

1932.

Kenya

No. 18117 / 2.

SUBJECT

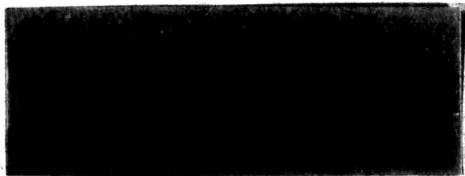
C0533 / 424

Land Commission.

*Power to take evidence on oath;
and other matters relating to the
taking of evidence.*

Previous

Main file.



Subsequent

*See 17165/31 (Native
grievances)
(Colonial
delegates.)*

Mr. Freeston.

You asked me to look into the question of the powers of a Commission (such as the recently appointed Carter Land Commission) to take evidence on oath, summon witnesses, etc.

This point arose in connection with the Palestine Commission of Enquiry when it was decided: - (vide minutes by Messrs. Lloyd and Rushe of 27/9/29 on 67450/29 Palestine) that it was not inappropriate for the H.Cr. to appoint under the local Commissions of Enquiry Ordce. a Commission already appointed by the S. of S., and that the Commission should be appointed a Commission of Enquiry by Warrant issued by the H.Cr. under the Palestine Commissions of Enquiry Ordinance, 1921, - vide 7 in 67450/29 Palestine.

On the analogy of the above the Kenya Commissions of Enquiry Ordinance, cap.25, Vol.1 Laws, can presumably be utilised although it is not so suitable in form and does not give the Commission discretionary power to prohibit the appearance of an advocate in the case of any person concerned. The Commission if appointed by the Governor under Cap.25 would have power to summon witnesses and take evidence on oath under section 10.

There is, however, a complication in cap.25 which does not appear in the Palestine Ordce., because section 8 of the former requires the result of the enquiry to be reported to the Governor. This could presumably be surmounted by arrangement in order to avoid passing a special ad hoc ordinance to cover the operations of the Land Commission.

I attach a copy of a telegram (7067450/29) which is of interest in this connection

J.F. P. M. S. M. M.
16/4/32

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I attach a copy of a telegram (70067450/1926) which is of interest in this connection

J.R. P. & M.
18/10/29

Mr. Allen

Mr. Priestman's note will be very useful if the question of compelling the attendance of witnesses, and taking their evidence on oath, arises in connection with the Kenya Land Enquiry Commission.

(Such forms are not likely to be required by Lord Moyne & Mr. Gifford)

You may think it well to explain to Sir Morris Carter, when he calls, the procedure that will be necessary.

JP Hunter
20/4

As regards Lord Moyne the point was considered by the Kenya Land Enquiry Commission & it is clear that the same applies to the case of Mr. Gifford 1944

Bushe
Mr. Allen

The following questions emerged from our conversation with Sir Morris Carter:-

(a) If in reporting under their second term of reference the Commission find it desirable and practicable to set aside further areas for natives, will they expect to specify, (1) which particular areas should be so set aside; (2) upon what type of tenure (e.g. freehold or leasehold, individual or communal, etc.) ^{such} areas should be held?

(b) Under their 3rd and 4th terms of reference will the Commission be required to make recommendations for the settlement of each separate claim (there are understood to be 92 from the Kikuyu alone), or merely to enunciate general principles in the light of which particular cases can be subsequently considered?

(c) Claims under the 3rd and 4th terms of reference will normally lie against the Crown. The Government case will therefore presumably be presented by the law officers of the Colonial Government. In this event should the claimants be allowed the right of appearing before the Commission by Counsel?

(d) The Commission has been appointed by the Secretary of State. To enable it to summon witnesses and to take evidence on oath, it appears desirable that it should be re-appointed by the Governor under the Commission of Inquiry Ordinance (Chapter 25, copy attached). There is precedent for this procedure, see 18125/32 Kenya ^{67450/24} ~~Palatine~~ ^{Palatine} ~~Palatine~~ below. If no legal objection is seen, the Governor should be instructed accordingly so that

(copy attached)

A ? Say that it was the intention that the Commission should set up his matter (see memo passed 14/7/54 not then held 25/8-10/9/54) 1944

B ? Suggest that not possible to say that each case must be subject to separate review but that Commission will have to see how far this is necessary & practicable when they see what is stated in the 1944 General

C ? May not desire to express any opinion (this matter seems essential as in the Commission itself to determine) 1944

JP Hunter
1944

the necessary instrument may be issued before Sir Morris Carter arrives at the end of June.

Mr. Bushé will no doubt be good enough to advise on questions (c) and (d) above; as regards (c) Sir Morris Carter agreed that if the legal officers confined themselves to the statement of facts and did not indulge in argument there would be no need for the representation of the native claimants by Counsel:

As regards (a) and (b) Sir Morris is not anxious for any direction to be officially conveyed to him in writing, but would be glad of an informal expression of the Secretary of State's views.

W. Allen

*may we have your advice as to...
- to assist will discuss with you...
in what*

W. Allen

27/4/32

Mr. Allen.

I have put in the margin the answer I should give to your questions if I was the Chairman of this Commission, but I feel very doubtful whether we ought to advise the Chairman now as to the interpretation of the terms of reference. I think the furthest we ought to go would be to tell him what we intended and meant by the terms of reference on the point raised. I cannot help you over that, as I do not think I have ever seen the terms of reference before.

As regards the re-appointing of the Commission

Commission under the local Ordinance, I do not see any objection, except that they would then have to report to the Governor, and I do not see how we can ^{wife} map out a statutory obligation of that sort. The Governor, however, could I suppose treat himself simply as a channel of communication, and ^{send to} similarly report on to the Secretary of State.

A/B 3.5.32

For convenience I have dealt with the marginal notes.

I do not think that the fact that the Commission's Order requires reports to be rendered to the Governor need deter receipt under that Order as proposed.

Although the taking of evidence is with my note ^{great imp} of importance the ~~fact~~ ^{fact} has to summon witnesses & demand production of papers does seem important

W. Allen

6/5/32

I see no objection to Sir M. Carter being told informally as at A. 7 ante.

A/B

*Agree representation by counsel...
On 20th 32*

** In the capacity of advocate - but it may be very desirable to have a "friend" to speak for them. JWB*

*This was what was done in the case of Lord Oliver's request in an interpretation: but the report did not make it to be said that...
to be to the Commission*

M. Carter should be free to handle
at the time that comes will be
most useful & efficient.

W.C.B.
6.5.32

Sir R. Hamilton

You should see J
officer.

J.H.B.
10.5.32.

M.H.B.
11.5.32 at once

I submit a draft despatch on D.
through channels desirable to
inform the former so

J.S. P. Smith
12/5/32.

A B C will no doubt be explained to
Sir M. Carter in conversation.

J.S. P. Smith
2/5.
Es he said he would call
straight as Kasko to do so.

J.S. P. Smith
13/5/32

By Air Mail
of 17/5/32.

1a To Gov 370 ——— 16 MAY 1932
(copy sent to 466 on 17/5/32)

~~DESTROYED UNDER STATUTE~~

To Sir M. Carter - 1/0 - 20/5/32

20
20
Sir M. Carter called today he asked that
the views on (1-1) H. J. D. of a very matter of
27 April above might be recorded in writing
I did so for convenience.

J.S. P. Smith
20/5

It came as a surprise to us that Sir
Horns later wanted anything in
writing. He has previously been quite
clear that he would not.

