

1933.

Kenya

No. 3092.

SUBJECT

CO 533/433

Segregation in Townships.

Sale of Land Plots.

Previous

18112/32

Subsequent

23228/34. (Indians)
/4. (Japanese)

Foreign Office _____ 21 Feb 33

State that the position which it is proposed to adopt regarding the right of a Japanese subject to purchase for occupation a plot in American area reserved for Europeans is open to doubt, & ~~in view of the fact~~ ^{it is thought} Japanese ~~should~~ ^{may} be prepared to forego such rights as they can claim under the Anglo-Japanese Commercial Treaty, but if this is not the case it may be necessary to have an ordinance ~~imposing~~ ^{imposing} restrictions imposed on Japanese subjects

Mr. Weston B/T telephoned back for a copy of Governor Kenny's despatch of 29 Aug 1932 which had not been enclosed with the P.O. letter.

D.P. W.

H.S. P.
 22/2/33

J. To W. Weston (B/T) (57113 on 18/12/32) etc 23/2/33

DESTROYED UNDER STATUTE

the suggestions to the T.O. suggestions in paras 5 and 6 appear to be inoperable. The first suggestion is that a time limit should be set to existing restrictions. This seems in possible in view of the legal opinions given on the 2nd page of 19 in 17/7/31 and of the fact stated in para 4 (iv) of the despatch of 20 in that paper that the fact of change is not called upon to take action which in the opinion of the legal advisers would not be sustained in law. The second suggestion is that in the event of the enactment of amending

legislation to remove restrictions the
Govt of Kenya might legislate to
except itself from liability. This
would be Govt passing of a disclaimer
hardly applicable to modern times.
? It seems desirable to approach
the B.F.? obvious but Mr. Duncan should
see and Governor Kenya might
be informed with reference to 20
in the P.P. then the question is still
under discussion in consultation with
and B.F.

J.F. Ross
24/1/33

L.B. Fenton

But bring up in 10 days
if nothing in 15 days
20 March

We must wait for the B.F. clearly since they are
involved. But I think you should see at this stage
what the F.O. view is. I am not sure that it is
altogether sound - but at present I suppose they are
anxious not to irritate Japan.

13 & 22 on 18/1/32 are all operative papers
to myself. I don't see how Kenya could pass an
Ordinance on the lines F.O. suggest in para 6 even
without a provision that no claim should lie against
Govt. - so the Govt would be very high handed indeed &
Kenya can't risk that.

At the same time the thing must be got over somehow.
You should have copies of 22 on 18/1/32 & Not here for
his information.

V.S.G. 2nd
27.2.

Seen, thank you. I shall be interested to hear
what the B.F. have to say.
10/3/33 H. Duncan.

Copy of 22 on 18/1/32

3 To Govt (Confidential) (18/1/32)

(21 on 15/11/32)

DESTROYED UNDER STATUTE
Requester Fee 1/2 to Dept. 141 of ...

Encls. copy lr. addressed to the foreign office
regarding the right of a Japanese subject to purchase
for occupation a plot in an area of ... reserved
for occupation by Europeans.

B.F. agree with the ...
to existing restrictions on occupation are
in consistency with the Japanese ...
obligations. The reasons for the
restriction of the restrictions are outlined
in paras 2 and 3 of the letter of 22
18/1/32

assuming that the legal concerns then
outlined are overruled by the ...
obligations the courses open ...
F.O. suggestions (1) to assign a lease to
the operation of the restrictions (2) to legislate
for the removal of restrictions on Japanese.
But (1) is contingent on the agreement of
the Japanese Consul. If he refused to
agree (2) would at once arise. It would
cause to be unpracticable to legislate (2) to
Japanese as it would cause offence to
acacitic British subjects - Indians.
But a general removal of restrictions
would at once make the Govt liable to claims

for breach of contract. (Whether such claims would in fact prove expensive seems a moot point).

? Subject to any legal objections send a copy of the correspondence to the former suggesting that he should proceed as at (1) and if necessary also agree to ad hoc methods of removal of the restrictions in the case of Japanese subjects.

H. S. P. 17.3.32

In spite of Mr. Booth's minute of 26 Nov. or 18 Dec. 31, I can't help feeling that, before going any further, it would be well to have recourse to the alternative defence, viz. that the Treaty forbids national discrimination, but the discrimination hitherto exercised by the King-Post has been ethnological. After all, an enormous majority of British subjects in Asiatic, & therefore subject to exactly the same disabilities in this matter as the Japanese.

H. S. P. 17.3.

Mr. Flood.

I do not think that we should take the points referred to by Mr. Freeston in his minute of 27.2 above.

I can see no satisfactory way out of the impasse created by the action of the Government

Government of King-Post...
 presented by the...
 27.2.32...
 Minister of the...
 the...
 1st...
 Government...
 for...
 the...
 the...

In...
 be...
 17.3.32...
 declining...

17.3.32. H. O. ...

In all the cases...
 do any good...
 17.3.32...
 of the...
 do not...
 17.3.32...

I think the...
 Council...
 the...
 board...
 imagine...
 17.3.32...

I think no other course...
 is...
 step...
 question...
 17.3.32...

for breach of contract. (Whether such
claims would in fact prove expensive
save a good point).

Subject having legal opinions
send a copy of the correspondence to
the former suggesting that he
should proceed as at (1) and if
necessary also agree to adhere
to the terms of the instructions
in the case of Japanese subjects.

1/5/33
16/3/33

In spite of the Board's minute of 26 Nov. or
18/12/32, I can't help feeling that, before
going any further, it would be well to have
recourse to the alternative defence: viz. that
the Treaty forbids national discrimination,
but the discrimination hitherto exercised by
the Kenya Govt. has been ethnological.
After all, an enormous majority of
British subjects are Asiatic, & therefore
subject to exactly the same disabilities in
this matter as the Japanese.

BA
17.3.

Mr. Flood.

I do not think that we should take the
points referred to by Mr. Freeston in his minute
of 17.3 above.

I can see no satisfactory way out of
the impasse created by the action of the
Government

Government of Kenya. Two courses have been
suggested by the Foreign Office in their letter of
21.2.33 (No. 1). I do not like either of them.
Another course might be to give notice to terminate
the Treaty under Article 27, and in the meantime to
let Mr. Kuga buy the plot in question, telling the
Government that if they are confronted with claims
for damages, they must face the music. This course
also has obvious disadvantages.

In all the circumstances, perhaps it might
be advisable to have a discussion with the Foreign
Office and with the Board of Trade before finally
deciding what to do.

24th March, 1933.

M. Duncan.

In all the circumstances I hardly think a discussion would
do any good. Kenya is definitely in an impasse. Like
Mr. Duncan, with whom I have spoken, I do not like either
of the courses suggested by the F.O., and, in particular
I do not think it would be advisable to pass any kind of
Ordinance in Kenya.

I think the simplest course is to let the Japanese
buy the plot and say nothing about it. If
the owners of other plots are aggrieved they can sue
Govt. (or so it seems to be supposed) but I do not
imagine they would get much damages.

? Put this view to F.O.

1.2.4. Flood

I think no other course is
reasonable possible, but it won't
stop us on Japanese - the whole Indian
question will come up. The origin of

of the trouble lies in the
application of ^{the} West African
system of rejected residential
areas. In Tanganyika the
system of separate
areas for separate types of
building has been adopted,
but it would have been
unacceptable in Kenya, as there
are many ^{of} ^{the} ^{same} ^{type}
of good houses
as dispersed?
West.

24. 3. 33

Rec of State

I think you should see
as a political question may
be involved. Any attempt at
amending legislation would
lead to all sorts of trouble &
I think the best course is, as
in Flood proposes, at A' see
the page & see what happens.

In communicating with the
Japanese we might suggest
that in the first instance
he should try to get the

Japanese Council not to press
his case and failing this
adopt course "A", which will be
only making the best of a bad
business.

R.M.G.

30.3.33

I think this is the only possible course.
I shall admit nothing. I shall do it
a special case to oblige the official representative
of the Japanese Govt. He will get what he
wants; I shall not get prejudiced
by a Japanese official who can afford to
pay £360 p. a. for a house, occupying a
house in a European quarter.

Legislation is in discussion; a committee
Govt. can't ~~is~~ ^{is} normally ~~not~~ ^{is} legislate
that out of the ^{or} ~~contradict~~ ^{contradict} obligations.

