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E. AFRICA

11298

REC. MAR 17

Not

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Colonial Office

1917

February

Last previous Paper.

Index of Papers East Africa

Memorandum for ~~Reference~~

~~Memorandum~~ War Cabinet

Registered for read. *minutes*
in this

2-5

Next subsequent Paper.

Declaration on behalf of a Corporation.

I, _____ of
 the _____
 (hereinafter called "the corporation") the buyer of
 being duly authorized by the corporation to make this declaration do solemnly
 and sincerely declare as follows:—

The corporation is not an enemy or enemy subject or a corporation under enemy control as these terms are respectively defined in the Enemy Property (Disposal) Ordinance 1916 and to the best of my knowledge there is no arrangement under which the corporation is to hold the said property or any right title or interest therein for or on behalf of or in trust for or for the benefit of or so that it shall in any way come under the control of any enemy or enemy subject or corporation under enemy control as these terms are respectively defined in the aforesaid Ordinance either alone or jointly with another or others.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835 *

Declared at

this

day of

191

Before me

* If the declaration is not made in the United Kingdom substitute the law which authorizes a declaration.

immovable property takes place in contravention of the provisions of Section 10 then, and in the latter case without prejudice to the recovery of the penalty under Section 10 the Attorney-General may apply to the Supreme Court for a declaration that (a) any right title and interest acquired or purported to be acquired in contravention of the provisions of either of the said sections or held by any person who has become (1) an enemy enemy subject or a corporation under enemy control or (2) a person who but for the conclusion of any peace in connexion with the present War would be an enemy enemy subject or corporation under enemy control and (b) in the case of a contravention of Section 10 any right title or interest in the property concerned which may be vested in the person guilty of such contravention is forfeited to the Crown and the Court subject to the proviso following shall forfeit such right title or interest to the Crown accordingly provided always that in dealing with the application the Court may take into consideration the position of persons who not being themselves prohibited persons under Section 10 hereof have bona fide for value and without actual notice or knowledge of the circumstances occasioning the liability to such forfeiture acquired any such right title or interest in such immovable property or who have acquired any right title or interest in such immovable property under the will or otherwise through or under any such persons as may make such order as it thinks fit wholly or partially relieving any such persons from forfeiture of such right title and interest so acquired by them or otherwise may make such order as it may under the circumstances deem equitable.

12. *Forfeiture of interest vested in enemy etc. by intestacy.*—If under the intestacy of any person in whom any immovable property sold by the Receiver or any part thereof or any right title or interest therein shall have become or shall become vested any person being a prohibited person under Section 10 hereof acquires any right title or interest in such immovable property such right title or interest shall also be subject to forfeiture under the provisions of Section 11 hereof and the Court shall have the like powers of relieving against forfeiture as are in the said section mentioned.

13. *Power to Governor to require any owner etc. of property to furnish particulars as to nationality.*—The Governor may at any time require any person claiming to be the owner lessee or mortgagee of any immovable property sold by the Receiver or of any right title or interest therein to furnish him in writing with particulars as appear necessary to enable him to ascertain whether or not the person is or holds the property or any part thereof or any right title or interest therein for or on behalf of or in trust for or for the benefit of in any way so as to come under the control of an enemy enemy subject or corporation under enemy control or of a person who but for the conclusion of any peace in connexion with the present War would be an enemy enemy subject or corporation under enemy control and in the case of a corporation may also require any Director of the corporation or person occupying the position of Director by whatever name called or the Secretary or any other officer of the corporation performing the duties of Secretary or any person acting as manager or agent for the corporation in connexion with the property to furnish the required particulars.

(ii) If any person fails when required to furnish such particulars as it is in his power to give or ascertain or furnishes particulars which are false in any material particular he shall be liable to a penalty of £100 or to six months imprisonment or to both.

(iii) Where any particulars have been furnished in accordance with this section such particulars shall be evidence against the person or corporation by whom they are furnished in any proceedings under Section 10 or Section 11 hereof and the fact that any person who has been required to furnish particulars in accordance with this section refuses or neglects to furnish such particulars as it is in his power to give or ascertain or furnishes particulars which are false in any material particular shall be prima facie evidence in the case of proceedings under Section 10 or Section 11 hereof that the person regarding whom the particulars were required is an enemy enemy subject or corporation under enemy control or a person who but for the conclusion of any peace in connexion with the present War would be an enemy enemy subject or corporation under enemy control.

14. *Registration of Ordinance.*—This Ordinance shall be registered in the land registry for Nigeria and shall be deemed to be a valid and effectual registration for the purposes of the Land Registration Ordinance 1915 with respect to all estates and interests vested in the Receiver by virtue of this Ordinance.

