

27TH OCTOBER, 1914.

PRESENT:—

HIS EXCELLENCY THE GOVERNOR, SIR FRANCIS HENRY MAY, K.C.M.G.

HIS EXCELLENCY MAJOR-GENERAL F. H. KELLY, C.B. (General Officer Commanding Troops).

HON. MR. CLAUD SEVERN (Colonial Secretary).

HON. MR. J. H. KEMP (Attorney-General).

HON. MR. E. D. C. WOLFE (Colonial Treasurer).

HON. MR. A. F. CHURCHILL (Director of Public Works).

HON. MR. E. R. HALLIFAX (Secretary for Chinese Affairs).

HON. MR. C. McI. MESSER (Captain Superintendent of Police).

HON. MR. WEI YUK, C.M.G.

HON. MR. H. E. POLLOCK, K.C.

HON. MR. E. A. HEWETT, C.M.G.

HON. MR. D. LANDALE.

HON. MR. LAU CHU PAK.

MR. M. J. BREEN (Clerk of Councils).

Financial

THE COLONIAL SECRETARY, by command of H.E. the Governor, laid on the table the Report of the Finance Committee (No. 15), and moved its adoption.

THE COLONIAL TREASURER seconded, and the motion was agreed to.

**Alien Enemies (Winding up)
Ordinance**

HIS EXCELLENCY—Gentlemen, since our last meeting it has been considered necessary, for reasons which I am not at liberty to state, that the German and Austrian community should leave the Colony or be interned. The result naturally is that their trading in the Colony must cease, and that the businesses of the various firms which have been trading here

under licence have to be wound up. This Bill is intended to give power to begin that winding up, and to carry it through, and you will understand that as the community in question has to cease business in a very few days, that it is necessary with the utmost despatch to provide for taking over all their business. Therefore, I will ask you to-day to pass this Bill in all its stages. There has not been a great deal of time for the consideration of the measure, and it is perhaps to be foreseen that it may be necessary to amend it in certain particulars later when perhaps experience shows that it is defective in any particular. But we must begin the liquidation of these businesses at once, therefore it is necessary that we should be armed with the necessary power so to do.

THE ATTORNEY-GENERAL then moved the first reading of the Bill entitled, "An Ordinance to provide for the winding up of the affairs of certain alien enemies."

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

The Objects and Reasons attached to the Bill state:—The object of this Bill is to provide for the winding up of the affairs of such alien enemies as may be ordered to quit the Colony or may be detained or may be absent from the Colony.

THE ATTORNEY-GENERAL moved the suspension of the Standing Orders to enable the Bill to pass through its remaining stages at this meeting.

THE COLONIAL SECRETARY seconded, and the motion was agreed to.

THE ATTORNEY-GENERAL moved the second reading of the Bill. In doing so he said—Certain enemy subjects have been ordered to leave the Colony, others will be detained, and others who are absent from the Colony will not be able to return. It is therefore necessary and desirable that some provision should be made for winding up the businesses and personal affairs of such persons, and this

Bill, Sir, provides a scheme for such winding up. Speaking generally, the scheme of the Bill is as follows:—In the first place, alien enemies, who are defined as persons whose sovereign or State is at war with his Majesty are prohibited from doing any business or disposing of any property without permission. Power is then given for you, Sir, to appoint such persons as you may think fit to wind up the business and personal affairs of any alien enemy who may have property or business in the Colony. These liquidators will have the same rights and powers as if the property and business of alien enemies whose affairs they are liquidating had been transferred to them, and as if the contracts made with alien enemies had been made with them. Of course liquidators, as provided in the Bill, will not be able to insist on the continuance of any contract of partnership, agency, or any contract of personal service. The Bill also provides that any proceedings which might, if this Bill were not passed, be brought against an alien enemy in respect of his trade, or in respect of his personal affairs, or brought by him, may be brought by or against the liquidator, but to save the liquidator from personal liability it is laid down that he is to incur no personal liability by the winding up except for such things as would be criminal in the case of the natural person. It is also provided that he is to incur no liability whatever in respect of the winding up beyond the assets which may come to his hands. It is also laid down, Sir, that the winding up is to be carried out as for the benefit of persons who may be entitled to the profits of the trade or to the property dealt with as the case may be, and proceeds resulting from the winding up are to be paid into a bank to await ultimate disposal thereof in accordance with any law provided for the purpose, or any direction you may give. The Bill also provides, in case the assets of an alien enemy are not sufficient to cover his liabilities, they shall be distributed in a certain order which, to a considerable extent, almost entirely, follows the order of distribution in bankruptcy: first of all, secured creditors are to be paid up to the value of their respective securities.

