

LEGISLATIVE COUNCIL.

Draft Bill.

No. S. 404.—The following draft Bill is published for general information :—

C.S.O. 1961/10, Pt. II.

A BILL

INTITLED

An Ordinance to regulate certain forms of female domestic service.

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

PART I.

Short title. 1. This Ordinance may be cited as the Female Domestic Service Ordinance, 1923.

Declaratory clause. 2. Whereas certain persons have erroneously supposed that the payment of money to the parent or guardian or employer of a female child, such payment purporting to be in return for the transfer of certain parental rights, may confer certain rights of property in the child and certain rights of retaining possession, custody and control of the child as against the child's parent or guardian, and as against the child herself, it is hereby declared and enacted that no such payment can confer any such rights whatsoever upon the person making such payment or upon any other person.

Interpretation. 3. In this Ordinance :—
(a.) " Mui tsai " includes :—
(i) every female domestic servant whose employer for the time being shall have made, directly or indirectly, within or without the Colony, any payment to any person for the purpose of securing the services of such female as a domestic servant ;
(ii) every female domestic servant whose employer for the time being shall, within or without the Colony, have acquired the custody, possession or control of such female from, or upon the death of, any former employer who made any such payment as aforesaid.
(b.) " Prescribed " means prescribed by regulations made under this Ordinance.

PART II.

No mui tsai to be engaged hereafter. 4. No person shall hereafter take into his employment any mui tsai.

No female domestic servant under 10 to be engaged hereafter. 5. No person shall hereafter take into his employment any female domestic servant under the age of 10 years.

Treatment of mui tsai. 6.—(1.) Every employer of a mui tsai shall provide such mui tsai with sufficient food and clothing of a reasonable kind, and, in case of illness, with such medical attendance as such employer might reasonably have been expected to provide for his own daughter.

(2.) No employer of a mui tsai shall over work or ill-treat such mui tsai, or subject such mui tsai to any punishment to which such employer might not reasonably subject his own daughter.

PART III.

7.—(1.) It shall be lawful for the Governor in Council Regulations to make regulations for the following purposes :—

- (a) the registration of mui tsai and the keeping of such registers up to date ;
- (b) the remuneration of mui tsai ;
- (c) the inspection and control of mui tsai and former mui tsai ;
- (d) generally, for the purpose of carrying out the policy of this Ordinance.

(2.) All regulations made under this Ordinance shall be laid on the table of the Legislative Council at the first meeting thereof held after the publication in the Gazette of the making of such regulations, and if a resolution be passed at the first meeting of the Legislative Council held after such regulations have been laid on the table of the said Council resolving that any such regulation shall be rescinded, or amended in any manner whatsoever, the said regulation shall, without prejudice to anything done thereunder, be deemed to be rescinded, or amended as the case may be, as from the date of publication in the Gazette of the passing of such resolution.

8.—(1.) Every person who at the date of the coming Registration. into operation of this Part shall have a mui tsai in his employment in the Colony shall register such mui tsai in the prescribed manner within six months after the date of the coming into operation of this Part.

(2.) Every person who shall at any time have in his employment in the Colony a mui tsai who shall have been brought into the Colony after the date of the coming into operation of this Part shall register such mui tsai in the prescribed manner within one week after the arrival of such mui tsai in the Colony.

(3.) It shall be lawful for the Secretary for Chinese Affairs in his absolute discretion to refuse to register any particular mui tsai and to remove any particular mui tsai from the register.

9. Subject to the period allowed for registration, and subject to the provisions of section 11, no person shall have in his employment an unregistered mui tsai. No person to have an unregistered mui tsai in his employment.

10. Subject to the period allowed for registration, and subject to the provisions of section 11, no person shall have in his employment any female domestic servant under the age of 10 years unless such servant is a registered mui tsai. No person to have in his employment any female domestic servant under 10, except a registered mui tsai.

11. (1.)—No mui tsai shall hereafter be transferred from one employer to another: Provided that upon the death of the employer of any mui tsai it shall be lawful for the Secretary for Chinese Affairs to make any order which he may think fit regarding the transfer of such mui tsai to a new employer. No mui tsai to be transferred hereafter from one employer to another except on death of the former employer.