15. *Indemnity to Receiver.*—The Receiver shall not be personally liable in respect of any immovable property vested in him as aforesaid and this Ordinance shall be a complete indemnity to the Receiver for any acts done pursuant thereto.

16. *Power to Governor to extend First Schedule.*—The Governor may at any time by proclamation extend the first schedule hereto (a) by adding in the fourth column thereof the name of any firm in the Receiver of which it is desired to vest any right title or interest in immovable property (b) by adding in the second column thereof a description of the immovable property concerned and (c) by adding in the third column thereof a description of the estate or interest which it is desired to vest in the Receiver as aforesaid and all the provisions of the Ordinance shall thereupon apply as if this Ordinance had been passed with the schedule so extended.

FIRST SCHEDULE.

Immovable property vested in the Receiver under Section 3 (2).

No.	Description of Property	Estate or Interest	Firm

SECOND SCHEDULE.

Declaration by an Individual Buyer.

I, _____ of _____ do solemnly and sincerely declare as follows:—
I am a _____ subject and reside and carry on business at _____ and I am not an enemy or enemy subject as those terms are respectively defined in the Enemy Property (Disposal) Ordinance 1916.

I further solemnly and sincerely declare that there is no arrangement under which I am to hold the property which I am purchasing from the Receiver or any right title or interest therein for or on behalf of or in trust for or for the benefit of or so that it shall in any way come under the control of any enemy or enemy subject or corporation under enemy control as these terms are respectively defined in the Enemy Property (Disposal) Ordinance 1916 either alone or jointly with another or others.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.*

Declared at

this _____ day of _____ 191

Before me

* If the declaration is not made in the United Kingdom substitute the law which authorizes a declaration.

6. *Notice of the sale of immovable property to be given and provisions as to proceeds of sale.*—(1) After the completion of the sale of any immovable property vested in the Receiver as aforesaid notice of the sale with a description of the property sold shall be inserted in the London Times newspaper and in one or more newspapers published in Nigeria and any person claiming to be entitled to any right title interest or benefit which is declared to be absolutely extinguished under Sub-section (3) of Section 3 hereof shall within six months after the date of such notice or within such extended time as the Governor may either generally or in any special case allow send to the Chief Registrar of the Supreme Court and to the Receiver a statement of his claim specifying the right title interest or benefit which he alleges he had in the property sold or in relation thereto and the amount he claims as compensation for the extinguishment thereof and if the claimant is not resident in Nigeria he shall appoint some person resident in Nigeria as his agent to represent him in respect of his claim and shall give particulars along with notice of his claim of such person's name and address.

Subject to the leave of the Governor an enemy may be permitted to send in any such claim and be represented before the Court under the provisions of the next sub-section.

(2) After the expiration of the six months from the date of such notice or within such extended time as aforesaid the Court shall if any claim has been sent in under the preceding sub-section issue a summons to the Receiver and to the claimant or his agent (but in the case of an enemy claimant only with the leave of the Governor) calling upon them to appear at a time and place named when the claim will be heard and determined. No appeal shall lie from the decision of the Court upon any claim. The Receiver shall be entitled to be paid his costs charges and expenses of and in connexion with the said notice and claim (if any) and summons (if any) but the costs of any claimant in connexion with any claim and summons shall be in the discretion of the Court and the Court if it thinks fit may order the claimant to pay all the costs of the summons.

(3) (a) After the expiration of the said six months or such extended time as aforesaid or after the determination by the Court of the claim (if any) of which notice has been sent in as aforesaid the proceeds of sale paid into Court or the balance (if any) thereof after deducting the costs charges and expenses of the Receiver and any sums directed by the Court to be paid or retained thereout in respect of claims (if any) allowed thereon and any claimant's costs allowed by the Court shall be paid to the Receiver and may be dealt with by him in like manner as the other assets of the firm and no person who has not given notice of a claim within the said six months or such extended time as aforesaid shall thereafter without the leave of the Governor be entitled to make or enforce any claim upon the said proceeds of sale or the other assets of the firm in respect of any right title interest or benefit declared to be extinguished as aforesaid.

(b) If an enemy establishes a claim to compensation out of the purchase money or any part thereof neither the amount of his claim nor any part thereof shall be paid out to him but shall be retained and remain in Court and shall be dealt with after the termination of the present War in such manner as the Governor may by order under his hand direct.

