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LEGISLATIVE COUNCIL.

No. S. 190.—The following Bill was read a first time at a meeting of the Council held on the 30th June, 1921 :—

A BILL

INTITLED

An Ordinance to amend the law relating to the recovery of possession in certain cases and to restrict the rents of certain domestic tenements.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows :—

Short title. 1. This Ordinance may be cited as the Rents Ordinance, 1921.

Interpretation. 2. In this Ordinance :—

(a.) "Court" means the Supreme Court in its summary jurisdiction.

(b.) "Domestic tenement" includes every bed space, cubicle, room, portion of a floor, floor, or building, which is the subject of a separate letting, and which is used wholly or in part for human habitation, provided that the following shall not be deemed to be domestic tenements within the meaning of this definition :—

(i) Any building or portion of a building which is used for habitation only by caretakers or watchmen not exceeding two in number.

(ii) Any building or portion of a building which is used for habitation only by office attendants.

(iii) Any hotel or boarding house, or any part thereof.

(iv) Any furnished house.

(c.) "Lease" includes every agreement for the letting of any domestic tenement, whether oral or in writing.

(d.) "Lessee" includes a sub-lessee but does not include the Crown lessee.

(e.) "Lessor" includes every person who lets any domestic tenement to any other person.

(f.) "Standard rent" with respect to any domestic tenement means :—

(i) if the domestic tenement was actually let on the 31st December, 1920, the rate of rent which was recoverable from the tenant in actual occupation on the 31st December, 1920; and

(ii) if such domestic tenement was not actually let on the 31st December, 1920, but had been let on some previous date, the rate of rent which was recoverable from the tenant in actual occupation on the last occasion before the 31st December, 1920, on which the domestic tenement was actually let; and

(iii) if such domestic tenement was not let until after the 31st December, 1920, the rate of rent at which such domestic tenement was or shall be first let to a tenant in actual occupation.

(g.) "Tenant in actual occupation" means a lessee of any domestic tenement who occupies such domestic tenement himself, or by his family or servants, provided that—

(i) A lessee of any domestic tenement who occupies a portion of such domestic tenement himself, or by his family or servants, and who sub-lets other portions of such domestic tenement, shall be deemed to be the tenant in actual occupation of such domestic tenement as regards his immediate lessor.

(ii) A sub-lessee from any such lessee as is referred to in proviso (i) above, of any domestic tenement which such sub-lessee occupies himself, or by his family or servants, shall be deemed to be the tenant in actual occupation of such domestic tenement.

3.—(1.) Notwithstanding any agreement to the contrary, whether made before or after the commencement of this Ordinance, and whether oral or in writing, no rent shall be recoverable in respect of any domestic tenement, from the tenant in actual occupation, in excess of the standard rent of such domestic tenement.

No rent in excess of the standard rent to be recoverable.

(2.) This section shall apply to any rent which shall become payable after the commencement of this Ordinance, whatever the period may be in respect of which it shall be payable.

4.—(1.) Notwithstanding any notice to quit, whether given before or after the commencement of this Ordinance, and notwithstanding the terms of any agreement whatsoever, whether made before or after the commencement of this Ordinance, and whether oral or in writing, an order or judgment against any tenant in actual occupation for the recovery of possession of any domestic tenement, or for the ejectment of a tenant therefrom, shall be made or given only if:—

Restrictions on the right to possession.
10 and 11 Geo. 5, c. 17. s. 5.

- (a) the tenant has failed to pay duly the standard rent recoverable in respect of his domestic tenement; or
- (b) the tenant has failed to perform some obligation of his tenancy; or
- (c) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the domestic tenement or allowing the domestic tenement to be used for an immoral or illegal purpose, or the condition of the domestic tenement has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or
- (d) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the domestic tenement or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
- (e) the domestic tenement is reasonably required by the landlord for occupation as a residence for himself, or for any person *bonâ fide* residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available.

(2.) If but for this Ordinance any tenancy would have expired by effluxion of time, or by reason of a notice to quit, or for any other reason, so that the tenancy is preserved only by reason of this Ordinance, the terms of the tenancy so preserved, except as they may be modified by this Ordinance, shall be as far as possible the same as the terms of the tenancy as it existed immediately before the time at which, but for this Ordinance, the tenancy would have expired.

(3.) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any domestic tenement, or for the ejection of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Ordinance, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit discharge or rescind any such order or judgment.