PZ-L

1/4/33

6 Tel To 92 Secut to Governor Kenya
+ ansd - 5/4/33

- 7 To To (with copy No. 6) B/Int. Secret. 7 APR 1933
- 8 To B/T. (" ") B/Int. Secret. 7 APR 1933

By Air mail
8/4/33

To Sec. Secy (N/C) 8 APR 1933

9
10

Messrs R. Dilly *undated*
applying to see reports of
the land case.

I have informed Mr. Thompson that
the case went to the Privy Council. He
will be able to refer to the inquiry &
the published reports.

Apart from this there is a copy
of the Judgment in *ETA* enclosed with
9 in 15633/29 and of the transcript
of the P.C. proceedings below 16 in 17173/31
but it seems undesirable to release
file copies for general.

Reply that *referred* records of
cases heard in the Supreme Court
of Kenya and in the E. A. Court
of appeal are not furnished to
this office but that the prior of the
records in question could no doubt
be obtained by her from the Registrar
of the Supreme Court at Nairobi on
payment of the prescribed fee.

Add that as the case in question
was finally determined on appeal
by the Privy Council (as Case No 8 of 1930)
it is possible that reference
to the reports in the published
proceedings of the P.C. may *summarize*
H.S.P. 2/5

P.P.O. to
communicate
to
G.O.C.

The documents are all public, and the question
is merely whether, as an act of courtesy, Miss
Dilly should be allowed access to the file copies,
& avoid the trouble, delay & expense in obtaining
copies for herself. Personally I see no
objection.

J.P. Austin

Mr. Thompson telephoned to say
that he has shown the Privy
Council for report to Miss Dilly
who states that as it covers
the whole proceedings it
is sufficient for her purpose.
P. P. O.

H.S.P. 2/5
2/5/33
at once

(10)

11. Governor Byene (N. India) Secret 15 May '33.
Trans. copies of course, with the Japanese Consul on which
he seeks to obtain an express assurance in terms of general
application that Japanese nationals will be afforded the
treatment prescribed in the Treaty of Commerce & Navigation.
India Office

P.P.O. to
communicate
to
G.O.C.

DESTROYED UNDER STATUTE

India Office 6 June '33.
Enquiries when a further communication may be expected
regarding acquisition of township plots by Indians.
No. 12. There seems little hope in view of
G.O.C. April. See how the G.O.C. proposals
maintained in para 2 of No. 8 on 18/12/32
have not yet been received; & receive to
avoid No. 11. T.W. Davis: 9/6

N^o 12 is a routine reminder, but in view of the anticipation expressed by Gov. at the end of 27 in Dec. (that we shall pass it)

Add to the proposed reply that the Gov's attitude is being invited to the matter & send copy copy Gov Lt

obv.

(Rec'd for 11)

9/6 atm

13 To L.O. (12 am.) 3 pm. 16/6/33

14 To go. confidential (N.C. 12 & 13) 4/1/33 16.6.33

Re. Flood.

I am sorry for the delay in sending this on. I took the opportunity ^{today} of asking Sir Thomas Carter whether the problem had (officially or unofficially) been brought to the notice of the Land Commission; he assured me that it had not, and nothing in their Report will be found to affect the issue.

It is now common ground that the action of the Haager Government in placing restrictions

on the ownership and occupation of town plots in Nombosa is contrary to the 1911 Anglo-Japanese Commercial Treaty. Logically, there are only three possible courses:-

- (a) to continue the policy, in defiance of the Treaty
- (b) to withdraw the restriction, & so observe the Treaty
- (c) to abrogate the Treaty, so far as Nombosa is concerned.

The consequences of each would be

(a) In due course the Japanese Govt will raise the matter officially with the Gov. and, in the last resort, they could presumably take it to the L.N. or the Hague Court. This would all take time, but nothing would ultimately be gained by the delay.

(b) If the restrictions are publicly withdrawn from Asiatics who are Japanese nationals, it is morally certain that the Indian Office - and public opinion - will insist on a similar withdrawal as regards Asiatic British subjects.

Moreover, what is applicable, under Treaty, to Nombosa cannot be denied to the Highlands; and there is no second line of defence (in theory) against the

invasion of the sacred White Highlands by
Indians.

(c) Article 27 of the Treaty provides for its
termination at 12 months' notice in
respect of any Dom. Col. or Port. which
may have adhered. I understand that
the question of terminating the Treaty as
regards Kenya was recently considered
with a view to terminating discrimination
against Japanese trade, but that the
govt. was not pursued, as the existence
of the St. Germain Convention of 1919
would prevent the desired result.

(The St. Germain Convention says nothing
about residence - see extract quoted in
No. 14 on B.11/32).

Subject to legal doubts, I write
to G.O. saying that, in S.O.F.'s view,
the interests of Kenya can best be
served by termination of the 1911 Treaty

[Signature]
6/8.

I have discussed this with Mr. Freestone and I am
not happy about it. No. 11 shows that the Japanese
Consul in Kenya has raised the question in the most
general terms. Why he is doing it locally instead
of getting Tokio to talk it up with London I really
can't make out.

The Japanese Treaty of 1911 can be denounced, and can be
denounced *quâ* Kenya only if necessary. It was in force till
1923 & then became subject to 12 months on either side.
It was extended till July 1932 by Articles 7 & 8 of the
Supplementary Convention but that time is now up. So it
can be denounced.

But is still Article 3 of the 8th German Convention
which gives Japanese the same rights as British subjects "with
regard to the acquisition & transfer of their movable and real
property". As Mr. Freestone says it doesn't mention residence
as the Treaty does, but could it not be argued that it does
give a Japanese a right to acquire any plot of land which an
Englishman may acquire, and if he can acquire land may he
not live on it? Of course the answer may be No: he may buy
land but if there is a covenant against Asiatics he can't
live on it" but would that hold water if it were tested?
I can't feel sure.

The main trouble is not so much Japanese in Mombasa
as Indians in the Highlands. To keep Indians out of the
Highlands does involve racial discrimination which is
clear from § 39 of the Crown Lands Ordinance which forbids
putting in a non-European as manager or occupier of land
leased under that part of the Ordinance. If we were to
admit Japanese then, as Mr. Freestone says, there is no case
for keeping out Indians.

So I can only agree that the safe course is to
proceed to denounce the Treaty. It could not have been
done till last year and I understand it is being
denounced *quâ* West Africa for trade reasons. On
principle I hesitate about such denunciations but I
can see no help for it here.

I pass through G.D. as it is a Treaty matter.

J. G. Flood

Mr. Pashin

I delayed this for your return as the general Treaty point is your affair. I am only concerned with the economic aspect, as to that, denunciation of the Anglo-Japanese Treaty will would remain as ~~is~~ to freedom of action but as the St. Germain Convention would remain it would not make much difference as regards trade policy. That aspect need not, therefore, receive much consideration in the decision. Whether it would be desirable to explain clearly to the Japanese that this denunciation, if decided upon, is not a "trade" issue, could be considered later.

S. Cairns
4-7-31

The denunciation of a treaty in respect of a Colony is, of course, never a matter to be embarked upon lightly for very obvious reasons of a general political character. This aspect of the matter is, however, essentially one for the Foreign Office rather than for the

Colonial

Colonial Office, and I do not think that it calls for comment on my part. In the particular case of the Anglo-Japanese Treaty, denunciation (for limited reasons) has already been decided upon as regards West Africa and I should not think that denunciation in respect of yet another Colony would be likely to cause very much further embarrassment to the F.O.

As regards the Treaty of St. Germain, I understand from Mr. Preston that there would not be any great difficulty in so far as restrictions which may at present rest on a basis of ownership into restrictions on occupancy or residence, thus bringing them into conformity with the Treaty.

J.P. Pashin
6/3

I think the first thing to do is to see whether the grounds back the view that under the St. Germain Treaty we could enforce covenants against Jap. residence. I have doubts, especially in view of the wide interpretation given by international lawyers.

H/S
7/3

Sir C. Bottonley

If Mr. Buxton's doubts under the St. Germain Treaty are well founded we are in for real trouble, for if you let a Japanese into the Highlands can you keep out an Indian or a fortiori a native of Kenya who is a British subject too?

As the Treaty with Japan is to be denounced ~~qua~~ West Africa we could probably denounce it ~~qua~~

promises and as it would be, if a Japanese were
allowed to have a farm. But that is another story.

V.L.G. Hand

119.

A. The same point had occurred
before, but it is little comfort to
know that if we have to break
faith we cannot be stopped from
doing so.

Sir J. Sheppard

This may be Kenya's worst
serious trouble and I agree on, but
I do not think it correct that the
S. P. should see before the latter
you to do.