(c) If an enemy subject (not being an enemy) or a corporation under enemy control establishes a claim to compensation out of the purchase money or any part thereof neither the amount of such claim nor any part thereof shall without the consent of the Governor be paid to him and if the Governor does not so consent or to the extent to which he does not so consent the amount shall be retained and remain in Court and shall be dealt with after the termination of the present War in such manner as the Governor may by order under his hand direct.

(d) The Receiver appointed or to be appointed of the business of any firm which being entitled or permitted to make a claim hereunder has established a claim to compensation out of any purchase money in Court may with the leave of the Governor apply to have the same paid out to him as assets of the firm.

(e) If the Court in considering the claim of any person for compensation out of any purchase money as aforesaid under Section 6 (1) hereof is of opinion that such person should be allowed to rank as an ordinary creditor on the other assets of the firm for any amount or balance of any amount allowed him by way of compensation which the purchase money in Court is not sufficient to provide the Court may with the approval of the Governor order that such person shall rank as an ordinary creditor on such other assets of the firm as were not distributed by the Receiver at the time when he received notice of such claim for such amount or

balance but the amount payable to any such claimant by the Receiver shall if the amount (if any) allowed him by way of compensation out of the purchase money would have been retained in Court be paid into Court by the Receiver in manner aforesaid and be dealt with under the provisions of paragraphs (b) and (c) of this sub-section and shall also be subject to the rights of the Receiver of any such claimant as is provided in paragraph (2) of this sub-section.

(f) Any costs charges and expenses of any abortive sale by the Receiver of immovable property may be paid by or retained by the Receiver out of any other assets of the firm that may come to his hands as a first charge thereon.

7. (1) *Receiver may assign Leases without consent of the Lessor.*—Except where the Crown is the lessor the Receiver may sell or assign any immovable property being leasehold property without the consent of the lessor any covenant or condition in the lease to the contrary notwithstanding and such sale or assignment shall not constitute a breach of any covenant or condition.

(2) *Receiver may assign notwithstanding breaches of Covenant or Condition.*—In the case of any lease specified in the schedule hereto the lessor or other the person in whom the reversion expectant on the termination thereof shall for the time being be vested shall not be entitled to exercise or enforce any power of re-entry under or right of forfeiture of such lease by reason of any breach of any covenant or condition prior to the date of completion of the sale thereof by the Receiver nor till the expiration of six months from such date by reason of any breach of a covenant or condition imposing on the lessee an obligation to trade upon the premises therein comprised.

8. *Prohibition of proceedings without leave of Governor where an Order made under Section 3 of the Aliens Restriction Ordinance 1914.*—When an Order has been made under Section 3 of the Aliens Restriction Ordinance 1914 for the appointment of a Receiver of the business of a firm no bankruptcy petition or petition for winding up such firm shall be presented or resolution for the winding up of such firm passed or steps for the enforcement of the rights of any claimants upon or against the firm (except such as are provided for in Section 6 (1) hereof) taken without the consent of the Governor.

9. *Receiver not to sell property to an enemy subject or a corporation under enemy control.*—The Receiver shall not sell any immovable property to an enemy or enemy subject or a corporation under enemy control or to any person acting for an enemy or enemy subject or corporation under enemy control and further shall not complete any sale of immovable property unless and until the purchaser being an individual or corporation shall have made a statutory declaration in the appropriate form set out in the second schedule. Such declaration in the case of a corporation being a purchaser shall be made by some official of the corporation duly authorized thereto by the corporation.

10. *Enemy etc. not to acquire any interest in immovable property sold by the Receiver.*—No person in whom any immovable property sold by the Receiver or any part thereof or any right title or interest therein shall have become or shall become vested shall except with the authority of the Governor given with the consent of the Secretary of State in any particular case or in general and in the latter case by proclamation or otherwise sell transfer lease mortgage devise or bequest such property or any part thereof or any right title or interest therein to or in any way deal therewith so that the same shall be acquired or owned by or for or be held on behalf of or in trust for or for the benefit of or so as in any way to come under the control of (1) an enemy or enemy subject or corporation under enemy control or (2) any person who but for the conclusion of any peace made in relation to the present War would be an enemy or enemy subject or corporation under enemy control and in either case either alone or jointly with another or others and if any person contravenes the provisions of this section such person or in the case of a deceased person his estate shall forfeit to His Majesty a sum of five thousand pounds to be recovered at the suit of the Attorney-General.