(4.) Where any order or judgment has been made or given before the passing of this Ordinance, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Ordinance had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit, for the purpose of giving effect to this Ordinance.

Revision of
the rent pay-
able under
intermediate
leases.

5.—(1.) Where the rights of any lessee of any building or buildings, other than the Crown lessee and the tenant in actual occupation, are affected by the operation of this Ordinance, it shall be lawful for such lessee to apply to the court for the revision of the rent payable under the lease, and upon such application the court may make such order as it shall think fit.

(2.) It shall be lawful for the court to give such directions as it shall think fit for the procedure to be followed on such applications, and for the notice to be given to the other parties to any such lease, or to their agents.

(3.) Pending the decision of the court upon any such application the lessee under any such lease shall be bound to pay at the due date the rent reserved by such lease, as if no such application had been made, but if the court shall order the rent payable to be reduced, the lessee shall be entitled to recover back from the lessor any amount paid in excess of the revised rate of rent in respect of any period after the commencement of this Ordinance, or to deduct such amount from any subsequent rent payable under such lease, and such amount shall be ascertained by apportionment if necessary.

(4.) There shall be no appeal from any decision of the court under this section except with the leave of the court or of the full court of two judges, and if any appeal is allowed under this sub-section it shall be to the full court of two judges, whose decision shall be final.

(5.) Any application to the court for leave to appeal against any decision by it under this section shall be made within 14 days after such decision shall have been given, and any application to the full court for leave to appeal under this section shall be by notice of motion which shall be filed with the Registrar within 14 days after the decision of the court under this section has been given, or, as the case may be, within 14 days after the refusal of the court to allow an appeal under this section.

6.—(1.) If any question arises as to the recovery of possession of any domestic tenement, or as to the ejection of a tenant therefrom, or as to the construction of this Ordinance, such question shall be decided in the first instance by the court, and there shall be an appeal as a right on any decision of the court under this section to the full court of two judges, whose decision shall be final.

Determination of the construction of the Ordinance.

(2.) An appeal from any decision of the court under this section shall be by notice of motion which shall be filed with the Registrar within 14 days after such decision shall have been given.

7. Nothing in this Ordinance shall be construed so as to prevent a lessor of a domestic tenement from collecting from his lessee the rates for the time being payable made in respect of such domestic tenement, or such apportioned sum as shall properly be attributable to such domestic tenement in respect of rates, provided that the obligation of paying the rates in respect of such domestic tenement has not been assumed by the lessor under terms of the tenancy.

Collection of rates not to be affected.

8—(1.) In any matter arising under or in consequence of this Ordinance, any returns made under the Rating Ordinance, 1901, relating to any domestic tenement, shall be admissible as evidence of the rent of such domestic tenement at the time when such return was made, and any return under the Rating Ordinance, 1901, which includes such domestic tenement shall be deemed to relate to such domestic tenement although such domestic tenement be not treated as a separate unit in such return.

Evidence. Ordinance No. 6 of 1901.

(2.) In any matter arising under or in consequence of this Ordinance, any assessment whatsoever made under the Rating Ordinance, 1901; which may appear to the court to be relevant shall be admissible in evidence.

(3.) Any such return or assessment as is referred to in sub-sections (1) and (2) of this section may be proved by a certificate under the hand of the Assessor or Assistant Assessor.

(4) In any matter arising under or in consequence of this Ordinance, it shall be lawful for the court to order the production of any books of account or documents whatsoever if it shall appear to the court that such books of account or documents may be relevant for the purpose of determining such matter.

9.—(1.) This Ordinance shall not apply to the New Territories, except New Kowloon.

Application of Ordinance.

(2.) This Ordinance shall not apply to any entirely new building in the case of which the certificate referred to in section 204 of the Public Health and Buildings Ordinance, 1903, shall not have been issued before the commencement of this Ordinance.

Ordinance No. 1 of 1903.

10. This Ordinance shall continue in force until, and including, the 30th day of June, 1922, provided that it shall be lawful for the Legislative Council from time to time by resolution to extend the duration of this Ordinance for such term, not exceeding one year at any one time, as may be specified in such resolution.

Duration of Ordinance.