When Lord Eglar's pronouncement
of the renunciation of the
Mightland was made in 1908, there
was no Treaty with Japan to
hinder us and no multilateral
Convention to which Japan was
a signatory. The trouble has
arisen from the 1911 Treaty and
the 1919 Convention, to which not
only Japan but also India were
parties. It was not till later
that Japaner started coming
to E. Africa.

Lord 19/9/33

Dft. letter to F.O. marked for issue.
It has only the paper
should be to the S. P.

V.L.G.

19/9/33

at mel

You asked me to look at this, & I offer the following rather scattered observations.

(1) From the point of view of the negotiations, it would be advantageous rather than otherwise to be able to denounce the A.-J. treaty with Kenya for some reason quite unconnected with those negotiations, but it would have to be made absolutely clear to the Japanese that it was unconnected.

(2) I don't think there is anything really inconsistent in saying to the Japanese: "When in 1913 we extended to Kenya a treaty negotiated between the U. K. & Japan to deal with a quite different set of circumstances, it did not occur to us that the provisions of that treaty clashed with a policy ~~we~~ adopted & publicly announced in 1908. Now that you call our attention to the fact, ~~that~~ we realize that in extending it we should have made a reservation on this subject & it would then have been open to you to accept the extension & the reservation or to reject both, & we now offer you the two alternatives."

(3) Personally I believe that the Convention of St. Germain gives the Japanese really exactly the same rights as the Treaty & that if by electing for termination of the

latter, so as to preserve this doctrine of absolute equality with the European, you will have to go on & open the whole question of the Convention on this point & not on the commercial equality point. From the commercial side this might not be a bad thing, but it looks as if it might be politically rather nasty.

G. L. Clayton

14(a) Minutell of St. meeting sat draft 27.0. shall not issue.

✓ 15 India office ————— 5 Sept. '33
 Enquires when a further communication regarding restrictions on the acquisition of township plots by Indians may be expected.

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16 J. G. Deputy Minutell 27th Sept. — 5 Sept. '33
 States that suggested policy regarding restrictions on the acquisition of township plots by Indians will be accepted & favorable details as to occupation restrictions in non-base, Nairobi, Nakuru, Eldoret & minor townships.

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India office ————— 8 Dec. '33

Ref. 13. Enquires when further comm. may be expected.

✓ 18 India office ————— 1 Feb. '34

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Copy note from Gov. of India & enquires when a fur. comm. may be expected.

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India office ————— 4 April '34

Enquires when fur. comm. may be expected.

✓ 20 J. G. Byrne 53 Conf. ————— 5 April '34

DESTROYED UNDER STATUTE

Enquires whether reply may now be given to Conf. document n. 124.

Sir C. B. G. G. G.

[Faint, mostly illegible typed text, likely a letter or official communication.]

J. E. G. Hand
 H. G.

P. T. O.

Sir J. Duffry

The subject with I think be clear to you from the letter B 20. What has happened but not sent.

I am certain that no harm has been done and that if Sir Hood had brought up the matter it would have been decided to put it on ice. It is quite certain that both the Treaty question & the Convention question will be settled on commercial considerations & that nothing should be done which might prejudice that aspect of the matter.

I repeat that the Japanese too are shy of this question, but should rather write privately to the Govt., explaining our position, and ask if things are just at his end.

As to B 20. Is Sir Hood prepared?

W.L.D. 11.6.34

Acqa. Proves as proposed.

J.M.
12/6

21

22 To Byrne. Cont. (1st ed.!!) cons. — 14
F.C. (Amis) (1st ed.!!) cons. — 15

23

24 To the Board of Trade
Recive to Mr. Foster

(with copy to and mail)

23/6/34 - R/16

Note of

Japanese Negotiation
Circumstances of his occupation
and under the Anglo-Japanese
Treaty of 1911

Tapes to
circulate in

a box. (cc. 15-20) These papers have been kept on a dummy file pending action on the position (discussed on the main file) created by Japanese treaty claims.

The India Office (Mr. Silva) telephoned ten days ago to say that they would be grateful for something which they could pass on to the Government of India "to keep them quiet"; though I understand

that the Indian Govt (like the Indians in Kenya) have shown no recent signs of a recrudescence of interest in the subject.

The question at issue, in the broadest terms, is how far the maintenance of Government restrictions on the ownership and occupation of land-plots in Kenya and other territories in Kenya is consistent with the declared policy of 1919, as expressed in the White Paper of 1925.

The position as it existed in June 1921 is comprehensively reviewed in the memorandum (which recites the relevant para. of the White Paper) flagged A. I annex a précis of the essential subsequent correspondence.

Had it not been for the Japanese complication, the way would now be clear for sending the I.O. a copy of the despatch of 5th Sept. heresh and saying that, subject to I.O. concurrence, Soff. proposes to arrange with the Govt of Kenya for a "public announcement",

to the effect that, unless the Kenya Govt, while feeling obliged to maintain the ¹⁵ existing restrictions on the occupation of certain township plots ~~will~~ not enforce them in respect of ownership .

But, in view of the Japanese position, the last thing wanted at the moment, is any form of publicity. It was the existing restriction on occupation which particularly annoyed the Kenya, and any public announcement that Govt. proposes to maintain such restrictions would inevitably lead him to press the Treaty claims.

The only course possible, therefore, seems to be that I.O. should be sent a copy of the despatch, in a letter drawing their attention to para. 2 (which really gives them all they want) and saying that Soff. sees no reason at the moment for any public announcement, which might only serve to reanimate controversies which at present are fortunately dormant. If the Soff. for India agrees, the Govt. of

Explanation
 can't possibly
have one

19 in
17.73

23A

Henry - will be so informed.
Copy the above to Gov. Henry.

RD
17/7

✓ 24. A. Silver (S.O.) % _____ 12 Aug 34

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Inquire whether an official letter may be embodied

✓ 25. Governor Byrne 100 (cont) _____ 16 Aug 34

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Inquire whether a reply may now be given to No 19.

I agree that we should write to the India Office on the lines indicated at the end of Mr. Freeston's minute of 17/7.

24/9/34 / A. Duncan.

Sir J. Maffey

Please see my minute on 23228/1/34 - the Japanese question.

I agree to Mr. Freeston's proposal for action. I see no way out of the difficulty - if we want of candour - is advised in our deprecating publicity without saying why. But an announcement would implicate the Japanese problem, while an explanation would go to

Delhi and thence to East Africa and we should have the letters on 22.8.

Mr. Freeston and I both feel that this would better have been confidential and private the explanation might be.

W.C.D.

28.11.34

J.M.
28.11.34

For Mr. Maffey
Dated 23228/1

P.R.
30/11

26 To S.O. (10/12/34) cont. cons.

7-12-34

1/12/35

? copy (26) to J.M. and to Kempster vide Mr. Freeston's min of 17/7

A. Silver (S.O.) % _____ 14 December 34.
Inquire whether a copy of the plan of the revised scheme for the Mombasa southern residential area may be included in a proposed letter to Govt. of India also whether there have been any important developments since No 19.

In 2 lines

There is a spare set of the enclosure to No 16 which we can send to the India Office if you agree. As regards the last paragraph of Mr. Silver's letter, I think it is

C.T.
as of (17)

safe to say today that we have
not heard of any developments
of importance as regards the
acquisition of trenching plots
by Indians—since the previous
despatch.

The previous last despatch on
the Japanese Consuls' representations
is No 11 on the file, dated
13 May 1933.

We have yet to tell Sir J. Byrd
what we are doing. His question
thought this might be done
when the India Office's official
reply to No 26 arrives.

C. J. [unclear]
18/1/34

Yes we can send I.O. the spare plan
& ask them to let us have it back in due
course, and say this has been so further
developments.

W. H. [unclear]
18.12

28 To C. H. Silver (10.) (27 ansd.) Cons. 20/12/34
(at least with [unclear]) 210 19/1/35
C. J.
as per [unclear] DM

3092/33

16

20

C. O.

Mr. *Ernest C. Flood*
Mr. *Flood*, 19 *Jan*
Mr.
Mr. Parkinson

To Mr. *Flood's*
Signature

Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh
Perm. U.S. of S.
Parly. U.S. of S.
Secretary of State.



Answered by No. 1
3810/35

20 December, 1920

Dear Sir,

DRAFT.

C. H. Silver, Esq.
India Office.

Stat.

In President's absence
on leave I am replying
to your letter of the
14th of December (reference
Dy. J. 4323/24) regarding
the restrictions on the
acquisition of township
plots by Indians in
Rangoon.

