

7th July, 1927.

PRESENT:—

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

THE HON. THE OFFICER COMMANDING THE TROOPS (COLONEL B. N. SERGISON-BROOKE, C.M.G., D.S.O.)

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 last meeting were confirmed.

NEW MEMBER.

Colonel B. N. SERGISON-BROOKE, C.M.G., D.S.O., commanding the 15th Infantry Brigade, who was acting on behalf of H.E. the General Officer Commanding the Troops, took the oath of allegiance upon taking his seat in the Council.

PAPERS.

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

Rules made under section 16 (1) of the Peak Tramway Ordinance, 1883, on 30th June, 1927.

ILLEGAL STRIKES AND LOCK-OUTS.

THE ATTORNEY-GENERAL moved the second reading of the 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." He said—In introducing this Bill at the last meeting of the Council I referred to certain amendments which it was proposed should be moved in Committee. Since last Thursday we have decided to propose three further amendments in addition to those which I then mentioned. Two of these appear on the sheet which was circulated to Honourable Members. The third does not appear on that paper. The two amendments which appear on the sheet that was circulated are amendments proposed to be made in Clause 6. The first is in Sub-section (1) where it is proposed to substitute the words "an agreement for service under" for the words "a contract of service with." The clause will then read "No person who is employed in the service of the Crown under the Government of Hong Kong shall wilfully break an agreement for service under the Crown if he knows or has reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, would, failing the adoption of extraordinary measures, be to hinder or prevent the discharge of the functions of the Government."

This amendment is made in order to make the terminology of the clause agree better with the terminology of General Orders. It also serves to mark the distinction between the terms of service under the Crown and the terms of service under some employer other than the Crown. Service under the Crown differs, of course, in a number of its details from service under any other employer, the great distinction being that, speaking generally, in every agreement for service under the Crown there is the implied condition that the Crown is at liberty to dispense with the services of its servants at any time.

The second amendment proposed to be made in Clause 6 is the addition of a new sub-section (2). The proposed new sub-section reads as follows:—"For the purpose of sub-section (1), and without prejudice to the interpretation of any express term of the agreement other than a term relating to notice, a person who is employed in the service of the Crown shall be deemed to break his agreement for service under the Crown if he absents himself from duty without leave and without having given to the head of his department one month's notice in writing terminating with the last day of a calendar month, or if he wilfully refuses duty, or if he wilfully omits to perform his duty, provided that the provisions of this sub-section relating to notice shall not apply to any person who is engaged by the day or who is paid daily."

The effect of the sub-section, of course, continued the ATTORNEY-GENERAL, is that in the circumstances contemplated in sub-section (1) of clause 6, no Government servant is allowed to leave his duty without giving one month's notice terminating on the last day of a calendar month except in the cases of servants who are engaged by the day or paid daily.

A secondary alteration necessitated by the insertion of that sub-section will be the re-numbering of sub-sections (2) and (3) as (3) and (4).

The third amendment which it has been decided to propose since the last meeting is an amendment to the proposed new clause 11. The new clause originally proposed was "No prosecution for any offence under Section 3, 7 or 8 shall be commenced without the sanction of the Attorney-General." It is now proposed to move in committee that the clause shall read "No prosecution for any offence under Sections 3, 6, 7 or 8 shall be commenced without the sanction of the Attorney-General." It has been deemed desirable to include section 6 in the terms of the proposed section.

THE COLONIAL SECRETARY proposed the second reading of the Bill.

HON. SIR SHOU-SON CHOW said—Sir,—As this Bill affects the Chinese more than other sections of the community by reason of their preponderate numbers, I crave permission to make a few remarks on behalf of myself and my Chinese colleague. We consider the Bill timely and necessary, and we therefore support it whole-heartedly. If and when it becomes law, it should go a long way towards preventing recurring political strikes—strikes which specially aim at the economic life of the Colony, such as those which we experienced in 1922 and 1925, and from the effects of which we are still suffering.

The proposed measure is not class legislation, because it affects employers as well as employees; nor is it in any way racial discrimination, for it concerns all, irrespective of race or creed. The fact that many of its sections are taken from the Bill now before Parliament proves conclusively that the Government has no intention of treating the Chinese differently from the British. If this Bill in any way savoured of class or racial distinction, we would have been the first to oppose it. It will, in fact, afford protection to the employees no less than to the employers, for it makes lock-outs illegal under certain defined circumstances. In short, it is legislation designed to protect the community as a whole. I say that not only is it not aiming at the labouring classes, but one of its basic principles is to afford protection to the law-abiding workmen who only want to be left alone to earn an honest living.

Strikes are double-edged weapons which injure the strikers just as much as the people they strike against. They cause untold losses, and widespread distress and misery to all classes. Thousands and thousands of honest working men have in recent years been forced to go on

strike, to give up their means of livelihood, at the dictates of a few individuals who batten on the ignorance and gullibility of the masses. It is this class of mischief-makers,—fomenters of sedition and trouble—that this Bill is designed to deal with. Hong Kong is no place for them. We do not want Bolshevism or Communism. We cannot afford to have the economic and financial structure of the Colony periodically shaken or undermined. What we want are peace and good order, and the right to follow our callings without let or hindrance.

This Bill is in no way a repressive measure. It will not interfere with the law abiding working men; it does not even make economic strikes illegal, and, further, it does not prohibit sympathetic strikes, as such. In the event of a wage dispute between employers and employed, the mediation of the Government can be invoked by the two parties to bring about a satisfactory settlement. The efforts of my Chinese colleague and myself can also be counted upon to that end, if desired. We are not unmindful of the legitimate aspirations of the working men to better their conditions of living. But the realisation of such aspirations can only be possible if the Colony enjoys peace and prosperity, if its industrial life pursues a normal course, and if Capital and Labour loyally co-operate for a common purpose. I believe, in all sincerity, that this Bill, more than anything else I can conceive of at the present time, will materially help to bring us these blessings. (Applause.)