11. *Forfeiture of interest acquired by an enemy etc.*—If any enemy or an enemy subject or a corporation under enemy control purchases from the Receiver any immovable property contrary to the provisions of Section 9 or if any person in whom any immovable property sold by the Receiver or any part thereof or any right title or interest therein shall have become or shall become vested shall become either (1) an enemy enemy subject or corporation under enemy control or (2) a person who but for the conclusion of any peace in connexion with the present War would be an enemy enemy subject or corporation under enemy control or if any transfer lease mortgage devise or bequest or of other dealing with such

NIGERIA.

DRAFT NIGERIAN ORDINANCE ENTITLED AN ORDINANCE TO MAKE FURTHER PROVISION WITH REGARD TO THE DISPOSAL OF ENEMY PROPERTY.

Be it enacted, etc. (Colony and Protectorate.)

1. Short Title.—This Ordinance may be cited as the Enemy Property (Disposal) Ordinance 1916.

2. Definitions.—“Firm” means any person company or association or body of persons corporate or unincorporate, the business of whom or which has been or shall on or after the commencement of this Ordinance be the subject of an appointment of a receiver or a receiver and manager under the provisions of Section 3 of the Aliens Restriction Ordinance 1914. (No. 13 of 1914.)

“Immovable property” includes any right whether legal or equitable in or arising out of immovable property.

“Receiver” means a receiver or receiver and manager appointed under Section 3 of the Aliens Restriction Ordinance 1914. (No. 13 of 1914.)

“Corporation under enemy control” includes—

(a) A corporation of which any of the Directors or persons occupying the position of Directors by whatever name called is an enemy or enemy subject.

(b) A corporation shareholders in which holding shares or stock representing ten per cent. or more of the paid up capital of the corporation are enemies or enemy subjects or persons who hold such shares or stock directly or indirectly for or at the disposal of enemies or enemy subjects.

(c) A corporation which is by any other means whether of a like or a different character in fact under the control directly or indirectly of enemies or enemy subjects or corporations under enemy control.

(d) A corporation the executive whereof is a corporation within (a) (b) or (c).

“Enemy” means any person who is or is treated as an enemy under any Act of Parliament Order in or of Council or Royal Proclamation for the time being in force.

“Enemy subject” means a subject of a State for the time being at war with His Majesty.

3. Immovable property of firms to vest in Receiver.—(1) The immovable properties specified in the second column of the first schedule* hereto shall vest in the Receiver of the respective firms specified in the fourth column of the said schedule for the respective estates and interests specified in the third column of the said schedule subject to any subsisting rights of way or apparent easements affecting the same but otherwise free from incumbrances.

(2) Every right title or interest of any person other than the Crown or the public and other than subsisting rights of way or apparent easements to and in any immovable property specified in the first schedule which is derogatory or counter to the estate and interest vested in the Receiver by the last preceding sub-section and the benefit of any covenant agreement or reservation in support of such right title or interest shall be absolutely extinguished and no action or other proceeding other than a claim for compensation as hereinafter mentioned shall be capable of being taken or proceeded with to enforce the same.

4. Receiver to sell immovable property.—The Receiver shall as soon as conveniently may be after the commencement of this Ordinance offer for sale by public auction or private treaty all immovable property vested in him by the last preceding section and shall complete the sale of any such property previously contracted to be sold by him and the receipt of the Receiver for the purchase money in respect of any such sale shall be a good discharge to the purchaser of the said property.

5. Payment into Court of proceeds of sale of immovable property.—On the sale by the Receiver either before or after the commencement of this Ordinance of any immovable property vested in him as aforesaid the proceeds of sale thereof after deducting the costs charges and expenses of and in connexion with the sale shall be paid into Court by the Receiver to the account of the Receiver to be dealt with as hereinafter provided.

*The schedule must contain descriptions of existing leases not of any leases which have been surrendered and must be altered accordingly.

Declaration on behalf of a Corporation.

I, _____ of _____ (hereinafter called “the corporation”) the buyer of _____ being duly authorized by the corporation to make this declaration do solemnly and sincerely declare as follows:—

The corporation is not an enemy or enemy subject or a corporation under enemy control as these terms are respectively defined in the Enemy Property (Disposal) Ordinance 1916 and to the best of my knowledge there is no arrangement under which the corporation is to hold the said property or any right title or interest therein for or on behalf of or in trust for or for the benefit of or so that it shall in any way come under the control of any enemy or enemy subject or corporation under enemy control as these terms are respectively defined in the aforesaid Ordinance either alone or jointly with another or others.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.*

Declared at _____ this _____ day of _____ 191____
Before me _____

*If the declaration is not made in the United Kingdom, substitute the law which authorizes a declaration.