(2.) Every person who after the date of the coming into operation of this Part shall become the actual employer of a mui tsai by reason of the death of the former employer of such mui tsai, or for any other reason, shall report such fact in the prescribed manner within one week after he shall have become the actual employer of such mui tsai.

12. Every mui tsai of or over the age of 18 years Mui tsai over may leave her employment at any time, without any 18. notice and without any payment whatsoever.

Mui tsai
under 18.

13. Every mui tsai under the age of 18 years who wishes to be restored to the custody of her parent or natural guardian, and every mui tsai under the age of 18 years whose parent or natural guardian wishes such mui tsai to be restored to his custody, shall, without any payment whatsoever be restored to such custody unless the Secretary for Chinese Affairs shall see some grave objection in the interest of such mui tsai to such restoration.

Mui tsai over
12 and under
18.

14. Every mui tsai of or over the age of 12 years and under the age of 18 years shall, as hitherto, have the right to apply to the Secretary for Chinese Affairs, and upon any such application it shall be lawful for the Secretary for Chinese Affairs to make any order which he may think fit regarding the custody, control, employment and conditions of employment of the applicant.

Remunera-
tion of
mui tsai.

15. Every mui tsai of or over the age of 10 years shall be entitled to such wages for her services as shall be prescribed.

Coming into
operation of
Part III.

16. This Part shall not come into operation until such date as may be fixed by proclamation of the Governor in Council.

PART IV.

Penalties.

17. Every person who contravenes or fails to comply with any of the provisions of this Ordinance or of any regulation made thereunder shall be liable upon summary conviction to a fine not exceeding two hundred and fifty dollars.

Consent.

18. No prosecution under this Ordinance shall be commenced without the consent of the Secretary for Chinese Affairs.

Saving.

19. Nothing in this Ordinance shall affect any of the rights and powers conferred on the Secretary for Chinese Affairs by the Protection of Women and Girls Ordinance, No. 4 of 1897.

Objects and Reasons.

1. This bill is introduced on the instructions of the Secretary of State, and is an attempt to deal with the mui tsai problem.

2. Clause 2 is declaratory. Payment to a parent or guardian by an employer who thereby obtains the custody of the child has never in this Colony conferred any rights upon such employer as against the parent or guardian, and has never conferred on such employer any right of retaining possession as against the child herself, but apparently some persons have ignorantly imagined that such rights could be transferred.

3. Broadly speaking, a mui tsai is defined as a female domestic servant whose employer obtained her services by means of a payment to any one. Paragraph (ii) of the definition is intended to cover two cases. One is the case where a girl has been transferred by one employer to another, and the second is the case where an employer has died and the care of the household has devolved on, *e.g.*, his son or widow.

4. Clause 4 provides that no person shall hereafter take into his employment any mui tsai. This of course will not prevent any one from employing under an ordinary contract for service a girl who was formerly employed as a mui tsai.

5. Clause 5 provides that no person shall hereafter take into his employment any female domestic servant under the age of 10 years. This is intended to prevent evasion, as in the case of a child under 10 it might be difficult to prove that she was a mui tsai.

6. Clause 6 deals with the treatment of mui tsai. It requires the employer to provide sufficient food and clothing, and in case of illness, such medical attendance as the employer might reasonably have been expected to provide for his own daughter. The clause also provides that no employer of a mui tsai shall overwork or ill-treat such mui tsai or subject her to any punishment to which he might not reasonably subject his own daughter.

7. Part III of the bill will not come into operation until such date as may be fixed by proclamation of the Governor in Council. This is provided in clause 16.

8. Clause 7 gives a wide power of making regulations.

9. Clause 8 deals with the question of registration, but it may be well to explain here that the general scheme of the bill is to allow employers to keep the mui tsai whom they have in their employment at present, but to prohibit the employment of any new mui tsai in the Colony. The right to retain the existing mui tsai is of course subject to the right of the parents to reclaim their child, and to the right of the child to leave her employment of her own accord. All this is put very broadly, and the limitations to the above statements will appear in the consideration of the particular clauses of the bill.