*1 Set of the enclosure
to No. 19/16*

I enclose a set
of the Plans which
accompanied the Acting
Governor's Confidential
Dispatch of the 5th
of September, 1920.
There is no objection

FURTHER ACTION.

to the Govt of India seeing
these plans, but we
should like to have them
back in due course.

There have been no
further developments
since the date of
the Mr Wade's departure.

Yours sincerely
J. E. W. Flood

(Signed) J. E. W. FLOOD

17 21

INDIA OFFICE,
WHITEHALL,
S. W. 1.

14th December, 1934.

P. & J. 4323/34

Dear Freeston,

With reference to our telephone conversation regarding
your official letter of the 7th December, No. 23228/1/34,
about the restrictions on the acquisition of township plots
by Indians in Kenya, I see from paragraph 3 of the Acting
Governor's confidential despatch of 5th September, 1933,
that two copies of the plan of the revised scheme for the
Mombasa southern residential area were sent home. As the
official correspondence in recent years has been mainly
concerned with the Mombasa plots, we think it would be
useful, should there be no objection, if we could include
a copy of this plan in our letter to the Government of India,
if a second copy is, in fact, available. When I telephoned
you said, I think, that you thought there would be no
objection on the part of the Colonial Office, to letting
the Government of India see the various plans referred to
in the Acting Governor's despatch if they wish to do so,
and you agreed that we might say this in writing to the
Government of India.

L. B. Freeston, Esq., O.B.E.,
Colonial Office,
S.W.1.

On a ~~different~~ point, may we take it that
there have been no developments of any importance
in connection with this matter since the date of the
Acting Governor's despatch?

Yours sincerely,

W. Wilkes

O.

23000/1/04

3092/33

Mr. Grossmith.

Mr. *Falconer* ^{4/12}

Mr.

Mr. Parkinson

Sir G. Tonkinson

Sgt Sir C. Bottomley.

Sir J. Shuckburgh

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

*Part awarded by No 1 23228/24
No 1 55101/55*

DOWNING STREET,

7 December, 1934.

Confidential

O. D.
R 5-DEC.
B

DRAFT.

for comm

UNDER SECRETARY OF STATE,
INDIA OFFICE.

Sir,

Sgt

I am etc. to refer to your letter of the 1st February (reference E. & O. 700/34) regarding the

restrictions on the acquisition of township plots by Indians in Kenya, and to transmit to you, to be laid before the Secretary of State for India, a copy of a despatch from the Acting Governor of Kenya.

2. I am to invite attention to the second paragraph of the despatch in which is described ^{the} policy which will be followed for all future sales of Crown land township plots, wherever situated, in Kenya.

*18
Not
3092/33*

*Sir Capt. 1925
No 10/10
3092/33*

Without enclosure

Copy to Kenya (3036/10/33)

FURTHER ACTION.

Sir

has good reason to consider

3 Sir Philip Cunliffe-Lister ~~considers~~ *is getting satisfied*

that any public announcement as suggested

in the last paragraph of Mr. ~~Heare~~

despatch would be most undesirable at

present, and would only serve to reanimate

controversies which at present are

fortunately dormant. In the circumstances

will be glad to learn

he trusts that Sir Samuel Heare ~~will~~ agree

no

should be made.

that a public announcement ~~will not be~~

necessary.

I am, etc.

(Signed) L. B. FREESTON

17/7/31
20

15 July 1931. Government of Kenya invited to consider how far abandonment of restrictions on ownership ("the sole issue now remaining") could be sustained in law.

23

20 July '31 Government of India ask whether C.O. have any objection to public announcement that Govt of Kenya will postpone for the present further sale of plots with restrictions, (b) question of restriction of ownership is receiving attention of C.O. & Kenya Govt.

26

19 Aug. '31 Governor of Kenya deprecates any such announcement; promises despatch.

18/11/32

4

28 April '32 Govt of Kenya seeks advice on certain legal points.

8.

29 June '32. C.O. advice tendered. In respect of areas not yet sold, and areas sold (or leased) without restriction covenant, restrictions on residences and

occupation shd. be maintained, but should not be extended to ownership. Governor is asked to put forward proposals for revised lay-out of unalienated areas in Bombay & certain other townships, to ensure that ownership & occupation of such areas by Asiatics would not affect adversely the amenities of plots already sold. Proposals should be in a form suitable for transmission to Govt. of India.

No. ¹⁶/₂ huron

5th Sept. 1935. Governor of Kenya agrees that restriction of ownership of township plots cannot properly be enforced in respect either of future or of existing sales. All future sales will therefore be unrestricted as to ownership; racial restriction on occupation will however be maintained.

Revised lay-out for Bombay, and proposals regarding other townships, submitted. Governor asks to see the terms of any public announcement before it is made.

21
22

C. O.

Mr. Grossmith. 18/7/34

Mr. Tomlinson 16

Mr.

Mr. Parkinson.

Mr. Tomlinson.

✓ Sir C. Bottomley. 18/6 f

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

June, 1934.

and No. 1 in
2322/34

Sir,

With reference to your

letter of the 21st of February

No. F.454/454/23, I am directed by

Secretary Sir Philip Cunliffe-Lister

to transmit to you to be laid before

Secretary Sir John Simon, copies of

further correspondence with the

Govt. of Kenya relating to the

rights claimed under Treaty by the

Japanese Consul at Mombasa for

Japanese subjects to purchase and

occupy plots in areas which have

been administratively reserved for

occupation by Europeans.

(2) It will be observed from

his letter of the 12th of April

(enclosed in the Governor's despatch

of the 13th of May) that Mr. Kuga has

been instructed by his Govt. to

ascertain

DRAFT.

THE UNDER SECRETARY OF STATE,
FOREIGN OFFICE.

(No. 1.)

Desp. to Gov. Kenya 8/4/34
No. 9
Desp. from " " 13/5/34
No. 11
17 encls.

FURTHER ACTION.

Copy of encs. to Bd.
of Trade L.F., refce, 5

Recd to me
40
16

22
 C.O.
 R 19 JUN
 D. 20
 21

C. O.

Mr. Grossmith. 18/6/34

Mr. ~~Fraser~~ 16Mr. ~~Clavin~~ 18/6

Mr. Parkinson.

Mr. Tomkinson.

✓ Sir C. Bottomley. 18/6/34

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

For Sir C. Bottomley's signature.

Downing Street,

21 June, 1934.

DRAFT.

Asiation General
 SIR JOSEPH BYRNE, G.C.M.G.,
 K.I.B.E., C.B.

(No 11)

Capital
My dear Byrnes
 I feel I ought to let you know the present position regarding the communication from the Japanese Consul enclosed in your secret despatch of the 13th of May, 1933. You will remember that Mr. Kuga, on behalf of the Japanese Govt., raised the question of the general eligibility of Japanese to hold land in Kenya under the Anglo-Japanese Treaty of 1911.

We have been somewhat exercised to know how best to deal with this matter. *One* the difficulty is that the position is governed *not only* by the Anglo Japanese Treaty of 1911 *but also* and by *by* the ~~terms~~ of the St. Germain-en-Laye Convention of 1919. *We had*

considered

ascertain the attitude of the Govt. of Kenya on the general question.

(2) The position appears to be governed both by the Treaty of Commerce and Navigation between the United Kingdom and Japan of 1911 and by the Convention of St. Germain-en-Laye of 1919, so that even in the event of its being decided to give notice to terminate one of these in so far as Kenya Colony and Protectorate is concerned, the position would be affected by the terms of whichever remained. *(2)* Sir Philip Cunliffe-Lister will be glad to receive any observations which Sir John Simon may have to offer in connection with this matter.

(1) A copy of this letter is being sent to the Board of Trade.

I am, etc.

(Signed) W. C. BOTTOMLEY.

FURTHER ACTION.

Even if the extreme step were taken

~~considered the question of denouncing~~

the 1911 Treaty in respect of Kenya, ~~but if we felt that~~

~~even if that were denounced~~, the St. Germain

Convention would remain, and it is very

doubtful whether the Foreign Office would

support the view that under the terms of

the Convention we could enforce covenants

against Japanese residents.

The Secretary of State decided,

however, that any suggestion to give notice

of terminating the 1911 Treaty would have to

wait until the ^{Trade} negotiations between the

Board of Trade and the Japanese delegates

~~on the subject of the St. Germain Convention~~

had been completed. Personally, I think it

is safe to say that the Treaty question and

the Convention question will ^{now} be settled on

commercial considerations, *and I am not anxious that any other considerations should intervene.*

It is noteworthy that the Japanese

have not raised the question here, and it is

possible that, they too, are shy of it. I

should be interested to know whether Mr. Kuga

has referred to this matter since your last

despatch.

