

*19th October, 1949.*

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**PRESENT:—**

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GEANTHAM, K.C.M.G.)

THE COLONIAL SECRETARY (HON. J. F. NICOLL, C.M.G.)

THE ATTORNEY GENERAL (HON. J. B. GRIFFIN, K.C.)

THE SECRETARY FOR CHINESE AFFAIRS (HON. R. R. TODD).

THE FINANCIAL SECRETARY (HON. C. G. S. FOLLOWS, C.M.G.)

DR. HON. I. NEWTON (Director of Medical Services).

DR. HON. J. P. FEHILY, O.B.E. (Chairman, Urban Council).

HON. E. A. BOYCE (Director of Public Works).

HON. GHOU TSUN-NIN, C.B.E.

HON. SIR MAN-KAM LO, KT., C.B.E.

DR. HON. CHAU SIK-NIN.

HON. LEO D'ALMADA E CASTRO, K.C.

HON. M. M. WATSON.

HON. C. BLAKER, M.C., E.D.

MR. ALASTAIR TODD (Deputy Clerk of Councils).

**ABSENT:—**

HON. D. F. LANDALE.

**MINUTES.**

The Minutes of the Meeting of the Council held on 5th October, 1949, were confirmed.

**PAPERS.**

THE COLONIAL SECRETARY, by command of His Excellency the Governor, laid upon the table the following papers:—

The Stamp (Bank Authorisation) No. 4 Order, 1949. (G.N. No. A. 216 of 1949).

The Public Health (Sanitary Provisions) Regulations, 1948,— Declaration under section 2(10)(a). (G.N. No. A. 217 of 1949).

The Dangerous Goods (Amendment) Regulations, 1949. (G.N. No. A. 218 of 1949).

The Defences (Firing Areas) Ord., 1936,—Amendments to the Schedules. (G.N. No. A. 219 of 1949).

The New Territories Regulation Ord., 1910,—Rescission of G.N. No. 1409 of 1941. (G.N. No. A. 220 of 1949).

The Registration of Persons Order (No, 2), 1949. (G.N. No. A. 221 of 1949).

Annual Report of the Director of Public Works for the year 1947/48.

Annual Report of the Sand Monopoly for the year 1948/49.

Annual Report of the Director of Marine for the year 1948/49.

**MOTIONS.**

THE CHAIRMAN, URBAN COUNCIL, moved—

“ That the by-laws made by the Urban Council on the 27th day of September, 1949, under Section 5 of the Public Health (Food) Ordinance, 1935, Ordinance No. 13 of 1935, be approved.”

He said: Sir, the purpose of these by-laws is to enable the Urban Council to exercise control over the sale of certain foodstuffs under the Public Health (Food) Ordinance.

The by-laws are intended to replace By-law No. 11 of the Domestic Cleanliness and Prevention of Disease By-laws, made under the Public Health (Sanitation) Ordinance, 1935, as well, as the Emergency Regulations for the prevention of Cholera, made under Ordinance No. 5 of 1922.

At the request of the Health Authorities, advantage has been taken of this opportunity to provide for more effective control over the importation and sale of bivalve molluscs.

THE COLONIAL SECRETARY seconded, and the Motion was carried.

**DEPORTATION OF ALIENS (AMENDMENT) BILL, 1949.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Deportation of Aliens Ordinance, 1935." He said: Sir, the Deportation of Aliens Ordinance, 1935, the principal Ordinance, empowers the Governor-in-Council summarily to issue a deportation order against any person whom he finds to be an alien and he may do so in three main cases mentioned in section 3 of the principal Ordinance; that is to say, if the alien has been deported or banished from the United Kingdom or from another Colony, or if the alien has been convicted in the Colony of any offence and if in any special case the Governor-in-Council deems it to be conducive to the public good to make a summary deportation.