6. *Notice of the sale of immovable property to be given and provisions as to proceeds of sale.*—(1) After the completion of the sale of any immovable property vested in the Receiver as aforesaid notice of the sale with a description of the property sold shall be inserted in the London Times newspaper and in one or more newspapers published in Nigeria and any person claiming to be entitled to any right title interest or benefit which is declared to be absolutely extinguished under Sub-section (3) of Section 3 hereof shall within six months after the date of such notice or within such extended time as the Governor may either generally or in any special case allow send to the Chief Registrar of the Supreme Court and to the Receiver a statement of his claim specifying the right title interest or benefit which he alleges he had in the property sold or in relation thereto and the amount he claims as compensation for the extinguishment thereof and if the claimant is not resident in Nigeria he shall appoint some person resident in Nigeria as his agent to represent him in respect of his claim and shall give particulars along with notice of his claim of such person's name and address.

Subject to the leave of the Governor an enemy may be permitted to send in any such claim and be represented before the Court under the provisions of the next sub-section.

(2) After the expiration of the six months from the date of such notice or within such extended time as aforesaid the Court shall if any claim has been sent in under the preceding sub-section issue a summons to the Receiver and to the claimant or his agent (but in the case of an enemy claimant only with the leave of the Governor) calling upon them to appear at a time and place named when the claim will be heard and determined. No appeal shall lie from the decision of the Court upon any claim. The Receiver shall be entitled to be paid his costs charges and expenses of and in connexion with the said notice and claim (if any) and summons (if any) but the costs of any claimant in connexion with any claim and summons shall be in the discretion of the Court and the Court if it thinks fit may order the claimant to pay all the costs of the summons.

(3) (a) After the expiration of the said six months or such extended time as aforesaid or after the determination by the Court of the claim (if any) of which notice has been sent in as aforesaid the proceeds of sale paid into Court or the balance (if any) thereof after deducting the costs charges and expenses of the Receiver and any sums directed by the Court to be paid or retained thereout in respect of claims (if any) allowed thereon and any claimant's costs allowed by the Court shall be paid to the Receiver and may be dealt with by him in like manner as the other assets of the firm and no person who has not given notice of a claim within the said six months or such extended time as aforesaid shall thereafter without the leave of the Governor be entitled to make or enforce any claim upon the said proceeds of sale or the other assets of the firm in respect of any right title interest or benefit declared to be extinguished as aforesaid.

(b) If an enemy establishes a claim to compensation out of the purchase money or any part thereof neither the amount of his claim nor any part thereof shall be paid out to him but shall be retained and remain in Court and shall be dealt with after the termination of the present War in such manner as the Governor may by order under his hand direct.

(c) If an enemy subject (not being an enemy) or a corporation under enemy control establishes a claim to compensation out of the purchase money or any part thereof neither the amount of such claim nor any part thereof shall without the consent of the Governor be paid to him and if the Governor does not so consent or to the extent to which he does not so consent the amount shall be retained and remain in Court and shall be dealt with after the termination of the present War in such manner as the Governor may by order under his hand direct.

(d) The Receiver appointed or to be appointed of the business of any firm which being entitled or permitted to make a claim hereunder has established a claim to compensation out of any purchase money in Court may with the leave of the Governor apply to have the same paid out to him as assets of the firm.

(e) If the Court in considering the claim of any person for compensation out of any purchase money as aforesaid under Section 6 (1) hereof is of opinion that such person should be allowed to rank as an ordinary creditor on the other assets of the firm for any amount or balance of any amount allowed him by way of compensation which the purchase money in Court is not sufficient to provide the Court may with the approval of the Governor order that such person shall rank as an ordinary creditor on such other assets of the firm as were not distributed by the Receiver at the time when he received notice of such claim for such amount or

balance but the amount payable to any such claimant by the Receiver shall if the amount (if any) allowed him by way of compensation out of the purchase money would have been retained in Court be paid into Court by the Receiver in manner aforesaid and be dealt with under the provisions of paragraphs (b) and (c) of this sub-section and shall also be subject to the rights of the Receiver of any such claimant as is provided in paragraph (d) of this sub-section.

(f) Any costs charges and expenses of any abortive sale by the Receiver of immovable property may be paid by or retained by the Receiver out of any other assets of the firm that may come to his hands as a first charge thereon.

7. (1) *Receiver may assign Leases without consent of the Lessor.*—Except where the Crown is the lessor the Receiver may sell or assign any immovable property being leasehold property without the consent of the lessor any covenant or condition in the lease to the contrary notwithstanding and such sale or assignment shall not constitute a breach of any covenant or condition.