C. O.

Mr.

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.

despatch. Meanwhile we are sending copies of the correspondence to the Foreign Office with a brief reference to the difficulties involved.

(Signed) W. C. BOTTOMLEY

DRAFT.

FURTHER ACTION.

24 16.



GOVERNMENT HOUSE
NAIROBI
KENYA

KENYA.

No. 124

CONFIDENTIAL.



5th September, 1933.

Sir,

I have the honour to refer to your Confidential despatch No. (2) of the 29th June, 1932, on the subject of the restrictions on the acquisition of township plots by Indians, and to express my regret that so long a time has elapsed before a reply could be furnished. This is to be attributed to the difficulty in obtaining a revised design of the Mombasa residential area on account of Survey Staff sickness, and pressure of other work.

2. I note the view of your legal advisers that, whilst racial restrictions on the occupation of township plots should be maintained, restrictions on the ownership of such plots cannot properly be enforced in respect of either existing or future leases. I am advised by the Attorney General that he holds the same opinion. This policy will, therefore, be followed for all future sales of Crown land township plots wherever situated, and will guide this Government in the exercise of its powers to veto transfers of alienated plots.

3. Pending the production of a revised scheme of layout of the Mombasa Southern residential area no public announcement of the change in Government's policy in this matter has been made, and I enclose two copies of a plan showing the suggested revision.

The -----

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON...S.W.1.

*Copy 1/24
18/11/32
208
18/11/32
copy with encl. to K.C. 4. 22/28/34
1 encl. (208 3804/35)
1 encl. to K.C. (28)*

*Copy 1/24
18/11/32
208
18/11/32
copy with encl. to K.C. 4. 22/28/34
1 encl. (208 3804/35)
1 encl. to K.C. (28)*

- 2 -

The area has been planned, not only with a view to improving the previous plan purely from the standpoint of an acceptable layout, but also in order to give to the European existing interests such safeguards as may reasonably be expected under the new policy. It is, however, considered that the design itself is an improvement on the present plan.

You will observe that it is proposed to alienate certain plots with a restriction to European occupation and the remainder without restriction. The area forms part of the present approved Mombasa Town Planning Scheme, 1926, and it will, therefore, be necessary to revoke under the provisions of Section 5 (5) of the Town Planning and Development Ordinance, 1931, the part of the scheme concerned, before the revised design can be surveyed. I should, therefore, make it clear that the design now forwarded is one prepared by Government's own officers and has not received any consideration by the Municipal Board as Town Planning Authority, and I can give no indication as to how it will be received by that Authority. It seems essential that the announcement of policy should precede any formal approach to the Town Planning Authority; the unofficial European members of the Municipal Board have, however, been informally advised of the proposals and have agreed that, subject to the boundary of the unrestricted block extending no further south than Kizingo Road, they will raise no objection to the proposals. Presumably this agreement will be without prejudice to any claims against Government which they or any other landowners in the area may consider they have when the proposals are put into operation.

4. The position as to occupation restrictions in the Municipalities of Nairobi, Nakuru and Eldoret and minor townships has been examined.

- 3 -

No. 4
1811-2/12

In Nairobi the Forest Road group of plots to which reference was made in paragraph 5 of Sir Joseph Byrne's Confidential despatch No. 62 of the 28th April, 1932, forms the only area in which relaxation of the occupation restrictions, in view of the fact that ownership restriction may no longer be maintained, could be considered. Government's policy has hitherto been that if all the plot-owners agree to the relaxation of these restrictions, no veto would be exercised and as it is believed that unanimous consent cannot, at least at present, be obtained, I see no good reason for abandoning the protection hitherto given to the European owners.

As you will see from the enclosed plan Indian penetration into Parklands has proceeded on a very extensive scale and I am satisfied that the preservation of the Forest Road group cannot be held to impose any hardship on members of that Community.

5. The position at Nakuru is shown by the plan and schedule enclosed. Restrictions to European ownership and occupation have hitherto been maintained in respect of Plots 1-5/IV, the whole of Sections XVI and XVII, Plots 6, 7 and 8/XV and 1/XII.

I consider it to be reasonable that the restrictions which have been made in the leases of plots 1-8 and 10 and 11 in Section XVII should be applied administratively to plot 9: and similarly that in section XVI plots 3 and 5 when sold should bear the same restrictions as plots 1, 2 and 4. On the other hand in Section VII there are no restrictive covenants in the leases of Plots 1 and 2 but there is a record of an instruction passed in 1910 to the Administrator General, who was then selling the plots on

behalf ----

- 4 -

behalf of a deceased's estate, that the sale should be restricted to Europeans only. I see no reason why this restriction should be preserved any longer. Similarly if release from the restrictions imposed in the lease of Plot 10 of this section were asked there appears to be no reason why this should not be granted.

6. At Eldoret and Kisumu no change can be recommended. At Naivasha several plots originally restricted to European occupation only have, during the past few years, with Government permission, been transferred to Asiatics on production of written agreements from the adjoining lessees whose leases contained similar restrictions. No general alteration in conditions can be suggested.

7. In other minor Townships the restricted areas do not extend beyond the plots whose leases contain special covenants. These cannot be relaxed except with the consent of other lessees in the same group.

8. This Government has, since the policy on this matter was laid down in the White Paper of 1920, been ready on application to release any lessee of township plots from restrictive occupation covenants provided lessees of adjoining plots whose leases were similarly restricted furnished written consent. In this way many small groups of plots, particularly in the Parklands area of Nairobi have been freed for Asiatic occupation.

9. As regards paragraphs 9 and 10 of your despatch, I presume that you will now desire to make an announcement on this subject but I should welcome an opportunity of seeing the terms of such an announcement before it is made.

I have the honour to be,
Sir,
Your most obedient, humble servant,

Arthur W. G. ...

for ACTING GOVERNOR.

STATEMENT RE RACIAL OWNERSHIP AND OCCUPATION OF
PLOTS IN NAKURU TOWNSHIP.

CATEGORIES.

1. Direct Grants 1905 to 1912.
2. Direct Grants under Official Gazette Notice 128 of 1911.
3. Alienated by public auction November 1924, December 1925 and February 1929.

<u>SEC: IV</u>	<u>(Old No.)</u>	<u>Category.</u>	
Plot 1	88	1	Lease restricts occupation to Europeans.
2	1	1	do
3	2	1	do
4	3	1	do
5	4	1	do
<u>SEC:VII</u>			
Plot 1	26	1	No restriction in lease. (Letter to Administrator General states sale should be confined to Europeans.) 1910.
2	35	1	do
3	27	1	No restriction in lease.
4	36	1	No restriction in lease.
5.	28	1	do
6	37	1	do (Asiatic occupation approved Sect. Ref. No. S. 19523/161 of 7.8.24.)
7	29	1	No restriction in lease. (Letter to Administrator General states sale should be confined to Europeans.) 1910.
8	38	1	No restriction in lease.
9	30	1	do
10	59	2	O.G. page 128 of 1911 "European" lease restricts.
11	31	1	No restriction in lease.
12	40	1	do
13	32	1	do (Allotted to Goan, now Indian.)
14	41	3	O.G. page 128 of 1911 "Goan" not alienated. Sold at auction Nov. 1924, unrestricted, bought by European.

28

STATEMENT RE RACIAL OWNERSHIP AND OCCUPATION OF
PLOTS IN NAKURU TOWNSHIP.

CATEGORIES.

1. Direct Grants 1905 to 1912.
2. Direct Grants under Official Gazette Notice Page 128 of 1911.
3. Alienated by public auction November 1924; December 1925 and February 1929.

<u>SEC: IV</u>		<u>(Old No.)</u>	<u>Category.</u>	
Plot	1	88	1	Lease restricts occupation to Europeans.
	2	1	1	do
	3	2	1	do
	4	3	1	do
	5	4	1	do
 <u>SEC: VII</u>				
Plot	1	26	1	No restriction in lease. (Letter to Administrator General states sale should be confined to Europeans.) 1910.
	2	35	1	do
	3	27	1	No restriction in lease.
	4	36	1	No restriction in lease.
	5	28	1	do
	6	37	1	do (Asiatic occupation approved Sect. Ref. No. S. 19525/161 of 7.8.24.)
	7	29	1	No restriction in lease. (Letter to Administrator General states sale should be confined to Europeans.) 1910.
	8	38	1	No restriction in lease.
	9	30	1	do
	10	39	2	O.G. page 128 of 1911 "European" lease restricts.
	11	31	1	No restriction in lease.
	12	40	1	do
	13	32	1	do (Allotted to Goan, now Indian.)
	14	41	3	O.G. page 128 of 1911 "Goan" not alienated. Sold at auction Nov. 1924, unrestricted, bought by European.

