

5th October, 1949.

PRESENT:—

HIS EXCELLENCY THE OFFICER ADMINISTERING THE GOVERNMENT

(MR. J. P. NICOLL, C.M.G.)

THE COLONIAL SECRETARY (HON. C. B. BUEGESS, *Acting*).

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

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

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

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

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

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

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

DR. HON. CHAU SIK-NIN.

HON. M. M. WATSON.

HON. C. BLAKEB, M.C., E.D.

MR. G. C. HAMILTON (Clerk of Councils).

ABSENT;—

HON. D. F. LANDALE.

HON. SIR MAN-KAM LO, K.T., C.B.E.

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

MINUTES.

The Minutes of the meeting of the Council held on 21st September, were confirmed.

OATHS.

The Hon. C. B. Burgess and Hon. E. A. Boyce took the Oath of Allegiance and assumed their seats as Members of the Council.

PAPERS.

THE ACTING COLONIAL SECRETARY, by command of His Excellency the Officer Administering the Government, laid upon the table following papers:—

Annual Report of the Estate Duty Commissioner for the year 1948-49.

Annual Report of the Hong Kong and Kowloon Magistracies for the year 1948-49.

Annual Report of the Director of Royal Observatory for the year ended 31st March, 1949.

REPRESENTATION OF FOREIGN POWERS

(CONTROL) BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to control persons, other than accredited representatives of foreign states, in the discharge in the Colony of functions on behalf of the Governments of foreign states or on behalf other foreign political organisations." He said: Sir, Honourable members have long been familiar with the practice whereby representation of foreign powers within the Colony occurs for diplomatic or consular purposes. Where such representation is desired it is the practice for foreign states to notify Government of its intention to establish representation and to invite the agreement of Government this course. When such preliminaries have been completed the foreign state sends or appoints within the Colony representatives duly accredited. Thus, no difficulty or misunderstanding occurs or should occur in regard to that class of representation.

However, Sir, since the war development has occurred which has confused or can confuse the position which I have described. Such development has resulted from the extension of state or political control into the commercial sphere so as to produce a tendency between states to establish representation abroad in furtherance of trade as so controlled. In regard to this class of representation the difficulty and objection has emerged within the experience of this Colony that obligation to invite the consent of this Government to such representation tends to be ignored. Because of this factor and because representation in the new form is sometimes employed or

is capable of being employed to project the political aims or doctrines of foreign states or political systems, need is seen for legislation in the Colony to enable control to be applied where necessity is seen.

Sir, the Bill before Council to-day is intended to provide the necessary legislation. The operative clause of the Bill is clause 3. It will be seen that it provides that no person shall function on behalf of any foreign power without the consent of the Governor. The terms "function" and "foreign power" are defined in clause 2 of the Bill. It will be noticed that "foreign power" is denned to mean not only the Government, whether legal or de facto, of any foreign state, but also to extend to any organisation, which, in the opinion of the Governor, is either politically associated with, controlled by or in political opposition to any such Government.

But, Sir, clause 3 to which I have referred does not stop short at the requirement that the consent of the Governor be obtained for representation. The clause goes further. In particular it makes clear that the position as regards the accredited representative of any foreign state will not in any way be altered if this Bill becomes law, because, as will be seen, the Bill is made not to apply to the accredited representative of any foreign state. The term "accredited representative" is also defined in clause 2 of the Bill. It means a person who by notice in the Cassette has been recognised by the Governor as the representative of a foreign state.

In addition, Sir, the clause gives power to the Governor to exempt, and to give to members of the staffs of an accredited representative of a foreign power exemption, from requirements of the clause.

It will be seen that the remainder of the Bill is largely ancillary. Clause 6 gives necessary powers of search and seizure, but again it will be observed that those powers are only exercisable under the general control of the Governor and under warrant signed by the Colonial Secretary. Clause 7, Penalty Clause, provides for the trial by indictment of an offence committed by contravention of the governing clause that is clause 3. But I would mention that the safeguard is added in regard to that penalty clause that the consent of the Attorney General is necessary before a prosecution for an offence against clause 3 may be instituted.

THE ACTING 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 has long been the practice in international relations for a State, desiring to establish representation within the territory of another State,—

(a) to invite consent; and

(b) to afford representation by duly accredited representative.

2. The practice described is followed, and the necessity for representation normally occurs, for diplomatic or consular purposes. In recent years however, development in the practice of representation has occurred. Such development has resulted from the extension of state or political control into the commercial sphere so as to produce a tendency to establish representation abroad in furtherance of trade as so controlled. It has been the experience of this Colony that, in representation according to the modern development above described, obligation to invite the consent of the Government to representation in such form has been ignored. Consequently a need exists for legislation to impose a measure of control. The need is increased by the fact that representation in the Colony for the purposes of commercial organizations which are subject to foreign state or political control is capable of being employed to project the political aims or doctrines of such foreign states or political systems.

3. The object of this Bill is to meet the need for legislation as above described. The Bill (clause 3) imposes a prohibition against representation of any foreign power (as defined) without consent of the Governor. The clause, however, provides for the exemptions from such prohibition which are stated in the proviso to the clause. Notably exemption is extended to the "accredited representative" (as defined) of any foreign state. Clauses 4 and 5 are ancillary to clause 3. They provide in detail for the grant or revocation of the consent of the Governor and for the grant and revocation of exemption. Clause 6 provides powers of search of premises, seizure of anything considered to be evidence of an offence against the Ordinance and authority to seal premises. Such powers, which are necessary to the enforcement of the Ordinance, would be exercisable only upon warrant of the Governor (clause 6(1)). Clause 7 prescribes the penalties which may be imposed upon conviction upon trial on indictment of a contravention of clause 3.