11. Immediately after this Ordinance shall cease to be in force any tenant who shall have been in occupation at the time when this Ordinance ceases to be in force shall be deemed to be holding over lawfully on the tenancy terms on which he shall have been holding immediately before this Ordinance ceases to be in force, and at the standard rent, unless the lessor shall have given such tenant such notice to quit, terminating with the termination of this Ordinance, as would have been a due notice to quit under the terms of the tenancy if this Ordinance had not been passed.

Effect on tenancies of the termination of the Ordinance.

Objects and Reasons.

1. This bill is the outcome of the appointment by H. E. the Governor of a committee of the Legislative Council "to consider and advise what steps should be taken to protect the tenants of domestic tenements from unreasonable increases in rental and from arbitrary termination of their tenancies". The committee was appointed on the 23rd June.

2. In appointing the committee H. E. the Governor suggested that a possible way of dealing with unreasonable increases in rental would be to add to the rents payable in 1914 and 1915 such a percentage as would compensate for the fall in value of money during the last six or seven years, and to provide that no rent higher than the maximum rent so ascertained should be recoverable after the 30th June of this year, unless such higher rent should have been authorised by some body appointed for this purpose.

3. The committee, in the short time at their disposal, have been unable to formulate any scheme to carry out this suggestion. The question of the percentage to be added in order to compensate for the fall in the value of money is a difficult one. It is complicated by the fact that in all probability the proper percentage would vary according to the locality in which the house was situated and it might be necessary to divide the Colony into a considerable number of districts in which varying percentages might be added. The boundaries of these districts might be difficult to ascertain and to define. For instance, it is possible that a district may have been in an early stage of development in 1914, and that the owners of houses in that district were prepared to let their property at low rentals in order to attract tenants to the locality, hoping to recover their losses later when the extension of the town, or the increased popularity of the district, should have attracted a larger population. In a case like this it would seem hardly fair to allow only the same percentage of increase as would be allowed in an old established district. The difficulty does not end here, because it is possible that some recent houses in the same locality may have been let from the beginning at a rental perfectly fair to the owners, and it would be unreasonable to allow such owners the same rate of increase as would be allowed to owners who had at the beginning let their houses at a sacrifice. It may also be pointed out that no assistance in dealing with the proposed return to the basis of the rents payable six or seven years ago, with the addition of a certain percentage, can be obtained from legislation on this subject in the United Kingdom or in the Straits Settlements, as in both these cases the statutes went back for a much shorter period. The original Act in the United Kingdom, which became law on the 23rd December, 1915, went back to the rents in force on the 3rd August, 1914, and the first Ordinance on the subject in the Straits Settlements went back only about a year and nine months.

4. These difficulties are referred to, not for the purpose of showing that the above suggestion is impracticable, but to explain why it has not been possible to adopt it in the present bill which has been drafted at such short notice. The committee will proceed to consider the suggestion, and they will be glad to receive through the Chairman (the Attorney General) any practical legislative proposals as to how this suggestion can be carried out. The importance of passing some legislation immediately is in order to prevent existing tenants from being turned out at the end of the current half year.

5. The main object of the present bill, therefore, is to ensure that tenants now in occupation shall not be dispossessed for the present, so long as they comply with the terms of the tenancies under which they hold. This policy obviously involves taking away from the landlords the right to give their tenants notice to quit.

6. It also seems desirable to provide expressly against increases of rent during the currency of the Ordinance. In view of the fact that in many cases rents appear to have been raised excessively since the end of last year, in some cases possibly on account of the anticipated raising of the rates, it seems advisable to go back to the 31st December, 1920, for the purpose of ascertaining what is termed in the Ordinance the standard rent. Speaking broadly, if the bill becomes law, no tenant now in actual occupation will be obliged to pay any rent higher than that which was payable in respect of his tenement on the 31st December, 1920. Provision is made in clause 2 (e) for the cases of domestic tenements which were not let on 31st December, 1920.

7. The bill applies only to private domestic tenements, and it does not apply to offices, godowns, hotels or boarding houses. It also does not apply to furnished houses. It does apply to every bed space, cubicle, room, portion of a floor, floor, or building, which is the subject of a separate letting, and which is used for human habitation. It applies to a shop if the master or his employees live on the premises. It does not apply to the New Territories, except New Kowloon. It does not apply to an entirely new building which gets its occupation certificate after the commencement of the Ordinance, and any such building will be completely free from the restrictions of the Ordinance. This provision has been made because it is desirable not to discourage the erection of new domestic buildings. The clauses in the bill on which this paragraph is founded are clauses 2 (b) and clause 9.