SEC:XII (Old No.) Category.

Plot	8	-	5	Sold 1924, no restriction.
	9	-	3	do
	10	21	1	No restriction in lease.

SEC:XV.

Plot	1	-	3	Sold 1924, no restriction.
	2	55		No restriction in lease.
	3	47	1	do
	4	52	1	do
	5	46	1	do
	6	51	2	O.G.1911 page 128 "European" Lease restricts.
	7	45	2	do
	8	50	2	do
	9	44	1	No restriction in lease.
	10	49	1	do

SEC: XVI.

Plot	1	58	2	O.G. 1911 page 128 "European" Lease restricts.
	2	57	2	do
	3	-	-	Vacant.
	4	55	2	O.G. 1911 page 128 "European", Lease restricts.
	5	-	-	Vacant.

SEC. XVII.

Plot	1	63	2	O.G. 1911 page 182 "European" Lease restricts.
	2	69	2	do
	3	62	2	do
	4	68	2	do
	5	61	2	do
	6	67	2	do
	7	60	2	do
	8	66	2	do
	9	-	3	Sold 1924, no restriction.
	10	64	2	O.G. 1911 page 128 "European", Lease restricts.
	11	65	2	do

R 11 11 11

Plots coloured Red. - Strips
 " " Green. - Sold at Auction since 1922; unrestricted.
 " " Brown. - Earlier allotments; unrestricted.



NAKURU TOWNSHIP

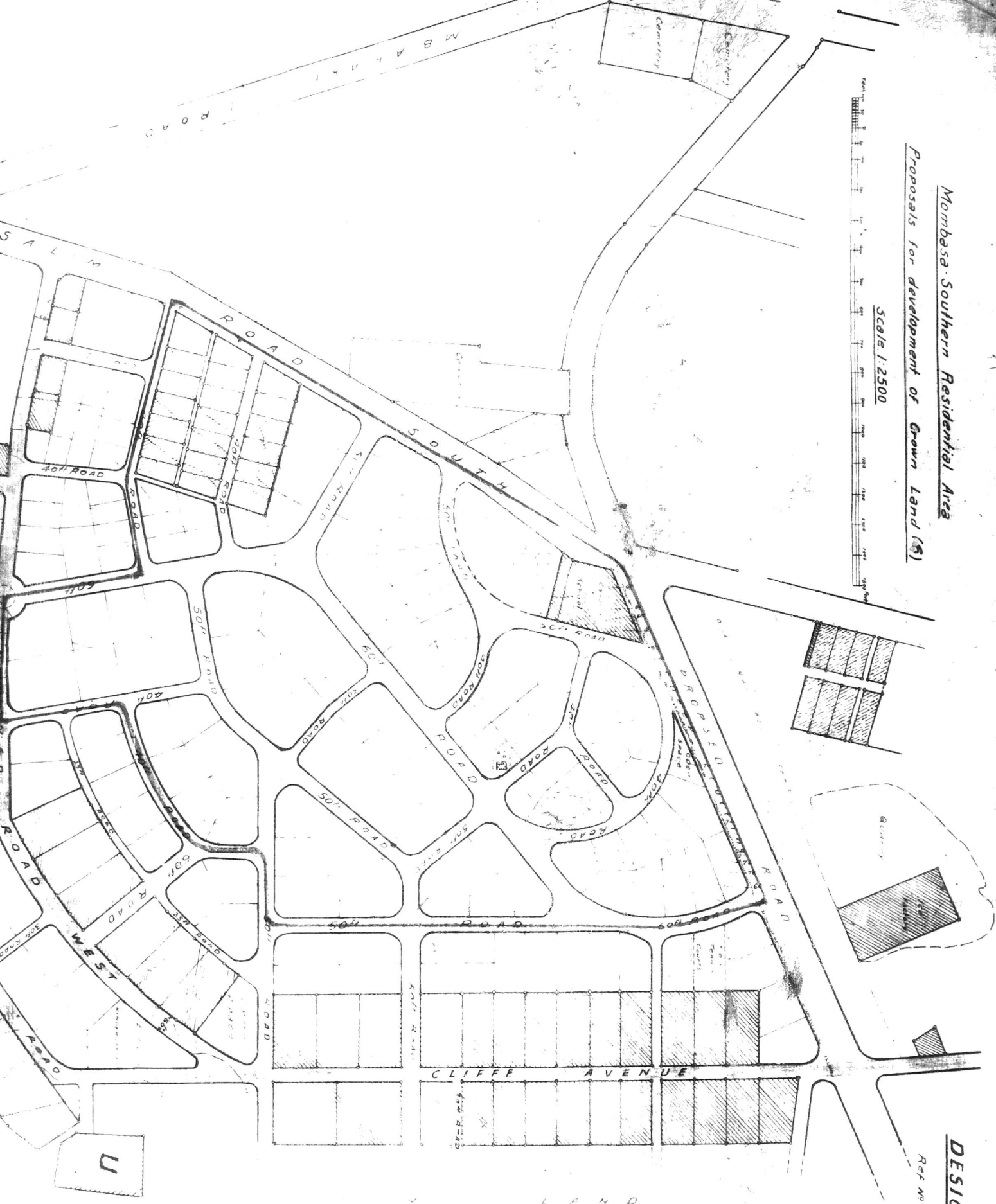
1:5000

Survey and Registration
 Department
 Date: 2/15/33
 1933

Mombasa Southern Residential Area

Proposals for development of Crown Land (5)

Scale 1:2500



DESIGN No. III

Ref No. 21231 Cont. 12052 III



The Southern Residential Area
 is bounded by Salim Road South,
 Proposed Road and High Water Mark

In the above area-

Private Freehold

- (i) in which Crown owns no interest □
- (ii) Portion of Alford's Estate passed to Crown, Burmah's Freehold being negotiable of South designed ▨

Crown Freehold

- (i) leased under covenant restricting occupation to Europeans □
- (ii) leased without special occupation restriction U
- (iii) 28 Plots which are to be reserved from alienation at Present □
- (iv) 181 Plots available for immediate alienation □
- (v) The Red line includes Plots to be alienated without racial occupational restriction □