J.S. P. Smith
21/5/32

W.C.B. 21.5.32

3 To Sir M. Carter - 1/0 - 26 MAY 1932

4 To Sir J. Byrne - 1/0 - w/c 3 - 26 MAY 1932

~~DESTROYED UNDER STATUTE~~

When Sir Morris Carter called recently at the Colonial Office he said that he had had a conversation with a Mr. MacGregor Ross who expressed to him the opinion that there was a great deal of very important evidence in regard to native land claims in Kenya which could only be obtained from ex-officials and Commissioners who were in this country. As regards the ex-officials Mr. MacGregor Ross instanced himself, Mr. H.H. Horne, Mr. H.H. Tate, Mr. J.K. Hooley and Mr. S. Bagge.

* He has also
mentioned
to settlers.

J.M.

Sir Morris Carter seemed impressed by the importance of this consideration, but he took the ~~position~~ ^{view} that it was ~~impossible~~ ^{difficult} to do anything about it before his departure, and as regards taking such evidence orally later on there is, of course, the difficulty that his two fellow Commissioners are in Kenya and not, so far as we know, coming to this country.

It was left that Sir Morris Carter would consider the matter further after his arrival in Kenya and if necessary they would send ~~the~~ ^{the} names of the people from whom they wished to call evidence with an indication of the nature of the evidence which they wanted, and that maps would be supplied from the Colony to enable the witnesses to illustrate their evidence so to speak on the ground.

Sir Morris Carter also referred to the question of taking such evidence on oath. He was not at all clear at present as to the extent evidence on oath would be taken, but presumably there would be no difficulty if the necessity arose in getting any statements of the nature

contemplated

contemplated sworn before a Commissioner for Oaths. Reference was also made to the possibility of issuing a public intimation that the Commission were prepared to receive statements, but this point also was left over. In this connection, however, Sir Morris Carter pointed out that what the Commission wanted was facts and not arguments from persons who were interested in the matter but who had no first hand knowledge of the actual facts.

J.M. Allen

25/5/32

Sec of State (through Sir K. H. Johnson)

NOTE DICTATED BY SIR MORRIS CARTER.

Sir Morris Carter called this afternoon and raised the question of postponing his departure until the 1st July (with a view to taking evidence of fact and fact only in relation to native claims from the persons in this country) - see the attached note of an earlier discussion and also to consult any earlier relevant records which may be e.g. in the Foreign Office such as treaties with tribes, reports by Sir A. Hardinge and reports on the survey of the original Uganda railway. He is sure that there is in this country a substantial body of evidence which should be before the Commission: and on further consideration he is of opinion that obtaining the evidence by questionnaire and written statements, which would certainly necessitate further correspondence between Kenya and this country with the witnesses, would be far from satisfactory.

For the purpose of taking such evidence a room and a shorthand writer would be all that would be required. Sir Morris Carter would take this evidence verbally, a shorthand record being taken. He is also satisfied that if he had been sole Commissioner he would have deemed it necessary to take this evidence either before or after the evidence in Kenya and preferably before in order to cross-examine the natives upon it. To bring the other Commissioners here for the purpose after the enquiry in Kenya would involve heavy expense. Also the evidence taken here might necessitate further enquiry in Kenya. Whereas if the evidence is taken now and it becomes necessary to ask further questions

of the witnesses these further questions could be sent to them.

As a matter of fact the Commission is also to be appointed formally by the Governor mainly for the purpose of enabling it to summon witnesses, demand documents, and take evidence if it thinks fit on oath. Sir Morris Carter's view is that the Commission was appointed by the Secretary of State and that the appointment of the Governor does not in any way diminish the Commission's power to do anything under its appointment by the Secretary of State as the local appointment is ^{merely} supplemental to that appointment. The taking of evidence by a single Commissioner prior to the sittings of the full Commission is analogous to the taking of evidence in Chambers in a Court case. Any doubt on the matter would be removed by the Secretary of State appointing him to take evidence in England for use before the Commission.

Sir S. Wilson

I understand that Sir Morris Carter has discussed this with Sir R. Hamilton. I doubt if documentary evidence here will amount to much, but if the oral evidence will help it should be taken.

7 Copy letter postmarked 26/5/32

the Govt. by telegram.
There will be allowances ^{W.C.S. 26.5.32}
& expenses of revision ^{but 50 -}
Kerry must pay all.

Sec of State
(through Sir R. Hamilton)

I must confess that I did not altogether like this proposal when I first heard of it, as I was not sure what sort of effect it was going to have in Kerry when they heard that the Chairman of the Commission was, before leaving England, taking evidence from people like Dr Macgregor Ross. On second thoughts, however, I am not sure that it is not the lesser of the two evils, and that to refuse to hear people in this country who want to give evidence would in the long run be more difficult to defend. I am sure therefore of what Sir R. Carter says, I think his proposal should be approved.

Order down 26/5/32

I can't think off hand of any precedent for the Chairman of a Commission hearing evidence without the other members being present but I suppose it is all right if it is only evidence of fact.

SM

26.5.32

Sof 8

I discussed this matter at some length with Sir M. Carter yesterday & came to the conclusion that the course proposed shd be adopted.

There is undoubtedly evidence obtainable in this country wh. will be useful & indeed necessary for the Commis to have before them in Banya.

This evidence could be obtained in the shape of written memoranda in answer to a questionnaire, or be taken orally by Sir M. Carter.

^{I think}
The latter procedure wd ~~be~~ ^{be} the more satisfactory as Sir M. Carter wd be able to exclude all irrelevancies or matters of opinion & confine the evidence to specific points of fact.
It wd be necessary also to obtain documentary evidence such as govt reports & treaties existing in this country, all of wh. together with the oral evidence recorded as above wd be available for the Commission before they began to take evidence locally.

Wlt

27.5.32

I will discuss this with Sir M. Carter on Monday

M. S.

27/5

297

5. To Mr. Tol. Conf. 110
(from Sir W. Morris Carter
as to taking evidence
in this country).

3/9/32
Cms.

6. info. Tel. Conf. 111
(Notifying departure
of Sir W. Morris Carter.)

DESTROYED UNDER STATUTE

6A. To 70 4/0
(As to facilities for Sir W. Morris Carter
at 70. Library).

7 Mr C.W. HOBLEY, C.M.G. 24th May, 1932
Refers to the recent Debates in the
House of Lords and draws attention to the mention
of his name in connexion with the early policy of
land alienation, and submits information
regarding the procedure in 1906. Refers to the
land granted to Capt. Wilson.

A copy of 7 was handed to Sir W. Morris Carter
when he called two days ago; I have
circulated the other spare copy for info.

7A. Minutes relative the
Circulation in C.P. of No 7.
B. F. 1/6/32

DESTROYED UNDER STATUTE
C. W. Hobley (7 Annul) - 3 JUN 1932

9. Mr. Kenya - Tel. 99 - 2/6/32
Kempster & Wilson both agree to Carter's
proposals subject to (a) all proceedings in
England being recorded verbatim & (b) witnesses
in England being prepared to answer subsequent
questions put by any member of the Commission.
He also request that witnesses in England
submit written memoranda.