8. It is hoped that one subsidiary effect of the Ordinance will be to encourage the erection of new domestic buildings. In the first place, such new buildings will be entirely free from the restrictions of the Ordinance, and the owners will be entitled to charge whatever rents they can obtain. In the second place, as tenants cannot be turned out so long as they pay the standard rent, well-to-do immigrants who wish to acquire a residence in Hongkong will have to build for themselves.

9. Tenants now in occupation will practically have their tenancies extended, on the old tenancy terms, so long as they pay the standard rent, and if they are turned out it will be due either to their own fault or to their failure or inability to pay the standard rent. There is one exception to this statement, *i.e.*, when the landlord requires the premises for his own occupation (see clause 4 (i) (e)), but even in that case the tenant will not be turned out unless the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available. If a tenant does leave, or is ejected, no new tenant will be liable for any rent higher than the standard rent, notwithstanding any agreement on the contrary.

10. It is obvious that the rights of intermediate lessees, *e.g.*, farmers, may be affected by the operation of the Ordinance. The lessee who collects the rents from the tenants in actual occupation will in future be restricted to the collection of the respective standard rents of his property, while he will still be bound to pay to his lessor the lump sum rent which he agreed to pay when he was unrestricted as to the rents which he could collect from his tenants. Clause 5 gives to such an intermediate lessee the right to apply to the court for the revision of the rent payable by him under his lease, and the court is given an uncontrolled discretion to make any order which the court may consider just. If there is another intermediate lessee above the lessee just referred to, the revision of the latter's rent will injuriously affect the former, who is accordingly also enabled to apply to the court to revise the rent payable by him to his lessor. The intention of this is that any loss caused by the reduction of the rents payable by the actual tenants shall be shared fairly by the various lessors. The Court in question will be the Summary Court, and there will be an appeal by special leave to the Full Court.

11. Clause 6 provides that any question arising under the Ordinance is to be decided by the Summary Court in the first instance, and that an appeal will lie as of right to the full court of two judges, whose decision shall be final. It will be noticed that there is an appeal as of right in all cases except in the one case of revision of rents payable under intermediate leases. An appeal as of right is not given in the latter case because no question of law would ordinarily be involved, and the decision is intended as a sort of arbitration between the parties so as to arrive in a more or less rough and ready way at a fair apportionment of the loss caused by the Ordinance.

12. Returns under the Rating Ordinance, and assessments, are made admissible as evidence of the rent of premises. Power is also given to the court to order the production of any books of account or documents whatsoever if it appears to the court that such books of account or documents may be relevant to any matter arising under the Ordinance.

13. The Ordinance is to continue in force until the 30th June, 1922, and power is given to the Legislative Council by resolution to extend this duration for such term, not exceeding one year at any one time, as may be specified in the resolution.

14. When the Ordinance eventually does come to an end, any tenant then in occupation shall be deemed to be holding over on the same tenancy terms as those on which he was holding immediately before the termination of the Ordinance, unless he has received from his landlord such notice to quit, terminating with the termination of the Ordinance, as would have been a due notice to quit under the terms of his original tenancy. For example, a monthly tenant will be entitled to remain on in his house or other tenement for at least one month after the ultimate termination of the Ordinance, unless his landlord shall have given him one month's notice expiring with the Ordinance. In other words, a landlord cannot turn a monthly tenant out, at or after the ultimate expiration of the Ordinance, except by giving the tenant a month's notice. Similar remarks apply to other tenancies, such as yearly or weekly tenancies. Any tenant so holding over after the termination of the Ordinance holds over at the standard rent.

15. Clause 4 (4) has a retrospective operation, and for that reason the sub-clause deserves special attention. It provides, in effect, that if any ejection order shall have been made before the passing of the Ordinance, but shall not have been executed, the court *may* rescind or vary the order if it is one which would not have been made if the Ordinance had been in force. In other words, a tenant who has received notice to quit on the 30th June, but who, being quite unable to find other accommodation, remains in his house after the 30th June, and who has an order for ejection made against him before the passing of the Ordinance, will, if this sub-clause become law before he has been actually turned out, be able to apply to the court to rescind or vary the ejection order.

J. H. KEMP,
Attorney General.

30th June, 1921.