Honourable Members will recall that the principal Ordinance was amended by Ordinance No. 58 of 1948 to make it possible for a court, in addition to or in place of a sentence, to make a deportation order against an alien if he has not been resident in the Colony for a consecutive period of one year immediately before conviction.

Now, Sir, since the Ordinance was amended by Ordinance 58 of 1948 the administrative machinery employed for the operation of the principal Ordinance has been under examination and notably has it been under examination by the Adviser on Organisation and Methods. The machinery now in vogue entails a considerable amount of work with consequential delay in the preparation of deportation papers in regard to the very considerable number of aliens who at the present time become subject to deportation. Furthermore, all such papers require to be circulated to all Members of the Executive Council and examination of such papers engages a considerable amount of the time of Members of that Council.

But, Sir, it is now the case that deportation tends in the majority of cases to be ordered in every case where there has been conviction of an offence of the nature described in the first schedule to the Bill before Council. In these circumstances, consideration has led to the view that a process of deportation in the case of aliens could be simplified by rendering deportation in the case of aliens automatic where conviction of offences of the nature mentioned in the first schedule to this Bill has taken place.

Accordingly, Sir, clause 3 of this Bill provides for the repeal and replacement of section 8 of the principal Ordinance so as to empower a competent authority, that is to say, an individual officer to order deportation of aliens of the category I have described. In so providing, however, it will be noticed that the proposed new section preserves safeguards against the deportation of any person who is not an alien, and provides for a due investigation of claims against deportation on the grounds, for instance, of long residence in the Colony.

Sir, the new section will provide for investigation of such special cases and advice thereon to be tendered by two members of the Executive Council, namely, the Attorney General and the Secretary for Chinese Affairs who under the present procedure are in the main concerned in tendering advice to Your Excellency and to the Executive Council on matters relating to deportation. I wish to stress, however, that the procedure which the proposed new section 8 would introduce will in no way derogate from the power vested in the Governor-in-Council by section 3 of the principal Ordinance to deport any alien notwithstanding that he may not have been convicted of an offence named in the First Schedule to this Bill.

But Sir, the procedure now proposed by the new section 8 will, it is anticipated, greatly reduce the administrative and clerical work present entailed by the existing deportation procedure and it should reduce the bulk of papers requiring the consideration and attention of members of the Executive Council.

Sir, the only other provision of this Bill which is of substantial importance is provided by clause 5 which provides for amendment of section 13 of the principal Ordinance in such a way as to simplify the procedure for redeportation in the rather frequent cases which occur of an alien returning to the Colony while a deportation order in regard to him is still in force.

Finally, Sir, clause 6 of the Bill takes account of the changes which have been effected by the British Nationality Act of 1948 as regards protected persons. To conform with that legislation it is necessary to provide, as by clause 6, that protected persons shall not be subject to deportation as aliens, but will be subject to the Deportation (British Subjects) Ordinance, 1936.

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 increase in the population of the Colony since the liberation and the necessity of preserving law and order has made it imperative to exercise extensively and expeditiously the power given to the Governor in Council to order the deportation of alien convicts. The experience thus gained has made it possible to formulate on reasonably definite lines the cases in which an alien convict should be deported and has thus opened the way to delegate within these limits the power of deportation.

2. Certain aspects of deportation, such as the question whether or not a person is an alien and whether or not his long association with the Colony together with other redeeming features make his case exceptional, require further investigation. These matters can,

however, suitably be dealt with by the Governor on the advice of the Attorney General and the Secretary for Chinese Affairs.

3. The object of clause 3 of this Bill, which substitutes a new section 8 for section 8 of the principal Ordinance, is to enable a competent authority appointed by the Governor to order deportation of an alien convict. This power will not be exercisable while any appeal or review may still occur or is pending (sub-section (13) of section 8) and must be preceded by a notification that deportation is proposed (sub-section (7)). This enables the alleged alien to claim that he is not an alien or to petition the Governor to be allowed to remain in the Colony (sub-section (8)). The former claim will be referred to the Governor with the advice of the Attorney General and the Secretary for Chinese Affairs and these officers will also make their observations on any petition to be allowed to stay in the Colony (sub-sections (9) and (10)).