10. Mr. Hobley (regarding postponement &
departure of Sir W. Morris Carter)

10A. To "Purines"
"Manchester Guardian"
"East Africa"
(taken from Sir W. Morris Carter
for publication - ref taking
of evidence)
Published in
The Times 4/6/32

11. To Major Dale
Office arrangements
at T.S.O. for Sir W. Morris Carter

12. To Sir W. Morris Carter (copy)
(copy of S. 6 + 7) Sent on
main file.

13. Major Dale
Re: receipt of No. 11
6/6/32

DESTROYED UNDER STATUTE

14. Carter, Sir W. Morris - 3/0 - 13/6/32
Encloses application for expenses incurred by Mr
Lane in connection with his evidence.

DESTROYED UNDER STATUTE

15. Carter Sir W. Morris - 3/0 - 15/6/32
Encloses claims for expenses for Messrs
Osborne and Battiscombe
(Received me letter).

DESTROYED UNDER STATUTE

18. ? Put by

14-15. In 12 Sir W. Morris Carter was asked
to present such claims as the Commission
has. ? ask and say that
he considers the claim reasonable

it will be sufficient if he signs the form in the space left for the approval of the head of Dept.
 ? forward the in clms to C.A.S. authorizing them to pay the claims direct to the claimants and to charge against Kenya funds.

W.S. Pines Kue
 23/6/32

we can consider the matter
 but "Calkin" claims whether it cannot be rubber stamped

W.S. Allen

23rd atance

~~DESTROYED UNDER STATUTE~~
 Carter, Sir W Morris — 5/0 — 22 June 1932
 Enclose claims for expenses by Mr Weeks, Mr Baker, Mr Isaac and the Rev. Arthur, in connection with the Kenya Land Commission.

~~DESTROYED UNDER STATUTE~~
 To Sir W. M. Carter (Sels. No. 15416) 25.6.32.

18 To C. A. (W/and L. 14, 15 & 16) 25.6.32.
 Leo

See 25
 Sir M. Carter — 27/6/32
 The claim for expenses by Mr E. S. Brown & Mr H. A. Tate.

Recieve this file in a week's time for deep to Kenya.

W.S. Pines
 30/6/32

~~DESTROYED UNDER STATUTE~~
 Sir M. Carter — 29/6/32
 The claim for expenses for Mr S. J. Lambing.

21 Lohia (in claim in 1930) — 2 July 1932
 Reinstated reference to President's account of 27/6/32. R 247. 6/17/32

22. Major Dale (T.S.O.) — 27/7/32
 Pro. an A/c for expenses incurred in connection with the taking of evidence in London. — T.S.O. office £3.5.6
 G. Moore & Co. } 10s. 7-7
 Sheppard Watson

? It seems desirable to have George Moore & Co's account certified by Sir M. Carter.
 ? authorize C.A.S. to pay to T.S.O. the sum of £3.5.6 and ask them to take the total amount paid in respect of 18 and 21
 ? Show notice to Govt of Kenya, sending

Morris' acct for celebration and return.

J.R. P. Ross
11/7/32

Witness' expenses totaled £24-6-0.
Sir Morris Carter's month in London has cost the Kenya Govt over £130; they have saved £58.16.0 however, on his extra remuneration (28 x (4½ - 2½) guis.)

As regards George Thorne & Co's bill, I have ascertained from Mr. Lyde at the Treasury, who is the authority on these matters, that the rates charged are those app'd by Treasury Circular. We shd. hardly be justified in deferring payment till Sir M. Carter had certified the account - he mentioned to Mr. Allen & myself that he had taken statements from more than 20 witnesses.

Tell C.A. to pay from Kenya funds, the sum of £3.5.6. to the T.O.I.O., and £103.7.7. to Messrs. George Thorne, on account of expenses incurred by Sir Morris Carter.

Tell T.O.I.O. that we have done so

And send ~~the~~ copy letter to C.A., Messrs. Thorne & Co. (overseas) and copy of each

enclosed to 22, to Mr. Kenyon. In addition enclosed copy of 12, saying that in addition C.A. have been asked to refund travelling expenses of witnesses to a total of £24.6.0. Add, as regards Messrs. Thorne & Co, that the rates charged are not in excess of those authorized by H.M. Treasury for similar work performed by outside agencies for Govt. Dept. in London.

J.R. P. Ross
11/7/32

23 To Deputy Comr. } 15
T. & Information Office - 22 ansd. } 2
24 " C. A. - (10/6 1st ind - 22) } 32

25 Loker. S. B. (info 24, copy for serial) - 16 July 1932
12nd ind - mfg - 22

~~W~~
T. & J. Office
Acty. receipt of No 33
20/7/32
Loker. C.A. 27/7/32

DESTROYED UNDER STATUTE

L. F. Whitcombe
27.7.32

N.A. Dept. Kenya
Circular 33 - 31/7/32
Registered for record
as directed on 16/22/32

NATIVE AFFAIRS DEPARTMENT,

Nairobi.

31st May, 1932.

Reference No. MLND. 7/7/1.II.
CIRCULAR NO. 53.

To all Provincial Commissioners (with
sufficient copies for all
District Commissioners).

LAND COMMISSION.

A despatch has been received from the Secretary
of State of which the following is an extract.-

"I would invite your attention to the remarks made
"by Lord Sanderson" (sc. in the House of Lords Debate
"on the last point in his question, namely, whether the
"African population will be allowed full opportunities
"of meeting and discussing the land question during the
"sitting of the Commission; and also to the statement
"made by Lord Strathcona and Mount Royal on behalf of
"the Government that I would gladly bring Lord Sanderson's
"remarks to your notice, but that I was confident that
"you will be equally anxious to ensure that the natives
"should have full opportunities for meeting and discussion
"not only during the sittings of the Commission, but
"also in the preparation of the representations which
"they wish to make".

2. The remarks made by Lord Sanderson to which the
Secretary of State refers are as follows:-

"Finally, there is a widespread belief, I am told on
"very good authority, amongst the African people that
"very great restrictions are placed on their right of
"meeting and holding political meetings. Of course,
"the District Commissioners have very wide powers with
"regard to prohibiting meetings. I ask the Government
"to ensure that before the meeting of the Commission
"during the sitting of the Commission these powers will
"not be used in such a way as to prevent meetings of the
"Africans, so that full and frank discussion of the land
"question can be carried on amongst them. Everything
"to be gained and nothing would be lost by freedom in
"this matter."

3. Lord Strathcona's statement is as follows:-

"As to the last point which the noble Lord made in his
"question, the Secretary of State will gladly bring
"the noble Lord's remarks to the notice of the Government
"of Kenya, but the Secretary of State is confident that
"the Governor will be equally anxious to ensure that the
"natives should have full opportunities for meeting and
"discussion, not only during the sittings of the
"Commission but also in the preparation of the
"representations which they wish to make".

4. It

4. It is left to your discretion, having due regard to any special conditions that may exist in your Province, to use such methods as may seem best to give effect to the Secretary of State's wishes, but if you have any reason to suppose that headmen are likely to use the powers conferred upon them by section 8(q) of the Native Authority Ordinance for the prohibition of meetings that may be desired for this specific purpose they should be warned that it is Government's wish that such meetings should not be prohibited.

5. District Commissioners will assist their people in preparing a statement of any reasonable case that they wish to put forward.

A. de V. WADE.

ACT. CHIEF NATIVE COMMISSION

AdeVW/LFR.

18117/2/32 Kenya

C. O.

Mr. Priestman *MP*

Mr. *Ansolin*

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

18 July 1932

Sir,

ack. the rest of
I am etc. to ~~refer to~~ your

DRAFT.