Constructed Roads —

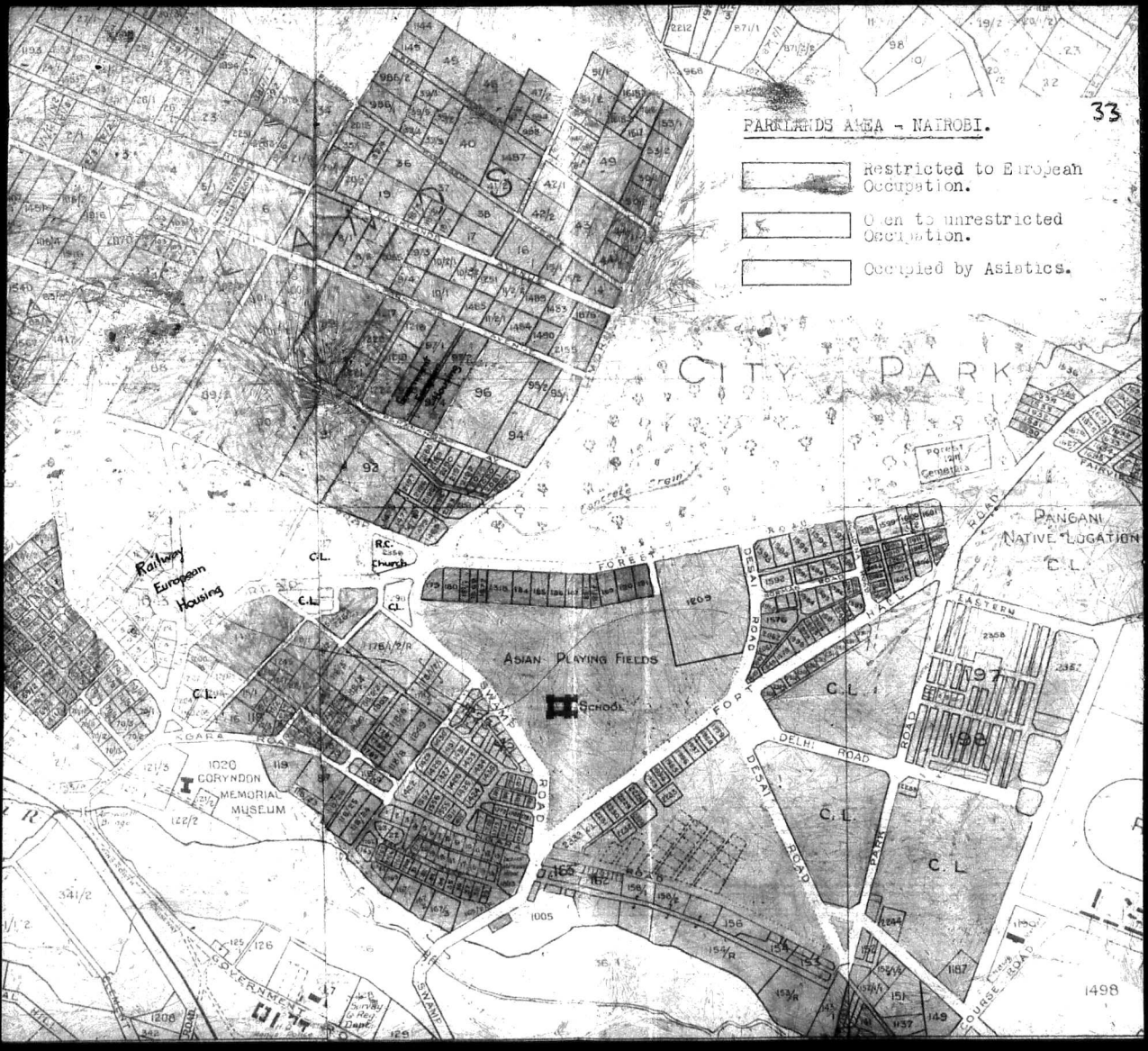
Contours at 2' vertical intervals —

Mombasa
 25th August 1933

H. Thwait
 District Surveyor

PARKLANDS AREA - NAIROBI.

-  Restricted to European Occupation.
-  Open to unrestricted Occupation.
-  Occupied by Asiatics.



CITY PARK

PANGANI NATIVE LOCATION

Railway European Housing

RC Church

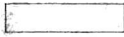
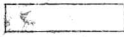

ASIAN PLAYING FIELDS

School

1020 CORYNDON MEMORIAL MUSEUM

GOVERNMENT

PARKLANDS AREA - NAIROBI.

-  Restricted to European Occupation.
-  Open to unrestricted Occupation.
-  Occupied by Asiatics.



Secretary of State

I send this on in advance of the 31st anniversary collection so that you may see Mr. Flood's note on the Morris Carter report, which I mentioned to you. W.S.B. 11/9

Sir Cecil Bottomley.

Kenya, Uganda and Zanzibar Report for week ending 3rd September.

The principal matters dealt with in the Department during the week have been

1. The question of ownership of land by Asiatics in Kenya. It will be remembered that the Japanese Consul raised the question in general terms in regard to the proposal to let him have a house in Mombasa. He was told that he could have the house himself, but he has returned to the charge on the question of the general eligibility of Japanese to hold land under the Anglo-Japanese Treaty of 1911. The Treaty can be denounced at any time and it is suggested that notice of denunciation should now be given.

This will have to wait at least 4 R. T. 1/2 before we stand on our interpretation

2. The question has arisen whether the wives and families of Government Officials in Kenya should continue to be entitled to free medical attendance. The Expenditure Advisory Committee has recommended that the privilege should be withdrawn and that fees should be charged and paid into the Treasury. The Director of the Medical Services objects.

What does the Comms say

3. The draft Agricultural Producers Association Decree has been received from Zanzibar.

This Decree has been prepared in pursuance of the recommendations of Mr. Strickland and Sir Alan Pim. There were some differences of opinion between Mr. Strickland and Sir Alan Pim and the recommendations finally put forward lean to the side of the latter. The Decree will need a good deal of examination, but at

at first sight appears satisfactory.

4. The Expenditure Advisory Committee in Kenya has recommended a reduction in the duty allowance of the Governor and in the salary of the Chief Justice, both to take place on the occurrence of vacancies. The elected members have given notice that they will raise the point in connection with next years estimate. It seems doubtful whether the recommendation can be accepted, especially as regards the Chief Justice's salary.

5 The advance copy of the Morris Carter Report has been received. Some emendations are being carried out and one copy has been sent to Sir Morris Carter in France. A brief summary of the Report is attached.

J. R. G. 727

29-33.

Mr. Flood.

Sir C. Bottomley.

You ^{should} will see the S. of S's. comments in pencil in the margin overleaf.

Ed. Boyd

22.9.33.

3092/55 Keny 5
13

O.D.
R 15 JUN
D 16

C. O.

Mr. Hooley 15/55
Mr. Kenning 16/35
Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State

The U.S. of State
for the sole purpose
his copies to the
U.S. of State for

DRAFT. 3 p.m.

under your, with
reference to his
note, E 40. 1210/55,
of the 6th of June,
is directed to
inform him that
the proposals of
the Gov. of Kenya
regarding the

(No. 12)
for (12)

and of

instructions on
the acquisition
of township plots
by Indian systems
in para 2 of the
Colonial Office letter
of the 16th of Feb.
(No. 18112/32) have
not yet been
received.

(No. 28
18112/32)

The Director
is being invited to the
matter.

Dowling Street,
16 June, 1933.

36 11

POST MAIL



GOVERNMENT HOUSE
NAIROBI
KENYA

KENYA
NO.

May, 1933.

SECRET

RECEIVED
2 MAY 1933
OFFICE

Consul (30a 3810/33)

106

I have the honour to refer to your Secret Telegram of the 5th April, No.92, and your Despatch No Confidential (2) of the 16th March.

I enclose, for your information, copies of subsequent communications between this Government and the Japanese Consul from which you will observe that the Japanese Government desires to obtain an assurance in terms of general application that their nationals will be afforded the treatment prescribed in the Treaty of Commerce and Navigation.

*No 12
15/10/32*

2. I would draw your attention to paragraphs 6 and 9 of my Confidential Despatch No.109 of the 29th August, 1932, and should be glad of your instructions as to the reply which should be sent to the Consul.

3. The repercussions upon the question of the White Highlands of any admission that Japanese are not to be regarded as Asiatics for the purposes of the local laws and policy of this Colony are no doubt under your consideration. At the time when the Treaty was made the Crown Lands Ordinance of 1915 had not been passed, and the provisions of the Crown Lands Ordinance 1902 merely required that any transfer of land leased under that Ordinance should receive the Governor's approval. As a matter of policy that approval was withheld subsequently to 1906 from any proposed.....

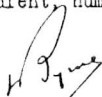
THE RIGHT HONOURABLE,
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

proposed inter-racial transfer of agricultural
land within the Highlands.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER GENERAL.

GOVERNOR.

COPY

LND. 29/1/1/8/4/37

CONFIDENTIAL.

27th April, 1938.

Sir,

With reference to your application for permission to acquire for your own residence the plot and house (No.39/VIII, Mombasa) now owned by Mr. Warren Wright, I have the honour to inform you that, in view of the special considerations attaching to this application and the desire to meet the convenience of the Japanese Government's representative, Government is prepared, as an entirely exceptional case, and without prejudice to the normal procedure adopted in cases where such special considerations do not apply, to withdraw its objection to the transfer of the site and to your occupation of it.

A similar communication has been sent to Mr. Warren Wright.

I have the honour to be,

Sir,

Your obedient servant,

COLONIAL SECRETARY.

S. Kuga Esq.,
Consul for Japan,
Mombasa.

COPY

CONSULATE OF JAPAN.

CONFIDENTIAL.

MOMBASA.

12th April, 1933.

The Hon. The Colonial Secretary,
Nairobi.

Sir,

I have the honour to acknowledge the receipt of your letter No. LND. 29/1/1/8/4/57 of the 7th instant, notifying that your Government has sanctioned the transfer by Mr. Wright to me, as the representative of the Japanese Government, of Mr. Wright's house in Cliffe Avenue.

I understand your letter to mean that I, as Consul for Japan, and as representing the Japanese Government, have permission to acquire or take a lease of this house and plot and that this permission extends to my successors in the office of Consul.

On behalf of my Government and myself I thank you for the permission given and the desire which you express in your letter to meet the convenience of the Japanese Government's representative. At the same time, I should like to draw your attention to the second paragraph of my letter to the Hon'ble the Commissioner of Lands dated the 16th July 1932 and to enquire whether any reply to the question raised therein has been received from the Rt. Hon. The Secretary of State for the Colonies, as I have been asked by the Foreign Office of my Government to ascertain the attitude of your Government with regard to carrying out the terms of the Anglo-Japanese Treaty of Commerce and Navigation, 1911, in so far as the Colony and Protectorate of Kenya are concerned.