4. Subject to these safeguards a competent authority will order—

(a) deportation for life of an alien sentenced to six months' imprisonment or more for a scheduled offence; (sub-section (1) of section 8);

(b) deportation for ten years of an alien sentenced to imprisonment for less than six months and to one month or more for a scheduled offence; (sub-section (2));

(c) deportation for ten years of an alien who has at any time been sentenced to more than eighteen months' imprisonment provided that such alien is still serving a sentence and has been convicted within six months prior to the making of the order; (subsection (3)).

5. Proof of the convictions referred to in 4(a) and 4(b) respectively will be furnished by the warrant of commitment or certificate of sentence which together with a certificate of previous convictions will also enable proof to be furnished of the convictions necessary to apply 4(c) (see sub-sections (4), (5) and (6) of section 8.) The duty thus cast on the Registrar of the Supreme Court (and on magistrates) is more than counter balanced by the fact that the Bill will relieve the courts of the duty of ordering or recommending deportation.

6. The power of the Governor in Council to order deportation has necessarily been preserved (sub-section (14) and sub-section (15) enables the Schedule to be amended by the Governor-in-Council.)

7. Under sub-section (8) of the new section 8 a person is given fourteen days in which to claim not to be an alien or to petition the Governor to be allowed to stay in the Colony. To enable proper effect to be given to this provision the powers of deportation given to the competent authority are in each case exercisable only if the person is still due to serve a sentence of imprisonment of not less

than fourteen days after service upon him of a notification of his proposed deportation. If he prefers a claim or petition provision is made by sub-section (12) for his detention in custody pending determination of his claim or petition.

8. The object of clause 5 of the Bill is to make better provision for the re-deportation of an alien who returns before the period for which his deportation has been ordered has expired. The main change effected is to render unnecessary any fresh order if he has been convicted of the offence of so returning (sub-section (5) of section 13.) The opportunity has, however, been taken to render re-deportation more practical where it is desired to take such course by order of the Governor without prosecuting the alien for the offence of returning before the expiration of the period for which he was deported. In particular, provision is made for a justice of the peace to authorize interim custody by warrant (sub-section (10)) and the Governor's order is signified by the Clerk of 'Councils instead of by the Colonial Secretary.

9. A British protected person is a person who is a member of a class of persons declared by Order in Council made in relation to any protectorate, protected state, mandated territory or trust territory to be for the purposes of the British Nationality Act, 1948, protected persons by virtue of their connection with that protectorate state or territory. Such a declaration has already been made by the British Protectorates, Protected States and Protected Persons Order in Council, 1949. British protected persons are strictly speaking aliens but it is the policy of His Majesty's Government in the United Kingdom that they should, whenever possible, be treated similarly to British subjects. The object of clause 2 of the Bill is to render them immune from deportation as aliens unless they have been deported, banished or expelled from a territory which is not a foreign country within the meaning of the British Nationality Act, 1948. In consequence of this amendment it is necessary to apply the provisions of the Deportation (British Subjects) Ordinance, 1936, to protected persons. This is achieved by clause 6 of the Bill.

### **CRIMINAL PROCEDURE (AMENDMENT) BILL, 1949.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Criminal Procedure Ordinance, 1899." He said: Sir, the Bill as before Council is accompanied by Objects and Reasons which are full and I do not think I can usefully add to the content of those Objects and Reasons.

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. It is the law of England that when the Court admits in evidence a statement by an accused person the fact that the judge, in deciding whether or not the statement was voluntary, has considered

and formed an opinion on evidence as to the circumstances in which the statement was made, does not prevent the jury from considering the same evidence for the purpose of deciding what weight if any should be given to the statement. In a case on appeal (Lau Hoi and another v Rex) the Full Court in Hong Kong stated the law in other terms which negated this rule.

