no trade union"

instead of

"Except under and in accordance with the permission of the Governor-in-Council."

The word "consent" is used instead of "permission" because the word "consent" is used in other parts of the section and it is thought better to make it simply a case of consent or refusal and not to attempt to attach conditions on which consent will be given.

After the Bill was drafted it was pointed out that a certain time must elapse between the coming into effect of the Ordinance and the consent which might be applied for at once under section 6 (1). The application might, or rather certainly would, require some little time for consideration before it could be granted. It was pointed out that in a case of that kind, consent might be given almost at once and yet in the interval between the coming into effect of the Ordinance and the granting of the consent, the union might occupy an illegal position. It is therefore proposed to add the following sub-clause as sub-clause 2 after sub-clause 1 of Clause 7.

"Any consent of the Governor-in-Council under the provisions of sub-section (1) may be made retrospective in effect to such date as the Governor-in-Council shall think fit."

So that if a trade union applied for consent the Governor-in-Council could make the consent date back to the commencement of the Ordinance.

It has also been pointed out that the sub-clauses which, following the introduction of the additional sub-clause (2), will now appear in the Bill as sub-clauses (6) and (7) instead of (5) and (6), should in some way be altered so as not to apply to cases where consent has been given under sub-clause (1). Sub-clauses (6) and (7) refer to attempts that might be made by unions or persons outside the Colony to give direction or notice to a union within the Colony. It is, therefore, proposed to add a new sub-clause—sub-clause (8)—at the end of sub-clause (7) in the following terms:—

The provisions of sub-sections (6) and (7) shall not apply to any direction or notice issued or given on behalf of or in the name of any trade union which is established outside the Colony to members of any trade union which is established within the Colony if the trade union which is established within the Colony is with the consent of the Governor-in-Council affiliated or connected with the trade union which is established outside the Colony."

Clause 8 also carries out another subsidiary purpose of the Bill in prohibiting the use of trade union funds for political purposes outside the Colony.

It is proposed to add in Committee a further clause to this Bill—clause 11 which will read as follows:

No prosecution for any offence under Section 3, 7 or 8 shall be commenced without the sanction of the Attorney-General.

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

Objects and Reasons.

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

1.—The main object of this Ordinance is to arm the Colony against strikes, like the general strikes of 1922 and 1925, which are designed or calculated to coerce the Government by inflicting hardship upon the community. It is also intended to strengthen the law against intimidation, and to free Hong Kong trade unions from the risk of being dominated by organizations outside the Colony. It deals also with illegal lock-outs. It is based chiefly on the Trade Disputes and Trade Union Bill, which is at present being considered in Parliament, and on certain sections in the Conspiracy and Protection of Property Act, 1875.

2.—(1) The definition of "strike" in section 2 is copied from clause 8 (2) of the English bill.

(2) The definition of "trade union" gave rise to some difficulty, the English definitions being complicated by the legislative history of trade unions in England. The definition which has been adopted in the Ordinance is based on that in section 16 of the Trade Union Act Amendment Act, 1876, 39 and 40 Vict. c. 22. In the peculiar circumstances of Hong Kong it has been considered unnecessary at present to follow that definition in its application to combinations of employers and to combinations for imposing restrictive conditions on the conduct of any trade or business. The reference to branches is taken from section 5 (2) of the Trade Disputes Act, 1906, 6 Edw. 7, c. 47. The phrase, "which has *among* its objects," is based on section 1 of the Trade Union Act, 1913, 2 and 3 Geo. 5, c. 30.

3.—(1) Section 3, which deals with illegal strikes and lock-outs, is based on clause 1 of the English bill, altered in accordance with certain amendments which it was indicated that the Government proposed to make in that clause.

(2) Sub-clause (2) of clause 1 in the English bill provides penalties of £10 or three months' imprisonment on summary conviction, and of two years' imprisonment on conviction on indictment. In the present Ordinance the penalties are all relegated to section 10 which provides simply for maximum penalties of \$500 and/or six months' imprisonment, to be imposed in all cases on summary conviction.

(3) Sub-clause (3) of clause 1 of the English bill is unnecessary here because the provisions there overridden do not exist in Hong Kong.

4.—Section 4, which is designed to protect persons refusing to take part in illegal strikes, from expulsion from their union or fine or loss of benefits, is taken almost word for word from clause 2 of the English bill, with the omission of the retrospective sub-clause (3).

5.—Sub-section (1) of section 5 is based on section 7 of the Conspiracy and Protection of Property Act, 1875, 38 and 39 Vict. c. 86, and sub-sections (2) and (3) of section 5 are based on clause 5 of the English bill. The section as a whole is designed to prevent intimidation.

6.—Sub-section (1) of section 6 is based on clause 6 (2) of the English bill, the Government of Hong Kong taking the place of the "local or other public authority" of the English clause. Sub-section (2) of section 6, which is aimed at strikes in essential services which are commenced without due warning, is based on section 4 of the Conspiracy and Protection of Property Act, 1875, but it extends the principle of that section to electricity, to telephone and sanitary services, and to the means of transport by railway, ferry, tram and bus. The English section is confined to gas and water. Sub-section (3) of section 6 is copied from section 5 of the above English Act.

7.—(1) Section 7 is intended to free Hong Kong trade unions from the risk of domination by organizations outside the Colony. Past experience shows that there is a grave danger that such domination, if it were allowed to exist, might in some cases be used, not for any genuine trade union purpose, but for bolshevistic and anti-British objects.

(2) Sub-section (1) accordingly provides that, except with the consent of the Governor-in-Council, no trade union which is established within the Colony shall be affiliated or connected with any trade union or other organization outside the Colony in such a manner as to place the Hong Kong trade union or its members under the control of the organization which is established outside the Colony. Any Hong Kong trade union so affiliated without consent will, under sub-section (3), be an unlawful society, or it may, under sub-section (4), be declared an unlawful society. Under sub-section (2) consent can be made retrospective.

(3) In order to facilitate proof, and to avoid doubts as to what establishment within the Colony means, sub-section (5) specifies certain facts, *e.g.*, the exhibition of a sign board, from which it is to be inferred that a trade union is established within the Colony.

(4) Sub-section (6) provides that no person shall on behalf of any trade union outside the Colony give any direction or notice to any person with regard to any action by such person within the Colony, and sub-section (7) makes possession of any such direction or notice in writing an offence unless lawful authority or excuse can be established. Sub-section (8) excepts cases where consent has been obtained under sub-section (1).

(5) Sub-section (9) throws on the defendant the onus of proving that any organization in question was not a trade union, or that any organization in question was not a trade union established outside the Colony.

8.—Section 8 prohibits the application of the funds of any trade union to any political purpose outside the Colony, and prohibits any levy for such a purpose.

9.—Section 9 is copied from clause 8 of the English Trade Dispute and Trade Unions Bill. It gives the Attorney-General the right to apply for an injunction to restrain any application of the funds of a trade union in contravention of the Ordinance.

10.—Section 10 is the general penalty section.

11.—Section 11 requires the sanction of the Attorney-General for prosecutions under section 3, 7 or 8.

Council adjourned until Thursday, 7th July.