10. Sub-clause (1) of clause 8 provides that every person who has a mui tsai in his employment in the Colony at the date of the coming into operation of Part III must register such mui tsai within six months after that date.

11. Sub-clause (2) of clause 8 provides that every person who at any time has in his employment a mui tsai brought into the Colony after the date of the coming into operation of Part III must register such mui tsai within a week after her arrival in the Colony.

12. Sub-clause (3) of clause 8 will enable the Secretary for Chinese Affairs to make it impossible for an undesirable employer to continue to employ any particular mui tsai as a mui tsai.

13. Clause 9 provides that no person is to have in his employment an unregistered mui tsai. This of course is subject to the period allowed for registration. It is also subject to the provisions of section 11, referred to below in paragraph 15.

14. Clause 10 provides that no one is to have in his employment any female domestic servant under the age of 10 years unless such servant is a registered mui tsai. This is intended to prevent evasion, as in the case of clause 5.

15. Part of the policy of the bill is to prevent transfers of mui tsai from one employer to another. It is, however, obviously necessary to provide for the case of the death of an employer, and, in that event, the Secretary for Chinese Affairs will under clause 11 have power to make any order which he may think fit regarding the transfer of a mui tsai to, *e.g.*, the widow of the former employer.

16. Sub-clause (2) of clause 11 requires every person who becomes the actual employer of a mui tsai, by reason of the death of the former employer or for any other reason, to report such fact within one week.

17. Clause 12 declares that every mui tsai of or over the age of 18 years may leave her employment at any time, without any notice and without any payment whatsoever.

18. It would obviously be undesirable to encourage mui tsai under the age of 18 to exercise their legal right to leaving their employment at any moment and without any reference to their parents or guardians or to the Secretary for Chinese Affairs. Accordingly, clause 13 provides that every mui tsai under the age of 18 who wishes to be restored to her parents, and every mui tsai under the age of 18 whose parents wish such mui tsai to be restored to his or her custody, shall be so restored unless the Secretary for Chinese Affairs sees some grave objection in the interest of the mui tsai to such restoration. For instance, he might refuse permission to restore a girl to the custody of a mother who was living an immoral life.

19. Clause 14 provides that every mui tsai of or over the age of 12 years and under the age of 18 years shall, as hitherto, have the right to apply to the Secretary for Chinese Affairs, and that upon any such application the Secretary for Chinese Affairs may make any order which he may think fit regarding the custody, control, employment and conditions of employment of the mui tsai.

20. Clause 15 provides that every mui tsai of or over the age of 10 years shall be entitled to such wages as shall be prescribed. Regulation 7 of the draft regulations published with the bill provides that every mui tsai over the age of 10 years and under the age of 15 years shall be entitled to wages at the rate of at least \$1 a month and that every mui tsai of or over the age of 15 years shall be entitled to the wages at the rate of at least \$1.50 a month. These wages may seem low by English standards, but they must be judged by local conditions, and it must not be forgotten that the girls are treated as members of the family, though not of course always as daughters would be treated. In many cases therefore the so-called wages might perhaps be better described as pocket money.

21. Clause 17 is the usual penalty clause.

22. Clause 18 provides that no prosecution under the Ordinance is to be commenced without the consent of the Secretary for Chinese Affairs.

23. Clause 19 saves the rights and powers conferred on the Secretary for Chinese Affairs by the protection of the Women and Girls' Ordinance, 1897.

J. H. KEMP,
Attorney General.

15th December, 1922.

No. S. 405.—The following draft of regulations proposed to be introduced when Part III of the Female Domestic Service Ordinance is brought into operation are published for general information.

REGULATIONS.

Registration.

1. Registration may be effected at the office of the Secretary for Chinese Affairs or at any police station.

2. The particulars required on registration shall be those specified in the Appendix.

3. The registration form, when filled up, shall be read by or to the employer, or shall be interpreted to him if he is unable to read or understand English sufficiently well, and shall be signed by the employer.

4. As soon as may be after registration, identification tickets for the purpose of facilitating future reference shall be issued to the employer and to the mui tsai, and the said tickets shall be carefully preserved by them and shall be produced by them on the occasion of any subsequent application or supplementary report.