(20)

THE DEPUTY COMMISSIONER
TRADE AND INFORMATION
OFFICE.

letter No. 6075/32 of the 8th July,
forwarding a statement of expenses
incurred by Sir Morris Carter, and
to inform you that the Crown Agents
are being
~~have been~~ authorised to pay to you
the sum of £3.5.6., and to Messrs.
George Moore & Co., the sum of
£103.7.7. on account of the expenses
shown in the statements enclosed with
your letter under reply.

I am etc.

(SIGNED) L. D. FREESTON

for
26

3 drafts

24

G. O.

Mr. Priestman 12/7

Mr. ~~Drasler~~ 12/7

Mr.

18 July 1932

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State

Gentlemen,

With reference to my letter

(21)

of the 2nd July regarding the payment of ^{costs} expenses in connection with Kenya

Lard Commission, I am etc. to request

that you will kindly arrange to pay

from Kenya funds the sum of £3.5.6.

to the Deputy Commissioner, Trade and

Information Office, in respect of

expenditure on the items shown in the

enclosure to this letter. I am also

to request that you will pay to

Messrs. George Moore & Co., Shorthand

Writers, 38 and 39 Parliament Street,

S.W.1: the sum of £103:7.7. on account

of expenses incurred by Sir Morris Carter

in connection with the taking of

evidence in this country.

I am etc.

(Signed) L. E. FREESTON

DRAFT.

THE CROWN AGENTS
FOR THE COLONIES

fb

14 July 1932

copy to Mr. Carter 12/7

copy to Mr. Carter 5/6

copy to Mr. Carter 12/7

3/12/32

C. O.

- Mr. Priestman *12/17*
- Mr. *J. S. Smith 12/17*
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

C. O.
 R 13 JUL
 D

18 July 1932

DRAFT. (15/18117/32)

KENYA
 NO. 516
 GOVERNOR

Set

*Copy of letter from Mr. ...
 copy of 1st serial to 22
 2nd serial to 22 in original.*

Sir,

I have etc. to refer to my despatch No. 415 of the *4th June* regarding the recording of ^{the} evidence of ~~by~~ witnesses in this country in *connection* ~~respect~~ ^{with} of the Kenya Land Commission, and to transmit to you copies of ~~the~~ ^{and one account in original} accompanying correspondence regarding the expenditure incurred in connection with that enquiry.

In addition to the expenses shown in the enclosures to this despatch, the Crown Agents have been ^{authorized} asked to refund travelling expenses of witnesses to a total of £24.6.0.

~~I am to add that~~ As regards the account from Messrs. George Moore & Co. for expenses in connection with the recording

3 Aug 1932

recording of the evidence, the
rates charged are not in excess
of those authorised by H.M.G.
for similar work performed by
outside agencies for Government
Departments in London.

I have etc.

(for the Secretary of State)
(Signed) R. W. HAMILTON.

recording of the evidence, the
rates charged are not in excess
of those authorised by H.M.G.
for similar work performed by
outside agencies for Government
Departments in London.

I have etc.

(for the Secretary of State)
(Signed) R. W. HAMILTON.

CHD/FNP

Whitnall

TELEPHONE: REGENT 5701/2.

CABLES: EAMATTERS, LONDON.

TELEGRAMS: EAMATTERS, WESTEND, LONDON.

Lesquare

REF.



TRADE & INFORMATION OFFICE

ROYAL MAIL BUILDING.

COCKSPUR STREET, LONDON, S.W.1.
(ENTRANCE SPRING GARDENS)

22
18

RECEIVED
9-JUL-1932
COL. OFFICE

8th July, 1932.

6075/32

Sir,

I have the honour to enclose herewith a statement of expenses incurred by this Office on behalf of Sir William Morris Carter, C.B.E., as requested by Mr. Freeston in his letter of the 3rd of June.

2. These items have actually been paid by the Office and receipts for same can be sent to you if you wish me to do so.

3. I also have the honour to enclose you herewith a statement of account from Messrs. George Moore & Co., which has just been received by this Office and which has not been paid.

I have the honour to be,

Sir,

Your obedient Servant,

C. H. Dale

Deputy Commissioner.

The Under Secretary of State,
Colonial Office,
London, S.W.1.

10/11

*To Sir 516 (info for my 2nd incl) - 16 July 1932
Annot. 1577/32.*

50/11

LIST OF EXPENSES INCURRED ON BEHALF OF SIR WILLIAM
MORRIS CARTER, C.B.E., DURING THE
PERIOD FROM 6th JUNE TO 30th JUNE,
1932.

	£.	s.	d.
Royal Anthropological Institute -	2.	0.	0.
Postage	13.	0.	0.
Steel Trunk for Records	2.	10.	6.

£3. 5. 6.

Copy to C.O., 17/7/32

C. O.

Mr. Priestman 3/6

Mr. ~~Tomlinson~~ 3

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.	
R	1-JUL
H	14

2 July
June, 1932

Gentlemen,

DRAFT. *unseen*

(18)

CROWN AGENTS

FOR THE COLONIES

In continuation of my letter of the 25th June, I am etc. to transmit to you the accompanying claims by Messrs. Browne *and Hauchberg* and Tate for expenses in connection with the evidence which they gave before Sir William Morris Carter, Chairman of the Kenya Land Commission, and to request that you will kindly arrange to pay the claims direct to the claimants and to charge the cost again ^{-st} Kenya funds.

Such is original to 19/20

2 drafts

I am, etc. (Signed) H. V. ...

C. O.

Mr.
44
21

Mr. Priestman 24/5
Mr. Allen 24/5
Mr.

18117/32/2

- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

83

Downing Street.

June, 1932.

Gentlemen,

DRAFT.

THE CROWN AGENTS

FOR THE COLONIES.

Order in response to 14, 15, 16.

I am etc. to transmit to you the accompanying claims ^{by} from Messrs Lane, ^{Wright, Baker, Isaac and another} Osborne ~~and~~ Battiscombe for expenses in connection with the evidence which they gave before Sir William Morris Carter, Chairman of the Kenya Land Commission, and to request that you will kindly arrange to pay the claims direct to the claimants and to charge the cost against Kenya funds.

I am, etc.

(Signed) H. I. ALLEN.

2 drafts:

3 June 1952

main file
18117/2/32

Sir,

I am directed by Secretary Sir Philip Cunliffe-Lister to refer to correspondence terminating with the letter from this Department of the 13th April, and to subsequent conversations in regard to the procedure to be followed in connection with the Land Commission in Kenya on which you have accepted appointment as Chairman.

2. It was originally proposed that you should sail from this country on the 3rd June and that the Commission should begin its work in Kenya early in July. You have since represented, however, that advantage would be derived from your delaying your departure for one month in order to take evidence in London from retired officials and others having knowledge of the facts, and to pursue research
into

SIR W. MORRIS CARTER, G.B.E.

into such documentary material in the Colonial Office and Foreign Office records as may be relevant to the Commission's enquiries.

3. Telegrams, of which copies are enclosed, were accordingly addressed to the Governor of the Colony and I am now to transmit to you a copy of Sir Joseph Byrne's reply. Sir Philip Cunliffe-Lister understands that the suggestions made by your colleagues on the Commission are in accordance with the intentions that you had already formed.

To Gov. 30 May
To Gov. 30 May
Fr. Gov. 2 June

4. The Crown Agents for the Colonies have been requested to transfer your passage to East Africa to a steamer due to sail on the 1st July. It is proposed that you should receive from Kenya Government funds an allowance at the rate of two and a half guineas per diem for the period 3rd June to 30th June, inclusive.