NATURALIZATION (REPEAL) BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to repeal the Naturalization Ordinance, 1902." He said: Sir, the object of this very short Bill is fully described in the Objects and Reasons which appear published with the Bill. I do not think I can usefully add to the reasons and the objects as therein described.

THE ACTING 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 Naturalization Ordinance, 1902, enabled the Governor to grant a certificate of naturalization as a British subject in Hong Kong to an alien who had continuously resided in Hong Kong or been

in the service of the Crown for a period of five years preceding the application. At the time the Ordinance was enacted the only alternative was a grant of naturalization by Ordinance in each case.

2. A certificate granted under the Ordinance only conferred the rights of a British subject while in Hong Kong and in consequence of this disability the Ordinance has very seldom been invoked.

3. The British Nationality Act, 1948, became law on the 1st of January, 1949, and applies a uniform scheme for obtaining naturalization in Colonies, protectorates and trust territories. Under sub-section (6) of section 32 of the British Naturalization Act, 1948, a person who has been granted naturalization under the Ordinance is deemed to have become immediately before the commencement of the Act a British subject and a person naturalized in the United Kingdom and Colonies.

4. The Ordinance has outlived its utility and should be repealed to conform with such uniform scheme.

LANDLORD AND TENANT (AMENDMENT) BILL, 1949.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Landlord and Tenant Ordinance, 1947." He said: Sir, this is a short Bill to amend tile Landlord and Tenant Ordinance, 1947, The Bill is being introduced in advance of a further Bill which is in contemplation to amend the principal Ordinance more comprehensively. The reason for introducing this Bill, short as it is, in advance of a more comprehensive Bill is given in paragraph 4 of the Objects and Reasons published with the Bill.

Sir, it will be seen that the Bill by clause 3 seeks to expand the permitted increase over the standard rent from 45% to 100% in the case of business premises. As Honourable Members will be aware the term "standard rent" is defined in clause 2 of the principal Ordinance, Such definition in effect makes the standard rent the rent prevailing in December, 1941.

Sir, it is not considered that the time has yet come when there can be removal of control in regard to the rent payable in respect of business premises to which the principal Ordinance applies, but it is felt that the time has come when there can be and should be a narrowing of the existing discrepancy between control and uncontrolled rents of business premises.

Sir, as I have stated the Bill by clause 3 seeks to give effect to the view which I have described by altering from 45% to 100% above the standard rent, the permitted increase.

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

Objects and Reason.

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

1. The Landlord and Tenant Ordinance, 1947 (the principal Ordinance) has in the interval since that date been amended by Ordinance No. 13 of 1948. Since that amendment was enacted further proposals for amendment of the principal Ordinance have been under consideration and consequently a Bill has been prepared which it is intended to publish for general information in the first instance.

2. The Bill above mentioned had included provision for the amendment of section 6 of the principal Ordinance. That section deals with permitted increases of rent for domestic and business premises above the “standard rent” as defined by section 2 of the principal Ordinance. In providing for control of rent for business premises the principal Ordinance marked a departure from practice in that rent control was applied to business premises although control is usually confined to domestic premises for the reason that the rent of such premises affects the cost of living more directly than does the rent of business premises. Control of the rent of business premises was, however, necessary in the case of Hong Kong because the destruction caused by the war and the cessation of building during the war had rendered business premises in short supply in relation to the demand. At this date the position as regards the availability of business premises has improved although demand still exceeds supply. It is, however, considered that the time has come when a further “permitted increase” in the “standard rent” of business premises should be made having regard to the discrepancy between controlled and uncontrolled rents at this date.

3. In these circumstances the object of this Bill is to provide (clause 3) for amendment of section 6 of the principal Ordinance so as to raise the “permitted increase” on the standard rent of business premises from 45% to 100% the increase to take effect at the dates specified in the clause.

4. As stated in paragraph 2 above provision for this amendment was inserted in the Bill which it is proposed to publish for general information in the first instance. But a result of that procedure will be that such Bill will not be enacted in the immediate future. Consequently it is considered that the amendment to section 6 of the principal Ordinance as above described should be introduced in advance of the other Bill. Necessity for this procedure is presented by the fact that a consequence of the raising from 45% to 100% in the “permitted increase” upon the standard rent of business premises will be that an increase in rates will result. Such increase in rates with consequent benefit to revenue will, however, be unduly delayed unless the legislation for which this Bill provides be enacted at an early date.

MATILDA AND WAR MEMORIAL HOSPITAL BILL, 1949.

HON. M. M. WATSON moved the Second reading of a Bill intituled “An Ordinance to provide for the holding of the property and funds now held by or vested in the Trustees for the time being of the Will and Codicil of Granville Sharp deceased and the funds of the Trustees of the War Memorial Nursing Home and for the administration of the said property and funds for maintaining endowing supporting carrying on or otherwise promoting subject to the provisions of this Ordinance -a hospital in substitution for the Matilda Hospital and the War Memorial Nursing Home as heretofore constituted and to be called the Matilda and War Memorial Hospital.”

HON. C. BLAKER seconded, and the Bill was read a Second time.

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

Council then resumed.

HON. M. M. WATSON reported that the Matilda and War Memorial Hospital Bill, 1949, had passed through Committee without amendment, and moved the Third reading.

HON. C. BLAKER seconded, and the Bill was read a Third time and passed into law.

ADJOURNMENT.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT:—That concludes the business for today. When will members wish to meet again?

THE ATTORNEY GENERAL:—I suggest this day fortnight, Sir.

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT:—Council will adjourn to this day fortnight.