HON. MR. HEWETT—I beg pardon, are you referring to sub-clause 11 of clause 5?

THE ATTORNEY-GENERAL — Yes. Next,

the expenses incurred by the liquidator in the course of winding up are to be paid; also, the remuneration of the liquidator, which has been fixed at $2\frac{1}{2}$ per cent. of the total assets realised and brought to hand by him. Next, the salary or wages of any clerk or servant in respect of services rendered, less any sum of money due by such clerk or servant to such alien enemy. Fifthly, all sums of money due to the Crown, and sixthly, all other liabilities rateably *pari passu* whether due to persons within or without the Colony. Clause 6 is intended to prevent the carrying on of a business formerly carried on by an alien enemy by a mere nominee or dummy figurehead on behalf of, and possibly under the direction of, an alien enemy. Without such prohibition it might possibly happen that an alien enemy, expelled or interned, might find someone to deal with the old customers and carry on the old business for the benefit of the alien enemy, and the intention of this Bill would be thereby frustrated. It is not intended, Sir, that this clause should prohibit in any way any person who *bonâ-fide* establishes any trade relations with any former customers of an alien enemy, or *bonâ-fide* obtains agencies formerly held by an alien enemy. In any case, Sir, you have power under the Bill to grant permission to anyone, if you think fit, to carry on the business formerly carried on by an alien enemy if it should be transferred to some person whom you approved, and it does not seem conceivable that any hardship will occur, or any undue interference will be made with any persons who should happen to deal with former customers or former principals of an alien enemy, assuming that they take it over *bonâ-fide*, and not for the benefit of the alien enemy. Powers are also given to inspect and search, and the usual penalty clause is inserted. Provision is also made that no prosecution shall take place without the consent of the Attorney-General, and the rights and remedies of persons as against alien enemies are not to be affected by the Bill. The Bill has been drafted, Sir, as you have said, at very short notice, the subject matter is novel, and the usual assistance received from previous legislation is almost entirely absent. Under those circumstances, it is perhaps too much to hope that the Bill approaches anywhere near perfection, and, as your Excellency said,

it is quite possible that it may shortly require supplementary amendment, but the urgency of the matter is such that some provision must be made at once.

THE COLONIAL SECRETARY seconded.

HON. MR. HEWETT—Your Excellency, this Bill, as you know, was only sent out this morning, and I have had no opportunity of consulting my colleagues on the matter. Two points occur to me which I think the hon. Attorney-General hardly made quite clear. Before I come to these I would state, speaking for myself entirely—I am not speaking for my unofficial friends—that I think we all ought to recognise the urgency of this Bill. It must become law to-day. I also realise the difficulties under which the Attorney-General had to work at very short notice in drafting such an important Bill having such far-reaching effects, and, as he stated, without guidance from previous legislation in the Colony. At the same time it is more than probable that we may early have to ask your Excellency to consider some of the clauses of this Bill and modify them. The point I wish to raise is that the Attorney-General said, in the early part of his remarks, that there was no question of an alien enemy disposing of any property. He then went on to make some reference to persons who might purchase a business and then work it in the interest of the original proprietors. I think that point ought to be made clear. As I stated in this chamber three weeks ago, it appeared to me just as bad for an alien enemy to sell his property to someone else and thereby benefit during hostilities, by capital being paid for a going concern, as it would be if he sold a ship. That is a point which I think ought to be made very clear, because, in the concluding remarks of the Attorney-General, it appeared to me that while on the one hand an alien enemy was not supposed to profit or benefit, at the same time a loophole was left by which he could dispose of his property to a person in his employ, or to some friend, and get so much in hard cash which would benefit him or his country; or, on the other hand, that a transfer might be more or less a bogus one. In either case, *bona fide* or bogus, it appears to me that there is a large opportunity given to an alien enemy to carry on his business and benefit in this Colony, and yet at the same time we cannot stop it. I gather