5. Arrangements have been made for you to be provided

provided with office accommodation and the services of a typist at the East African Trade and Information Office, Royal Mail Steam Packet Buildings, Cookspur Street. For an expert shorthand writer it will be necessary to have recourse to one of the outside firms of which particulars are given in the enclosed list. The charges incurred in this connection should be certified by yourself and forwarded to the Colonial Office for settlement. You are, however, authorized to use your discretion in arranging for the refund of necessary expenses to witnesses whose attendance before you involves long journeys. Claims on this account duly certified by you should be forwarded to the Colonial Office.

I am to request that you will be so good as to acknowledge the receipt of this letter, a copy of which is being sent by air mail to the Governor of Kenya.

I am, Sir,

Your obedient servant,

(Signed) H. T. ALLEN

18117/2/

C. O.

Mr. Freeston. *sf*

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET,

3 June, 1932.

Dear Major Dale, *2/2*

This note is to confirm the arrangement made with you by telephone in regard to the assistance which you kindly promised to Sir W. Morris Carter, Chairman of the Kenya Land Commission.

We understand that you will be prepared to let Sir Morris have a room in the Trade and Information Office during the month of June and that you can also place at his disposal the part time services of a typist. If it is found that any expenditure is incurred which cannot properly be charged to the funds of your office you will no doubt let us know so that we can arrange for the bill to be paid by Kenya.

Yours sincerely,

(Signed) H. B. FRITTON

DRAFT.
MAJOR C.H. DALE, O.B.E.

10A.

3rd June, 1932.

Sir,

As the terms of reference to the Kenya Land Commission include a direction (a) "to determine the nature and extent of claims asserted by natives over land alienated to non natives" and (b) "to examine claims asserted by natives over land not yet alienated", and there is reason to believe that persons now resident in this country are in possession of evidence of facts relevant to the matters in issue which would be of value to the Commission in Kenya, it has been decided to delay my departure until July 1st in order to afford an opportunity of such evidence being taken.

I should, therefore, be grateful if you would give publicity to my desire that persons possessing such evidence should communicate with me at 25, Upper Berkeley Street, London, W.1. without delay, briefly stating the points on which they would be prepared to tender evidence.

Yours obediently ~~servant~~
W. H. M. Carter

The Editor,
 "The Times",
 "The Manchester Guardian",
 "East Africa".

(Chairman, Kenya Land Commission)

The Times 4/6/32

KENYA LAND COMMISSION

Sir Morris Carter, chairman of the Kenya Land Commission, writes:—

As the terms of reference to the Kenya Land Commission include a direction (a) "to determine the nature and extent of claims asserted by natives over land alienated to non-natives . . ." and (b) "to examine claims asserted by natives over land not yet alienated . . ." and there is reason to believe that persons now resident in this country are in possession of evidence of facts relevant to the matters in issue which would be of value to the Commission in Kenya, it has been decided to delay my departure until July 1, in order to afford an opportunity of such evidence being taken. I should therefore be grateful if you would give publicity to my desire that persons possessing such evidence should communicate with me at 15, Upper Berkeley-street, W.1, without delay, briefly stating the points on which they would be prepared to tender evidence.

~~Kenya Land Commission~~
Kenya Land Commission

15 copies
Press announce

The departure of Sir Norris Carter, chairman of the Commission, to Kenya has been postponed till July 1st with a view to obtaining such evidence of relevant facts as may be available in this country before for the use of the Commission when sitting in Kenya.

10A.

'Times' 4th Oct 1952
'M. G.' 1st Oct 1952
'East Africa' Carbon 9005 1st Oct 1952
2 Pressies.

Sir,
as the terms of reference to the Kenya

Land Commission include ~~in~~ a direction (a) to determine the nature & extent of claims asserted by natives over land alienated to non natives - - - and (b) "to examine claims asserted by natives over land not yet alienated - - -"

and there is reason to believe that ~~there is evidence~~ ^{if facts relevant to} persons now resident ~~are in possession of evidence~~ ^{relevant to the matters in issue} in this country ~~facts~~ ^{facts} of value to the Commission in Kenya, it has been decided to delay my departure in order to give an opportunity of ^{afford} taking such evidence being taken.

until July 1st

I should therefore be grateful if you would give publicity to the fact ~~my~~ ^{my} desire that persons possessing such evidence should communicate with me at 25 Upper Berkeley St. London W., ~~at the earliest without delay with a view to~~

~~He~~

~~(also) add that the evidence which is required
is to be confined solely to matters of fact~~

briefly stating the points on which they will be
prepared to tender evidence.

J.P. MacCarthy

Chairman Pugh had been

~~Has~~

~~(also) add that the evidence which is required
is to be confined solely to matters of fact~~

briefly stating the points on which they will be
prepared to tender evidence.

J. D. McCarthy

Chairman Ryan - had lunch

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 2 June 1932. Received 4.20 p.m. 2 June 1932.

No 5

No 6

No.99. Your telegram No.110. Your telegram No.111. Confidential.

HEMSTED and Wilson both agree to Carter's proposal subject to (a) all proceedings in England being recorded verbatim and (b) witnesses in England being prepared to answer subsequent questions put by any member of the Commission. They add request that witnesses in England submit written memoranda.

*Copied to Wilson, Carter
1/20.11. Main file
3/6/32*



COPY FOR REGISTRATION

928

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 2 June 1932. Received 4.20 p.m. 2 June 1932.

No 5

No 6

No.99. Your telegram No.110. Your telegram No.111. Confidential.

HEMSTED and Wilson both agree to Carter's proposal subject to (a) all proceedings in England being recorded verbatim and (b) witnesses in England being prepared to answer subsequent questions put by any member of the Commission. They add request that witnesses in England submit written memoranda.



Copied to Wilson, Carter, Main, etc.
No. 11 - 3/6/32

Mr. Allen

7A
29

The original of this interesting letter
is in ID 117 1/2 Kenya (in writ?). It
has been used, & the writer has been
informed that Sir Robin Carter has
been handed a copy.

Sir C. Bottomley may like

to see.

Bottomley
1/6.

1/11/32

Sir S. Wilson

2/6/32

I don't know if you have
seen the original of this. It is
especially interesting as regards
Kwaja Wilson, but, generally, it
is good to have this other side of
the case.

W.C.S. 3.6.32

Rep of State

You may like to see.

StH
9.6.32.

X 62 - Mr. Bottomley's
evidence is
taken 5 XI
10/6 1932

Very interesting
1/11/32
Carter will take this
evidence - 1/11/32
1/6

7/30

copy handed to Sir James Carter 30/5/32

RECEIVED
27 MAY 1932
COL OFFICE

Chale,

Sidcup. KENT.

May 24th 1932

P.C. Ask 27/5/32

The Under Secretary of State
for the Colonies,
Colonial Office.

Sir,

*27/5/32
pd. file.*

I have the honour to request to be allowed to bring to your notice certain points raised by Lord Olivier in the debate on East Africa which took place in the House of Lords on March 23rd 1932.

In such references as ensue I rely upon the Official report Vol. 23 No. 33.