(2) *Receiver may assign notwithstanding breaches of Covenant or Condition.*—In the case of any lease specified in the schedule hereto the lessor or other the person in whom the reversion expectant on the termination thereof shall for the time being be vested shall not be entitled to exercise or enforce any power of re-entry under or right of forfeiture of such lease by reason of any breach of any covenant or condition prior to the date of completion of the sale thereof by the Receiver nor till the expiration of six months from such date by reason of any breach of a covenant or condition imposing on the lessee an obligation to trade upon the premises therein comprised.

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9. *Receiver not to sell property to an enemy enemy subject or a corporation under enemy control.*—The Receiver shall not sell any immovable property to an enemy or enemy subject or a corporation under enemy control or to any person acting for an enemy or enemy subject or corporation under enemy control and further shall not complete any sale of immovable property unless and until the purchaser being an individual or corporation shall have made a statutory declaration on the appropriate form set out in the second schedule. Such declaration in the case of a corporation being a purchaser shall be made by some official of the corporation duly authorized thereto by the corporation.

10. *Enemy etc. not to acquire any interest in immovable property sold by the Receiver.*—No person in whom any immovable property sold by the Receiver or any part thereof or any right title or interest therein shall have become or shall become vested shall except with the authority of the Governor given with the consent of the Secretary of State in any particular case or in general and in the latter case by proclamation or otherwise sell transfer lease mortgage devise or bequest such property or any part thereof or any right title or interest therein to or in any way deal therewith so that the same shall be acquired or owned by or for or be held on behalf of or in trust for or for the benefit of or so as in any way to come under the control of (1) an enemy or enemy subject or corporation under enemy control or (2) any person who but for the conclusion of any peace made in relation to the present War would be an enemy or enemy subject or corporation under enemy control and in either case either alone or jointly with another or others and if any person contravenes the provisions of this section such person or in the case of a deceased person his estate shall forfeit to His Majesty a sum of five thousand pounds to be recovered at the suit of the Attorney-General.

11. *Forfeiture of interest acquired by an enemy etc.*—If any enemy or an enemy subject or a corporation under enemy control purchases from the Receiver any immovable property contrary to the provisions of Section 9 or if any person in whom any immovable property sold by the Receiver or any part thereof or any right title or interest therein shall have become or shall become vested shall become either (1) an enemy enemy subject or corporation under enemy control or (2) a person who but for the conclusion of any peace in connexion with the present War would be an enemy enemy subject or corporation under enemy control or if any transfer lease mortgage devise or bequest or of other dealing with such

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Be it enacted, etc. (*Colony and Protectorate.*)

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“Immovable property” includes any right whether legal or equitable in or arising out of immovable property.

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“Corporation under enemy control” includes—

(a) A corporation of which any of the Directors or persons occupying the position of Directors by whatever name called is an enemy or enemy subject.

(b) A corporation shareholders in which holding shares or stock representing ten per cent. or more of the paid up capital of the corporation are enemies or enemy subjects or persons who hold such shares or stock directly or indirectly for or at the disposal of enemies or enemy subjects.

(c) A corporation which is by any other means whether of a like or a different character in fact under the control directly or indirectly of enemies or enemy subjects or corporations under enemy control.

(d) A corporation the executive whereof is a corporation within (a) (b) or (c).

“Enemy” means any person who is or is treated as an enemy under any Act of Parliament Order in or of Council or Royal Proclamation for the time being in force.

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3. *Immovable property of firms to vest in Receiver.*—(1) The immovable properties specified in the second column of the first schedule* hereto shall vest in the Receiver of the respective firms specified in the fourth column of the said schedule for the respective estates and interests specified in the third column of the said schedule subject to any subsisting rights of way or apparent easements affecting the same but otherwise free from incumbrances.

(2) Every right title or interest of any person other than the Crown or the public and other than subsisting rights of way or apparent easements to and in any immovable property specified in the first schedule which is derogatory or counter to the estate and interest vested in the Receiver by the last preceding sub-section and the benefit of any covenant agreement or reservation in support of such right title or interest shall be absolutely extinguished and no action or other proceeding other than a claim for compensation as hereinafter mentioned shall be capable of being taken or proceeded with to enforce the same.

4. *Receiver to sell immovable property.*—The Receiver shall as soon as convenient after the commencement of this Ordinance offer for sale by public auction or private treaty all immovable property vested in him by the last preceding section and shall complete the sale of any such property previously contracted to be sold by him and the receipt of the Receiver for the purchase money in respect of any such sale shall be a good discharge to the purchaser of the said property.