HON. MR. W. E. L. SHENTON said—Your Excellency, I rise to support this proposed ordinance because it will contribute to the peace and good order of this Colony. It is one of the principal duties of the Justices of the Peace of this Colony to assist in the preservation of peace and good order and it is, therefore my wish as the representative of that body to support this proposed legislation.

It is needless for me to point out that Hong Kong is peculiarly situated on the borders of China and that in the heat of political movement it is particularly sensitive to political emotion. It is essential, your Excellency, in this Colony that we should entirely control our own house. It is equally essential that there should be no interference from without. It is also essential that we should preserve some control over our own people and their connections and associations outside the Colony.

This main section of this Ordinance is Section 3 which states that either a strike or lock-out designed or calculated to coerce the Government is illegal. Those words "designed or calculated" do not mean that there must be actual coercion. As to whether the strikes in 1922 and 1925 were illegal strikes, or would have become illegal strikes, under this Ordinance, it is unnecessary for us to argue. We can at the most surmise. They are old history. But it is particularly desirable that there should be a statutory declaration as to what is an illegal strike is.

The principal objects and merits of this proposed Ordinance are in Sections 3, 4, 5, 6, 7, 8 and 11. Section 3 is the section which deals with illegal strikes and illegal lock-outs. It is, I may say, declaratory of the law as it exists to-day. It has been held at Home, in the Courts, that strikes and lock-outs such as are indicated in Section 3 are in fact illegal irrespective of this section. No one could possibly deny that interference with the policy of this Government would be a most serious matter. I would interpret this section as one upholding the principle that the Government must not be forced to do what it does not consider right. This legislation is directed towards that end.

Section 4 is a section which deals with the protection of the individual. It is framed with the object of assisting any inhabitant of this Colony who wishes to observe the law. That is to say if he refuses to take part in any strike which is declared illegal he shall not be subject to fine or otherwise deprived of any right or benefit to which he might be entitled. I would describe this section as giving the right to the individual to carry on his advocations according to his own wishes.

Section 5 is the section which deals with intimidation. This section does not in any way effect what is known as peaceful picketing. That is preserved, but it states very clearly and emphatically what will not be allowed. This again, Your Excellency, is declaratory of the law as it exists to-day, but it is extremely useful to have the declaration placed on the Statute book so that all may know. I regard this section as the acknowledgment of the right of the individual to exercise his own discretion.

Section 6 deals with breaches of contract. This is specially framed to stop what are known as lightning strikes in essential services. I may well describe this section as the section for the protection of the public.

Section 7 gives to this Colony the right to regulate its own affairs without interference from without. I would describe this section in a few words as embodying and assisting the preservation of the independence of this Colony.

Section 8 is the section which prohibits the use of trade union funds for political purposes outside the Colony. It is, if I may say so, a section based upon the necessity of maintaining our neutrality. Our inhabitants should not unduly interfere with politics outside the Colony and this section is a contribution to the maintainance of neutrality in political affairs which at this particular juncture is so essential.

Section 11 provides a safeguard against frivolous prosecutions. It acts as a guarantee in this Colony that the law will be properly administered. It is essential that we should have a section of this nature because it assures that legal strikes and legal lock-outs will

not be interfered with. This section provides that there shall be no prosecutions without good cause.

In conclusion, I would point out that this Ordinance places no restriction whatever on genuine trade disputes nor upon the common law rights of individuals. It merely provides that lawful objects shall be carried out by lawful means and for that reason I have great pleasure in supporting it. (Applause.)

The Bill was then read a second time.

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

In the first line of sub-section (3) of Clause 3 the words "this section" were substituted for the words "sub-section (1)."

In the third line of sub-section (1) of clause 6 the words "an agreement for service under" were substituted for the words "a contract of service with."

The following sub-section was added as sub-section (2) immediately after sub-section (1) of clause 6.

"For the purpose of sub-section (1), and without prejudice to the interpretation of any express term of the agreement other than a term relating to notice, a person who is employed in the service of the Crown shall be deemed to break his agreement for service under the Crown if he absents himself from duty without leave and without having given to the head of his department one month's notice in writing terminating with the last day of a calendar month, or if he wilfully refuses duty, or if he wilfully omits to perform his duty, provided that the provisions of this sub-section relating to notice shall not apply to any person who is engaged by the day or who is paid daily."

Sub-sections (2) and (3) of Clause 6, following this addition were re-numbered sub-sections (3) and (4).

In the re-numbered sub-section (3) of Clause 6 the words "water or" in the 13th line of the sub-section were deleted.

In Clause 7 the words "with the consent" were substituted for the words "under and in accordance with the permission."

The following sub-section (2) was added immediately after sub-section (1) of Clause 7.

"(2) 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 it."

The original sub-sections (2) (3) (4) (5) and (6) were then re-numbered (3) (4) (5) (6) and (7).

In the original sub-sections (5) and (6), now re-numbered as (6) and (7), the words "Subject to the provisions of sub-section (8)," were added before the words "no person" in the first lines of those sub-sections.

The following new sub-section (8) was added to Clause 7:—

"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 the 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."

The original sub-section (7) was re-numbered sub-section (9).

A new clause No. 11 was added as follows:—

Sanction of
Attorney-General.

11.—No prosecution for any offence under section 3, 6, 7 or 8 shall be commenced without the sanction of the Attorney-General.

Upon Council resuming,

THE ATTORNEY-GENERAL moved the third reading of the Bill.

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

Council adjourned *sine die*.