(1). On p 1013 Lord Olivier quotes Koinange to the effect that the Government responsible for alienating land owned by the Kikuyu was that at the time when Mr Ainsworth and Mr Hobley were the Commissioners. The inference from this statement is that Mr Ainsworth and myself were in effect responsible for this matter, and I hold no brief for my esteemed colleague Mr Ainsworth, he is fortunately still alive and can speak for himself, but when I succeeded him as Provincial Commissioner, Ukamba Province about July 1906 the partition of Kiambu district was already completed, several years ^{previously} ~~previously~~, most of the farms which had been allotted were in occupation by their owners and titles had

been issued by the Land Office. The actual demarcation of the line which made the partition was, I believe, done by the late Mr J.O.W. Hope then District Commissioner of Kiambu under orders from his Provincial Commissioner and on the general direction of Sir Charles Eliot.

During the whole of my tenure of office at Nairobi as Provincial Commissioner, Ukamba I can testify that no extension whatever of the lands allotted to European colonists in Kiambu district was made, and the only land ^{acquisition} ~~extension~~ in that region being a limited area taken over for the Government Agricultural Station and the Native Reformatory at Nabeto. This was arranged by friendly negotiation with the Kikuyu elders concerned. It is thus very mortifying to me to see my name bandied about in the House without an opportunity of contradicting the inference that I was a party to this partition of land for the purpose of white settlement.

It is of course open to me to contradict this in the Press but it has never been my custom to discuss official acts in this manner and I would prefer to place the matter in your hands. I note that a Commission has recently been appointed to enquire into the native lands question in Kenya and I would venture to ask that that Commission should state in their report the facts as to the above mentioned partition and exonerate me from any connection with it, for the Office records should

demonstrate the date of this executive act.

(2). May I now be allowed to submit a few remarks on certain other statements made by Lord Olivier in his speech and which I submit are calculated to mislead.

On p 1013, Lord Olivier states that the Europeans took the ground from the Government free of all equitable claims of occupants and free from all encumbrances whatever. As far as my recollection goes the titles granted by the East African Government to the holders of the various farms allotted in Kiambu district each contained a clause preserving the rights of all natives who were residing on the land at the time of the partition.

Soon after my appointment in charge of this Province I toured extensively through the area which had been granted to colonists and was struck by the very small number of native settlers; I doubt if from the Chania River (which was the Northern boundary of Ukamba Province) to the Railway, there were more than 100 Kikuyu huts on the farms and the aggregate area of cultivation was insignificant. I can definitely testify that the amount of beneficial occupation by the natives in the area which was allocated to colonists was in 1906 extremely small and further I was not able to find that any natives had been driven off the alienated land into the reserve or elsewhere. As when I travelled I was always

accompanied by local elders I feel sure that I should have heard of greivances relating to the land if they had then existed. During the whole of my service at Nairobi, a period of seven years, it was curious that the only native who complained of the loss of a "githaka" was Koinage himself, then a very small person in the tribe, he claimed a portion of a farm near the boundary line a few miles North of Kabete.

The activities of the colonist holders of the land were at that time 1906-07 not extensive, few having much capital, development was in most cases very slow; the considerable numbers of squatters which became a feature of later years did not exist, so the present theory that the squatters represent the people who were dispossessed of their land is almost entirely false for the majority of the squatters were later migrants from the reserve to the farms and as a rule the cause of migration from 1906 - 1914 was not lack of land but was generally — disagreement with their elders, reluctance to pay their share of taxation, tribal debts in the reserve and causes of a similar nature, for the farms were convenient places wherein to avoid tribal liabilities.

When the first Kikuyu migrated from North of the Chania River into what is now known as Kiambu district and Limuru the Eastern slopes of Kikuyu country were generally covered with high forest down to near the line of the present road from

Mairobi to Fort Hall on the East, on the South to near Ngong, the outer line of the old forest can still be traced by isolated patches of great trees; this Eastern boundary of the forest was however not straight, for there were wedges of grass land here and there running up from the plains. The movement of the Kikuyu into this area probably commenced not more than 100 years ago. When I first travelled through this country in 1894 there was a thick belt of forest on the Eastern and Southern sides of this area which had purposely been left by the Kikuyu as a defensive barrier against the Masai and inside that there was a considerable population of natives in isolated settlements. When after a great smallpox epidemic which occurred some 40 years ago the Masai gave up grazing their cattle on the Athi Plains near where Nairobi now stands, the Kikuyu destroyed most of this outer belt of forest in order to make gardens and at the same time worked steadily up each ridge destroying new forest each year. In the course of their occupation of this area they have destroyed quite 600 square miles of primeval forest to the South of the Chania River.

Their natural system of cultivation is to preferably seek each year new areas of forest and to cut it down, for during the first few years the soil recently occupied by forest is more fertile. As this process went on extensive ^{areas} ~~spaces~~ were left behind as being exhausted and this had up to 1914 mostly

reverted to secondary scrub and bracken fern. About 1906 the local Government decided that this wasteful destruction of forest must cease and in course of time the boundaries of the forests were demarcated and patrolled.

The agricultural operations of the natives were then confined to the area between the forest edge and the line of farms. When I first visited Kikuyu their possessions in cattle were very limited, but by working for farms and selling food to Europeans for their labourers, they speedily amassed very considerable herds and they own large numbers today. The demarcation of the forest boundary to the West first brought the question of land to the notice of the people, the demand for grazing land for ever increasing cattle gradually accentuated it, added to this the natural increase of population plus some immigration from the North has produced the situation of today.

If the farm area had never been alienated the Kikuyu would have worked the land to exhaustion and then abandoned it to grow long grass and scrub and the shortage of land for agricultural purposes would have occurred just the same, but a few years later. The cattle population would however have been less, for ~~them~~ to some extent ^{it is} the cash which they have earned from the colonist which has enabled them to increase their herds.

We have heard much about the "Githaka" the ancestral holdings which are not, as Lord Olivier appears to believe,

individually owned, but are held in a sort of primitive trust by the head of a family for the use of his blood kin. The custom undoubtedly exists; I was the first officer to discover the principle and duly reported its existence. Let us however consider its origin. It is based on the right to peaceful possession of a certain area which was acquired by the payment of a number of goats to the section of the aboriginal people, the Dorobo, who hunted and collected honey in the forest lands before the Kikuyu immigrants arrived. When I first discussed the matter with the Kikuyu they said "Our fore fathers bought the country from the Dorobo", but when one enquired more carefully it became clear that each section of new arrivals merely compensated the Dorobo elders for the surrender of certain rights which the latter had established by occupation, for the conception of transfer of freehold is quite foreign to people in this stage of culture. Each group of immigrants settled on a separate ridge and cleared a small patch and as they increased they cleared more forest for cultivation, thus none of the "githaka" have boundary marks. All present day claims to large and defined areas as ancestral "githaka" are fictitious and an afterthought produced by a wider knowledge of the Western conceptions of land tenure.

I am further of the opinion that no attempt

to increase the area dedicated to the Kikuyu by buying back farms already granted to colonists will have more than a very temporary effect. The only solution of the difficulties experienced by the Kikuyu is an intensive effort to teach the people better methods of agriculture. The natural productivity of the reserve is great but it is at present not by any means being utilised to the full. Some good work is being done in this direction by Dr Patterson, the Dep. Director of Health services and excellent results have been obtained on a limited scale, the necessity of the use of manure, the use of compost pits for the collection of this essential, are all means by which the yield of the land in the reserve can be increased fourfold and further by alternation of crops the yield can be made permanent. Further, soil erosion must also be checked, for in places it is most destructive. The Kikuyu cultivator, like most natives, plants the same crop year by year until the fertility is exhausted and then expects to have access to virgin ground, preferably forest. Any policy of periodically acceding to demands for more land while these conditions persist can only be a temporary palliative.