5. *Payment into Court of proceeds of sale of immovable property.*—On the sale by the Receiver either before or after the commencement of this Ordinance of any immovable property vested in him as aforesaid the proceeds of sale thereof after deducting the costs charges and expenses of and in connexion with the sale shall be paid into Court by the Receiver to the account of the Receiver to be dealt with as hereinafter provided.

* The schedule must contain descriptions of existing leases not of any leases which have been surrendered and must be altered accordingly.

9540

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REG. 21 FEB 17

Enclosure 2a in Circular Dispatch (2) dated 20th December, 1916.

TRADING WITH THE ENEMY AMENDMENT ACT, 1916.

Form of Statutory Declaration on Sale of Business.

That the purchaser is a British subject and free from any foreign influence; that the purchase is made, and the business will be conducted, wholly on his own account and for his own benefit and with no reservation of enemy or other interest.

[Enclosure 2 in Circular despatch (2) dated 20th December, 1916]

TRADING WITH THE ENEMY ACT, 1916.

SPECIAL CONDITIONS.

1. The purchaser must be a British subject and not under any foreign influence and will be required to satisfy the Controller that no person of enemy or foreign origin is directly or indirectly interested with him in the purchase, and he must make such statutory declaration as may be required by the Board of Trade in the case of a sale pursuant to the Trading with the Enemy Amendment Act, 1916.

2. In the case of a Company formed for the purpose of acquiring the business its Memorandum of Association must contain special provisions, to be approved by the Board of Trade, to exclude the possibility of the Company falling under foreign control. Generally speaking, it will be necessary to prevent more than one-fourth of the shares or the voting rights being held by, or subject to the control of, foreigners.

3. In the case of a Company already in existence, if the Articles of Association do not already so provide, they must be altered in a manner satisfactory to the Board of Trade so as to exclude the possibility of falling under foreign control, and the Directors must furnish an undertaking to use their best endeavours to have the provisions referred to above inserted in the Memorandum of Association if legislation should be passed enabling the Memorandum of Association to be altered by the insertion of such provisions.

4. Should the Board of Trade for any reason not approve of the purchaser, the contract may be rescinded by the Controller and the deposit will be returned without interest or expenses.

which the Government may declare to be subject to them, and the necessary declaration should only be issued in cases of this special character.

6. I would also invite your attention to the clauses of the Nigerian draft which deal with the question of title. The form of these clauses is due to the peculiar circumstances of Nigeria. The enemy firms in that territory are without exception mere agencies of head offices in European Germany or Austria, and the title deeds of the various properties belonging to or occupied by the firms were for the most part kept at the head offices. Although, therefore, there was in general little doubt as to the extent of the interests vested in the enemy firms, exact particulars of the titles acquired by them and of the subsequent dealings with the properties were difficult, and in many cases impossible, to obtain. Moreover, some of the titles which had been acquired from the natives were of a kind not known in English law. In these circumstances it was thought desirable to schedule to the draft Ordinance a list defining the titles vested in and transferable by the liquidator, and to abolish all inconsistent interests, throwing the onus of any such interest upon the purchase money or other assets of the firm for compensation. Although I realise that the difficulties which arise in connexion with the Nigeria sales may not exist in the territory under your administration, your advisers may find these provisions of the draft of some use in dealing with the various questions which may arise in connexion with the sales of local enemy properties.

7. The preceding paragraphs have been written on the assumption that all sales will be by public auction, and this method of sale will no doubt be the one generally adopted. If, however, you decide in any case to sell by tender or private contract the instructions given above as to the form of conditions of sale in the case of public auction will be a sufficient guide as to the form in which invitations to tender and contracts should be drawn up.

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8. I will without doubt always have considered the desirability of advertising any intended sales in this country and elsewhere in the Empire, but I think it best to call express attention to this point, since I regard it as of importance, for international reasons, that all enemy properties sold should, if possible, realise reasonable prices.

9. I am addressing you in a separate despatch regarding the sale of trade marks, in respect of which the practical experience gained in connexion with the Nigerian sales has disclosed certain new difficulties.

I have the honour to be,

Sir,

Your most obedient, humble servant,

WALTER H. LONG.

3. I have also come to the conclusion that, as a general rule, and in the absence of special reasons to the contrary, only British subjects should be allowed to become purchasers of these properties. If you are not aware of any such special reasons in the Colony or Protectorate, under your government you should, on receipt of this despatch, proceed with the necessary arrangements for the sale of the properties concerned. If, however, you consider that there are any special circumstances which make it desirable not to confine the sales to British purchasers, I request that I may be informed of your reasons for so thinking before any action is taken to invite foreign purchasers to make offers for the assets. You will no doubt communicate with me by telegraph if necessary.