2. The object of this Bill is to restore the rule of English law as above described by inserting an appropriate section, as section 55, in the Criminal Procedure Ordinance, 1899. The section proposed also makes clear that, where, as most commonly occurs, evidence as to the circumstances in which a statement by an accused person was made is taken in the 'absence of the jury, the Crown and the accused have the right to have the evidence retaken in the presence of the jury.

### **PREVENTION OF CORRUPTION (AMENDMENT) BILL, 1949.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Prevention of Corruption Ordinance, 1948." He said: Sir, the Prevention of Corruption Ordinance, 1948 made legislative provision to amend and strengthen the law against corruption in office or corrupt transactions by agents. In prosecutions for offences of that character, it is not infrequently the case that reliance, to a greater or less extent, must be placed on the evidence of an accomplice. Where such evidence is adduced, it is a rule of practice that a judge directs a jury that it is dangerous—emphasising the word "dangerous"—to convict on the evidence of an accomplice without corroboration in a material particular implicating the accused.

Sir, because experience has shown that a direction to a jury in such terms makes juries hesitant to an unjustifiable extent to convict, section 9 of the principal Ordinance was enacted to declare that a judge would not be required to direct the jury that it is dangerous to convict, but that instead he should direct a jury that they may convict if satisfied beyond reasonable doubt that the evidence of the accomplice is worthy of belief.

Sir, in the meanwhile since the principal Ordinance was enacted the wording of section 9 has been under consideration and the wording has been criticised on the grounds which are set out in paragraph 1 of the Objects and Reasons published with this Bill. Accordingly, Sir, the Bill, by clause 3, proposes to repeal and replace section 9 of the principal Ordinance in such a way as to meet the criticisms which I have indicated.

Again, Sir, section 5 of the principal Ordinance has been under consideration since its enactment. That section provides for a penalty for offences by fine and imprisonment, but in addition to such penalties it goes further and empowers a Court on a conviction to order forfeiture of office or of rights or claims to compensation or pension.

But, Sir, as a result of the consideration to which I have referred, the view is now held that provision for additional penalty by forfeiture of office or by forfeiture of pension and the like, should not properly have been included in the section but should instead be left to be determined in accordance with the constitutional instrument governing the public office held by any convicted offender. Accordingly, Sir, by clause 2 of the Bill, provision is made for the repeal and replacement of section 5 of the principal Ordinance in such a form as to omit provision for forfeiture of office or disqualification from office or for forfeiture of compensation or pension.

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 Prevention of Corruption Ordinance, 1948, the principal Ordinance, makes special provision dealing with the subject of the evidence of an accomplice upon trial on indictment for offences against sections Q and 4. Such provision is contained in section 9 which reads as follows:—

“9. Notwithstanding any rule of practice or procedure to the contrary in the event of a person being charged with an offence against section 3 or section 4, a judge shall not be required to direct the jury that it is dangerous to convict on the evidence of an accomplice without corroboration in a material particular implicating the accused, but in every such case the jury shall be directed to convict if they are satisfied beyond reasonable doubt that the evidence of such accomplice is worthy of belief.”

The wording of such section has been criticized on the grounds that if strictly construed the section—

(a) requires a judge to direct a jury to convict if they believe the evidence of an accomplice regardless of whether that evidence, if true, is sufficient to uphold the charge; and

(b) deprives a judge of a discretion, in directing a jury to use the word “dangerous” or similar expression if he thinks in the circumstances of a particular case such expression should be employed with reference to the evidence of an accomplice.

2. In these circumstances the Bill (clause 3) provides for the repeal of section 9 of the principal Ordinance and its replacement in a form designed to meet the objections above described.

3. Section 5(1)(d), (e) and (f) and section 5(2)(c) of the principal Ordinance empower the Court and magistrates to impose penalty by disqualification from public office or pension rights in addition to the penalties of fine or imprisonment provided by the section.