They are now alleged to be short of land for agriculture and if this is so, they will be likely to be more receptive as regards improved methods. With regard to grazing land, when a tribe which originally owned but few cattle increases

its stock to great numbers the question of adequate pasture is bound to arise. If European Government control had not come on the scene this problem would not have materialised for if the Kikuyu had driven their cattle to grazing land outside the forest the Masai would have promptly annexed them; as it happened a ready market for produce was brought to their door, peace was assured and a new situation has been produced. Even as far back as 1912 this question of grazing was acute and I surveyed a definite boundary line between the Kikuyu grazing lands South of Limuru and the Masai reserve, and arranged for the construction of a dam at Nyakumu swamp ^{so} so that they could obtain more water for their increasing herds. If an additional area in this locality could by some monetary arrangement be acquired from the Masai it would alleviate the situation for a time, but say in five years it would recur.

18/11/32
P.C.

Opening a debate in the House of Lords on May 4th relative to the recently appointed Kenya Land Commission Lord Sanderson referring to the personnel of the Commission stated that Captain F.O.B. Wilson was in a different category. He was a white settler and a landowner who might be occupying land which the African population rightly or wrongly, regarded as stolen from them and alienated by the Crown. I would venture to be allowed to submit a word regarding this statement, for it happened to be my duty to determine the Western boundary of the Kamba reserve upon which Captain F. Wilson's estate near

Kilima Kiu. The grant of land to Captain Wilson had taken place some years previously, but the Western boundary where it marched with the reserve had not been determined. Accompanied by the Kamba elders of the neighbourhood the boundary of the reserve at this place was amicably settled as running along the base of the hills, for it was admitted by the A-Kamba that the plains to the ~~East~~^{West} were in former times intermittently utilised by the Masai and if Kamba cattle were grazed outside the line of the natural steep scarp they would be exposed to Masai attack as being beyond the natural frontier of defence formed by the mountain range. The matter was gone into with care and it was considered that this marked natural feature should form the Western boundary of the reserve at this point. What the present generation of A-Kamba may claim as the Western boundary of their ancestral lands I know not, but the fact remains that the A-Kamba were hill dwellers and made no serious claim to the plains ^{to} of the West. Thus Lord Sanderson's guarded suggestion has, I can testify, no foundation in fact.

I first traversed the Kamba country in 1891 and the progressive destruction of the fertility of their own country by the natives themselves in the last forty years is a tragedy. Owing to the primitive methods of agriculture, the myriads of tracks made on the hillside by goats and cattle, the destruction of the bush cover, soil erosion has been excessive and has vastly reduced both the cultivable area and that

available for grazing. This was realised by a succession of officers, but the Kamba people are ultra-conservative and it proved well nigh impossible to wean them from their customary practices.

In conclusion I would apologise for the length of this memorandum, but my excuse is that this question is one in which I have for so many years been concerned and I would venture to assure you that in every case where native interests have been involved the greatest care was taken to arrive at an equitable solution of each particular case. I need hardly add that I am at your service if any further information is desired.

I have the honour to be,

Sir,

Your obedient servant,

E. W. Hordley

1 Enc.

C. O.

Mr. ~~Robertson~~ 21/5
Mr. ~~Robertson~~ 31/5 *for*

L.C. for Sir C.B. Stansbury

Mr.

Mr. Tomlinson.

● C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindall.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

^{GASSELGIE}
Stephen Gaselle ^{Eng.} C.A.E.
[2.0.]

Sir William Norris Carter

has been appointed by the S. of S.
for the Colonies to be Chairman
of a Commission to enquire
into various land problems
& in Kenya. Sir Norris
expects to sail for the Colony
on July 1st and wishes to
employ the interest in
collecting such information

C. O.

Mr. *Beeston 2/5*

Mr. *Aden 31/5*

Mr.

Mr. Tomlinson.

● C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

L.E. for Sir C.B. Sturtevant

DRAFT.

GADELSE
Stephen Garden *Eng. C.E.*

[2.0.]

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has been appointed by the S of S.
for the Colonies to be Chairman
of a Commission to enquire
into various land problems
in Kenya. Sir Norris
expects to sail for the Colony
on July 1st and wishes to
employ the interest in
collecting such information

relevant to his enquiry as may be
accessible in London.

It is thought that the Foreign
Office Library may offer a fruitful
field for research, especially
up to April 1905 when control was
transferred to the C.O. I shall be
grateful if Sir Ross may be given
all facilities and such assistance as
he may require.

Yours sincerely

W. C. BOTTOMLEY.

relevant to his enquiry as may be
accessible in London.

It is thought that the Foreign
Office Library may offer - fruitful
field for research, ^{especially} as regards the period
up to April 1905 when control was
transferred to the C.O. I shall be
grateful if Sir Thomas may be given
all facilities and such assistance as
he may require.

Yours sincerely

W. C. BOTTOMLEY.

~~Dr. Allen~~

Sir W. Carter has today asked for this.
? Send it, when signed, to him, to
present when convenient to himself.

W. Carter
31/5

W. Carter
31/5

To Sir W. M. Carter w/ letter to Mr. Gaselee.

31/5 31 MAY 1935

~~Dr. Allen~~

Sir W. Carter has today asked for this.

? Send it when signed to him to present when convenient to himself.

J.P. [Signature]
31/5

W. Allen
31/5

To Sir W.M. Carter w/ letter to Mr. Gaselae.

B/12 31 MAY 1932

C. O.

Mr. Freeston 30/11

Mr. ~~Wilson~~ 30

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley. 30 *at once*

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT. Telegram.

Governor Nairobi.

2 drafts.

9.
Copy to Mr. Wilson-Lamb
No. 11. 2/16/32.

18/11/32

Kenya.

Coastal
645P
10/11
30/11/32

5/11

C.D.
R 31 MAY
B 31

No. 110

Confidential.

Following from Morris

Carter for Hemstead and Wilson begins

After considering position I am

satisfied that there is in this

country a large body of important

evidence on facts directly relevant

to native claims to land in Kenya

especially from retired officials

also from ex-settlers and ex-

missionaries. I am strongly of

opinion that best method of taking

this evidence is by personal examina-

tion by me in London rather than by

correspondence from Kenya necessitat-

ing frequent reference back. I

should limit evidence to fact and

fact only. I consider this procedure

would conduce to speed and economy.

1825 Copy 18/11/31 *main file*

94

3

C. O.

Mr. Freeston *2/5* (S/C for Sir C. Bottomley's signature)

● Allen *2/5*

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley. *cc-f*

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

26/6 26 May 1932

Dear Sir Morris,

This note records the points which have been raised in your talks at the Colonial Office in regard to the terms of reference of the Kenya Land Commission, and such opinions as ~~the Secretary of State is in a~~ *I am authorized* position to express upon them.

- (a) If, in reporting under their second term of reference, the Commission find it desirable and practicable to set aside further areas for natives, will they be expected to specify which particular areas should be so set aside, and upon what type of tenure (e.g. freehold or leasehold, individual

DRAFT.

SIR W. MORRIS CARTER, C.B.E.