4. I enclose for your information, a copy of the special conditions as to the nationality of purchasers which were employed at the sale of an important business recently disposed of as a going concern in this country. A form of statutory declaration is attached. In order to make paragraphs 2 and 3 of these conditions plain reference should be made to Mr. Bonar Law's Circular despatch of the 15th of July. The special provisions which have, according to paragraphs 2 and 3 of the conditions, to be introduced into the constitution of the purchasing company follow the lines of the specimen form of articles a copy of which accompanied the last-mentioned Circular despatch. You may think it desirable to adopt these or similar conditions in case of special importance; in other cases it may be sufficient to use conditions similar to paragraph 1 of the special conditions referred to above, and also providing that no corporation more than twenty-five per cent. of the issued capital or voting rights of which is held by, or subject to the control of, foreigners shall be allowed to purchase. The conditions should, of course, also provide for an appropriate statutory declaration to be made on behalf of any purchasing corporation.

5. The conditions suggested in the preceding paragraph do not definitely preclude the possibility of subsequent transfer of the property purchased out of British control. I am advised that this object can only be obtained by special legislation, the use of a bond being undesirable for the reasons already mentioned. There are, however, objections to legislation applying to all property of the kind now in question and directed against transfer to any foreign interest whatever, and I do not think that it would be desirable to introduce general legislation on these lines. Nevertheless, if you consider it specially desirable in any case, for economic, military, or other public reasons, to keep the property sold permanently or for a period under British control, you should secure legislation which could be based on the relevant clauses of the draft Nigerian Ordinance already referred to subject to the alterations necessary for the extension of the restriction to foreign interests. In any such adaptation the definition of "Corporation under Foreign control" should be as follows:

"Corporation under Foreign control" includes—

- (a) A Corporation of which any of the Directors, or persons occupying the position of Directors by whatever name called, is a foreigner;
- (b) A Corporation twenty-five per cent. or more of the issued capital or voting rights of which are held by, or directly or indirectly for or at the disposal of, foreigners or foreign corporations;
- (c) A Corporation which is by any other means, whether of a like or a different character, in fact under the control, directly or indirectly, of foreigners, foreign corporations, or corporations under foreign control;
- (d) A Corporation the Executive thereof is a Corporation within (a), (b) or (c), or a foreign Corporation.

Moreover, as it will not be desirable to apply the restrictions in question to any properties but those of the special character already mentioned, the proposed legislation should direct that these restrictions shall only apply to properties

To
 Hong Kong
 Straits
 Ceylon
 Gold Coast
 Sierra Leone
 Uganda
 E. Af. Prot.
 Zanzibar
 Nyasaland
 Jamaica
 Trinidad
 Br. Guiana

Denning Street,

20th December, 1916.

9540
 REC^d
 REC^d 21 FEB 17

Sir,

With reference to Mr. Bonar Law's Circular despatch of the 1st of August last I have the honour to inform you that I have further considered the question of the conditions of sale of the permanent assets of the enemy firms now in liquidation in the Colonies and Protectorates.

2. I have now come to the conclusion that the objects indicated in the Circular despatch of 1st August can be more satisfactorily obtained by legislation than by the means suggested in that despatch. The procedure by means of a bond has been found inconvenient here and elsewhere as tending unduly to hamper the title to the property sold, and it is, moreover, unsuitable if the restriction is to be continued indefinitely or for a long period. In this connexion I enclose copies of a draft Ordinance which has been drawn up for use in connexion with the recent sales of enemy property in Nigeria. You will observe that Clauses 9-13 of this draft are devoted to the exclusion of enemy interests, and you should take the necessary steps to secure legislation on the lines of the relevant clauses of the draft before proceeding with the sales of any enemy property in the territory under your administration. In adapting these clauses of the draft Ordinance you should substitute in Paragraph b of the Definition of "Corporation under enemy control" (see section 2) for the words "shares or stock representing ten per cent. or more of the paid-up capital" the words "ten per cent. or more of the issued capital or voting rights."

East African

9540

REC'D
RES'D 21 FEB 17

~~Mr. Grindle~~

I think we agreed that copies of Circular No. 2 of the 20th December regarding conditions of sale of Enemy Properties should be circulated to Geographical Departments in order that they might consider whether any special action is necessary regarding the various Colonies and Protectorates.

If you concur, copies of this minute might be registered for each Department with copies of the Circular

C.P. 22/12/16.

From 24/12/16 sent when my mistake, it had been filed for record

G.G. 22.12.16.

at once.

Handwritten notes at bottom of page, including "Lecture, public file" and other illegible text.