It is considered that provision for additional penalty as described should not appropriately be included in the section and that the consequences of conviction for an offence under the Ordinance such as disqualification for office or pension rights should instead be determined in accordance with the terms of the constitutional instrument [*e.g.* Letters Patent or Royal Instructions or Ordinance or Colonial Regulations governing any such “public office” (as defined in section 2 of the principal Ordinance)].

4. In these circumstances the Bill (clause 2) provides for the repeal of section 5 of the principal Ordinance and its replacement go as to delete provision empowering the Court or a magistrate to adjudge an offender to be disqualified from the holding of public office or the receipt of pension.

### **REPRESENTATION OF FOREIGN POWERS (CONTROL)**

#### **BILL, 1949.**

THE ATTORNEY GENERAL:—Sir, I ask leave to defer the motion standing in my name, that is, to move the Second reading of the Bill shortly intituled the Representation of Foreign Powers (Control) Bill, 1949.

I do so, Sir, because consideration is now in being for possible amendment of this Bill, to be effected appropriately at committee stage when that is reached.

H.E. THE GOVERNOR:—Is that agreeable?

This was agreed to.

#### **NATURALISATION (REPEAL) BILL, 1949.**

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled “An Ordinance to repeal the Naturalisation Ordinance, 1902.”

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

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

Council then resumed.

THE ATTORNEY GENERAL reported that the Naturalisation (Repeal) Bill, 1949, had passed through committee without amendment, and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

## LANDLORD AND TENANT (AMENDMENT) BILL, 1949.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Landlord and Tenant Ordinance, 1947." He said: Sir, in so doing, I would add that I propose, at the appropriate stage, to move the amendment of this Bill by the addition of a clause. My intention has been notified to Honourable Members by circulation before this meeting.

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

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

Clause 3.

THE ATTORNEY GENERALS—Sir, I move that the following clause be added immediately after clause 2 and numbered clause 3, namely:

"Amendment  
of section  
5 of the  
principal  
Ordinance.

3. Section 5 of the principal Ordinance is hereby amended by the insertion of the following additional subsection after subsection (3):—

“(4) Notwithstanding the provisions of subsection (1)—

(a) a closure order may be made under section 120 of the Buildings Ordinance, 1935; and

(b) a closure order may be made under paragraph (ee) of subsection (1) of section 6 of the Buildings Ordinance, 1935, if the Building Authority has certified by writing under his hand that the making of such an order is necessary in order to enable the owner to carry out the building works required without undue danger to the tenants or to the public generally.”

I also move that clause 3 be renumbered clause 4.

Sir, the position is that by judicial interpretation of section 5(1) of the principal Ordinance it has been held that a magistrate may be precluded from making a closure order under the Buildings Ordinance, 1935, in a case where danger threatened by the condition of the building is only prospective. Such interpretation has disadvantage in that although in a large number of cases of prospective danger it is not necessary to evict the tenants in order to carry out building works required by the Building Authority from time to time, it is essential for the safety of the tenants and passers-by that an order be made where danger is prospective.

The object of the clause which I move be inserted is to amend section 5 of the principal Ordinance to enable a closure order to

be made either upon application by the Building Authority or upon application by a landlord, if the Building Authority certifies that the order is necessary in order to enable the owner to carry out the repairs required without undue danger to the tenants or to the public generally.

It had been intended that this clause should form a part of a further Bill to amend the Landlord and Tenant Ordinance, which would come before this Council at a later date, but on consideration it seemed unwise to postpone the provision proposed because in the meanwhile there would be no power to order closures in necessary cases; that is, in cases where there is a real danger to the inmates of the building or to passers-by.

This was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Landlord and Tenant (Amendment) Bill, 1949, had passed through Committee with two amendments, and moved the Third reading.

THE COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed into law.

#### **ADJOURNMENT.**

H.E. THE GOVERNOR:—That concludes the business, Gentlemen. Council will adjourn to this day week.