Copy to *Mr. Freeston* - 26 MAY 1932

*Copy to *Mr. Freeston* in conf. dft.*

or

or communal, etc.) such areas should be held?

It was the intention that the Commission should go into these matters.

(b) Under their 3rd and 4th terms of reference will the Commission be required to make recommendations for the settlement of each separate claim, or merely to enunciate general principles in the light of which particular cases can be subsequently considered?

It is not possible to say that each case must be the subject of a separate recommendation; the Commission will no doubt judge how far this is necessary and practicable when they see the nature and extent of the claims.

(c) If the Government case in regard to claims under the 3rd and 4th terms of reference is presented by the Law Officers of the Colonial Government, should the claimants be allowed the right of appearing

or communal, etc.) such areas should be held?

It was the intention that the

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(b) Under their 3rd and 4th terms of reference will the Commission be required to make recommendations for the settlement of each separate claim, or merely to enunciate general principles in the light of which particular cases can be subsequently considered?

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(c) If the Government case in regard to claims under the 3rd and 4th terms of reference is presented by the Law Officers of the Colonial Government, should the claimants be allowed the right of appearing

before the Commission by Counsel.

It is not desired to express any opinion on this matter, which seems to be essentially for the Commission itself to determine.

You are already aware that in dealing with this point raised by Lord Olivier in the debate in the House on this subject, in regard to para 3 of the terms of reference relating to native claims Lord Southam said (column 321) that the intention was that the Commission should accept the facts as they are known today, on that basis deal with native claims upon grounds of equity not be prevented from so dealing with them by any provisions of law.

Yours sincerely

(Signed) W. G. BOTTOMLEY

See notes to the
a copy of the debate
1970

before the Commission by Counsel

It is not desired to express any opinion on this matter, which seems to be essentially for the Commission itself to determine.

You are already aware that in dealing with the point raised by Lord Olivier in the debate in the House of Lords on the 16th May in regard to para 3 yet to the terms of reference relating to native claims Lord Southcote said (column 321) that the intention was that the Commission should accept the facts as they are known today, on that basis deal with native claims upon grounds of equity not be prevented from so dealing with them by any provisions of law.

Simon's like too
in 1972 the debate
1972

Yours sincerely

(Signed) W. C. BOTTOMLEY

(Air Mail) (Copy retained on 17312/81 (No 47A))

20/6

DOWNING STREET,

20 May, 1932

18125

Dear Moore,

Sir Morris Carter, who sails for Kenya early in June, has just been in to see us and has asked that Government's attention may be invited to the following three points:-

- (a) He very much hopes that a good shorthand-typist may be found locally for attachment to the Commission.
- (b) He asks whether the free transport which he is to receive in the Colony includes the provision of a car for his personal use in Nairobi.
- (c) He dislikes the prospect of staying at a club or hotel and wonders whether Government has a small unoccupied house which could be made available for him during his visit.

We gave no undertaking on any point but said, as regards (a), that we felt sure that

Government

H. M. -H. Moore, Esq., C.M.G.

Government would recognise the importance of providing the staff necessary for facilitating the Commission's labours.

This note, which calls for no reply, is merely to let you know of the requests which Sir Morris will probably put forward on his arrival.

Yours sincerely,

C. O.

C.D.
13 MAY
D 19

18125/32 Kenya.

Mr. Priestman

Mr. *Joshi*

Mr. *Allen*

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

For Air Mail of Tuesday, 17th May.

Downing Street,

16 May, 1932.

Sir,

I have the honour to refer to my

(1 on despatch No. 359 of the 10th May and
18117/32)

previous correspondence on the subject

of the Land Commission, ^{Kenya} Enquiry.

DRAFT.

KENYA

NO. 370

2. The question of the powers which

will be required by the Commission has

been discussed with Sir Morris Carter

who considers it ^{advisable} ~~desirable~~ that the

Commission should be ^{in a position, should it so desire,} ~~enabled~~ to summon

witnesses, to demand the production of

documents and to take evidence on oath.

The will no doubt

3. I agree that it is ^{desirable} ~~advisable~~ for

the Commission to be vested with these

powers, and I am advised that to enable

this to be effected it is necessary for

the Governor to issue a commission under

Section 2 of the Commissions of Enquiry

Ordinance, Cap. 25, appointing the

Pass: [unclear]

File not called.
Enc. to 40 on
17312/311.

Commissioners and authorising their enquiry
in accordance with the terms of reference
indicated in my telegram No.59 of the
23rd March.

(24 in 17212/31).

3. I shall be glad if you will take
steps to appoint the Commission accordingly.

4. I take this opportunity to enclose,
for your information a list of the
documents supplied to Sir Morris Carter.

(Copy of enclosure to
46-17212/31)

~~You will no doubt cause the other members
of the Commission to be furnished with
copies of such of these documents as you
may consider necessary.~~

I have, etc.

(Sgd.) R. CUNLIFFE-LISTER.

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23rd March.

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copies of such of these documents as you
may consider necessary.~~

I have, etc.

(Sgd.) P. CUNLIFFE-LISTER.

(Copy of enclosure to
462 17212/31)

Copy of 7 in 67450/1929 Palestine

44

Copy.

Telegram from the Secretary of State for the Colonies to the High Commissioner for Palestine.

(Sent 4.50 p.m. 28th September, 1929.)

Immediate and Confidential.

No. 196.

The Palestine Commissioners of Enquiry have asked that the following communication should be addressed to the Chairman of the Palestine Zionist Executive begins.

The Commissioners appointed by His Majesty's Government to enquire into the recent disturbances in Palestine held a second meeting on the 28th of September when further consideration was given to the questions of procedure which form the subject of the letter addressed to you through the High Commissioner for Palestine on the 24th of September.

The Commissioners decided that it was desirable to lay down more precisely and in some respects to amplify the procedure which they propose to follow in the conduct of their enquiry. They therefore decided to adopt the following statement of their procedure which, where it conflicts with that already communicated, should be regarded as superseding it;

(1) The Commission does not sit as a court of justice or a legal tribunal of any sort.

(2) The Commissioners will seek powers from the Palestine Government enabling them to require evidence to be given on oath or declaration and to compel the attendance of witnesses and the production of documents. For this purpose the Commission will be appointed a Commission of Enquiry by Warrant issued by the High Commissioner under the Commissions of Enquiry Ordinance 1921 but the

Commissioners

Copy 1 of 7 in 67450/1929 Palestine

49

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Commissioners

LVI

departure for Palestine and it is now probable that they will not arrive in that country until towards the end of October.

The Commissioners would be glad to have an acknowledgment of this letter on their arrival in Palestine. It is their intention first to hear such evidence as the Government may have available for them but other parties interested in the enquiry may wish to be represented when such evidence is being heard subject of course to the right of the Commission under (5) above to hear evidence in camera.

A letter in terms of this communication has been addressed to the Government of Palestine and to the President of the Palestine Arab Executive (Signed) T.I.K. Lloyd Secretary to the Commission. Ends.

This letter should be sent to the Palestine Zionist Executive to-day. Simultaneously a letter in similar terms mutatis mutandis should be addressed to the Palestine Arab Executive and you should regard a communication in similar terms as having been addressed to the Palestine Government.

My immediately following telegram contains the text of an announcement which is to be published in this country on Monday morning and the message contained in the present telegram, so far as it concerns your Government, should be read in conjunction with my next telegram but one which deals also with matters of detail arising out of the postponement of the departure of the Commission.