from the Attorney-General's explanation, with regard to section 6, sub-section 1, that it is quite understood that any British firm who can capture the trade of the enemy is not liable to come under the terms of the section. Of course, Sir, I speak entirely on my own responsibility, and possibly some of my unofficial colleagues may wish to modify or dissent from what I have said. I trust I have in the main expressed the views of British merchants in Hongkong on this very important measure.

THE ATTORNEY-GENERAL—In reply to what the hon. member has just said, I would like to say that when I was dealing with clause 6 I was merely trying to make the point that though the clause as drafted, wide as it is, might appear possibly to allow interference with persons who might *bonâ fide* get hold of trade formerly carried on by alien enemies, that was not the intention. Permission may be given by the Governor to carry on or engage in trade previously carried on by an alien enemy. As the intention is not in any way to hamper such trade not carried on by an alien enemy, such permission would, of course, be given. With regard to clause 4, prohibition against disposing of property, that, of course, is only prohibition against disposing of property without permission. The liquidation itself, of course, presupposes that the property of an alien enemy will be disposed of under permission, and any proceeds of that property will not be sent out of the Colony, but will be paid into a bank to be held at the disposal of any law that may be enacted on that behalf or any directions given by the Governor.

The Bill was read a second time.

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

On Clause 5, sub-section 11,

THE ATTORNEY-GENERAL moved the amendment of this sub-section by the addition of the words, "including the rent of any business premises formerly occupied by such alien enemy due while such premises are occupied by the liquidator for the purposes of such winding up."

HON. MR. LANDALE — How does that affect premises on lease?

THE ATTORNEY-GENERAL — The question of lease is not dealt with in this Bill expressly, and cannot for the moment be dealt with without further consideration. The only point affecting this Bill is payment of the rent by the liquidator, who may use the premises formerly occupied by an enemy firm. That rent is to be paid in certain priority.

HON. MR. LANDALE—Is a lease not a definite liability on the part of an alien enemy?

HIS EXCELLENCY—The question of lease was only raised this morning, and we have not had time to consider it. It will require careful consideration. I would remind you that a very great number of persons are affected by this Bill, alien enemies so-called, who are now prisoners of war; others of them are not prisoners of war, but are compulsorily expelled from the Colony. This question will have to be carefully considered, and when we come to a conclusion on the point, no doubt it may be necessary to further amend this Bill to make it clear what the law on the subject is.

HON. MR. HEWETT—With regard to your Excellency's remarks about making it quite clear, I presume when you refer to the word "lease" you mean the lease of premises for private use as opposed to office premises?

HON. MR. LANDALE—I meant all leases; they are a definite liability.

HIS EXCELLENCY—I think the point of the hon. member who raised the question is, that many of these offices, which are rented at very large rentals, are leased for considerable periods, some for five or six years. Well, it is obvious that the rent of those during liquidation is a fair charge against the assets of a firm which is being liquidated. Then the question arises as to what about the remainder of the leases. Is that it?

HON. MR. LANDALE—Yes, Sir.

HIS EXCELLENCY—That is a question which will have to be considered.

HON. MR. HEWETT—Also, I understand, leases of private premises from which the occupants will have to be expelled.

HIS EXCELLENCY — Leases of private residences come in also.

On Council resuming,

THE ATTORNEY-GENERAL reported that the Bill had passed through Committee with slight amendment, and moved that it be read a third time.

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

HIS EXCELLENCY — Council stands adjourned until next Thursday week.