I have the honour to be,
Sir,

Your obedient servant,

(Signed) S. Kuga.
Consul for Japan.

Encl. to 12 - 3/12/32

1040

10 Bedford Place
London, W.C. 1

To the Under-Secretary
Colonial Office
Downing Street

My dear Sir:

In connection with work which I am doing I am anxious to see the Reports of a case arising in Kenya over restrictions made by the Land Commissioner concerning sales by auction of residential plots on Mombasa Island, 1928. It is my understanding that a test case was instituted and carried through the High Court of Kenya and the East Africa Appeal Court, and I should very much appreciate it if the Reports in each instance might be made available to me.

Yours very truly,

Marjorie Ruth Dilley
Marjorie Ruth Dilley.

Per Rail 11 April

9

C. O.

- Mr. Priestman. 10/4
- Mr. *Joshi* 10
- Mr. *Hand* 10
- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Beckettley.
- Sir J. Shackburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.



DEMINING STREET,

11 April, 1933.

Sir,

I have, etc., to refer to my secret telegram No. 92 of the 8th of April on the subject of the right of a Japanese subject to purchase for occupation a plot in an area at Mombasa reserved for occupation by Europeans and to transmit to you for your information ^{a copy} ~~copies~~ of the marginally noted ^{letter} ~~correspondence~~ on this question.

DRAFT. Conson.

KENYA

SECRET

Gov.

Fr. Board of Trade 15th March.

2. It is clearly impossible to reconcile the restrictive covenants entered into by the Govern^{ment} of Kenya in regard to certain plots in European residential areas with the obligations accepted by accession to the Treaty of Commerce and Navigation

the United Kingdom
between ~~Uganda~~ *Kenya* and Japan signed at London on the 3rd of April, 1911, but I can come to no other conclusion than

Copy F.O. 16.

that it would be most inopportune at present to make any

~~Any attempt to regularise the position either by legislation or by denunciation of the Treaty would, however, for obvious reasons, be most inopportune at the present time.~~

3. In the circumstances the course of action suggested in my telegram above mentioned seems best *advised* to meet the particular case, without prejudice to any steps which it may become necessary to take if the situation should develop, ~~as is not improbable~~, either because of further Japanese demands or because of renewed Indian protests.

I have, etc.,

(394.) P. OUNLIFFE-LISTER

~~that it would be most inopportune at present to make any~~

~~Any attempt to regularise the position either by legislation or by denunciation of the Treaty would, however, for obvious reasons, be most inopportune at the present time.~~

3. In the circumstances the course of action suggested in my telegram above mentioned seems best adapted to meet the particular case, without prejudice to any steps which it may become necessary to take if the situation should develop, ~~as is not improbable,~~ either because of further Japanese demands or because of renewed Indian protests.

I have, etc.,

(354.) P. OUNLIFFE-LISTER

Mr. Freeston 3/4
Mr. Flood 3.4
Sir C. Bottomley 4.4.
S.H.W. at once 4.4.33.

426

3092/33

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

(Sent 1.30 p.m., 5th April, 1933.)

Secret.
No. 92.

I am satisfied after full discussion with the Secretary of State for Foreign Affairs that the only course practicable if there is no prospect of getting the Japanese Consul to withdraw his application is for you to inform him that the Government of Kenya is prepared to waive its objections to the transfer of the plot concerned. I suggest that any admission of principle should be carefully avoided in communicating with him and that you should represent that his wishes are being acceded to as a special case to oblige the representative of the Government of Japan. A despatch on the wider questions involved will be addressed to you shortly. This communication is with reference to your Confidential despatch No. 23 dated the 25th of February.

I think this is what the S. of S. wishes. A telegram seems needed. J.E.W.F.

Copy to ~~F.O.~~ L.F.F. ref.
B.T.

Recirc. for desp.

Copy to F.O. (F.T.) 7.4.33

543

Any reply to this letter should be addressed to—
THE SECRETARY,
BOARD OF TRADE,
GREAT GEORGE STREET,
WESTMINSTER, S.W.1,
and the following reference number quoted:—

BOARD OF TRADE,
GREAT GEORGE STREET,
WESTMINSTER, S.W.1.

C.R.1. 1353/33.

15th March, 1933.

18/11/32

The Board of Trade present their compliments to The Secretary of State for the Colonies and beg to transmit herewith for information copy of a letter of to-day's date which they have caused to be addressed to

The Under-Secretary of State, Foreign Office, S. W. 1.

W.S.

copy to Secy (9)

Reference to previous correspondence (if any):—

Not

F.O. letter of February 21st (F. 434,484, 23).

3674

44

Any further communication should be addressed to:

THE ASSISTANT SECRETARY,

at the address given opposite

The following letters and number should be quoted:

C.R.T. 1353/33.

Telegraphic Address:

COLASTA, PARL, LONDON.

Telephone No.: Whitehall 5140.



COMMERCIAL RELATIONS AND TREATIES DEPARTMENT.

BOARD OF TRADE.

GREAT GEORGE STREET,

LONDON, S.W. 1.

15th March, 1933.

Sir,

I am directed by the Board of Trade to refer to your letter of the 21st February (F 454/454/23) enclosing copy of correspondence with the Colonial Office regarding the question of the right of a Japanese subject to purchase for occupation a plot in an area at Mombasa reserved for occupation by Europeans. As the Board understand the matter, the Government of Kenya control the development of land generally in the Colony and restrictive covenants of the kind complained of by the Japanese Consul were incorporated in leases relating to the development of the best class of residential districts as a matter of public policy. In other words, the Government of Kenya were acting in this matter in their capacity as a Government and not as private landlords of certain land which happened to be in Government ownership. In these circumstances the

The Under-Secretary of State,
Foreign Office,
S. W. 1.

Board are in agreement with the conclusions reached in the letter of the 21st February addressed by your Department to the Colonial Office, a copy of which was enclosed with your letter under reply.

A copy of this letter is being sent to the Colonial Office.

I have the honour to be,

Sir,

Your obedient Servant,

(Signed) A. H. DUFFIN

45 /

In any further communication on this subject, please quote

No F 454/454/23.

and address—

not to any person by name,

but to—

"The Under-Secretary of State,
Foreign Office,
London, S.W.1."

FOREIGN OFFICE.

S.W.1.

21st February, 1933.

Immediate.

32

Sir,

No 22

18112/32

In reply to your letter No.18112/32 of the 14th ultimo in regard to the question of the right of a Japanese subject to purchase for occupation a plot in an area at Mombasa reserved for occupation by Europeans, I am directed by Secretary Sir John Simon to inform you that he is advised that the correctness of the position which it is proposed to adopt as indicated in your letter, in regard to this question is open to some doubt.

Copy Kenya
to 3800 93

2. The restrictive covenants preventing the occupation of certain plots of land by an Asiatic were, so far as Sir John Simon is aware, attached to the land, not by some private owner or vendor, but by the Government of Kenya themselves.

copy to 2-20 (3)

3. By Article 1 of the Anglo-Japanese Commercial Treaty of 1911, Japanese subjects were placed on the same footing as British subjects in regard to the ownership or occupation of houses and land. The East African Protectorate, including Kenya, acceded to this treaty in 1913 and while, in accordance with their obligations under the treaty, the Government of Kenya have not enacted any general law placing Japanese subjects at a disadvantage as compared with British subjects in Kenya, they did, Sir John Simon understands, in 1918 proceed to lay out and sell certain allotments in Mombasa and to attach thereto restrictive covenants preventing their occupation by Asiatics.

4.

The Under Secretary of State,
Colonial Office.

4. Sir John Simon is advised that this action on the part of the Government of Kenya was scarcely consistent with their obligations under the Convention and that the inconsistency is not diminished by the fact that the restrictions were imposed not by a general law affecting all property in Kenya but by means of private contracts between the Government and the allotment holders regarding certain properties only. Sir John Simon is apprehensive lest the admission of the principle that contracts of this nature, entered into by the Government, do not constitute an infringement of treaties providing for free ownership and occupation of houses and land by the nationals of a foreign Power, might render possible the evasion of such provisions in commercial treaties.

5. If the difficulties described in your letter are explained to the Japanese Consul and he is informed that there is no general law restricting the occupation of land in Kenya by Japanese subjects; that in future no restrictive covenants will be imposed in respect of particular plots and that those which already exist will expire within a given time; it is no doubt possible that the Japanese authorities would be prepared to forgo such strict rights as they can claim under the Anglo-Japanese Commercial Treaty.

6. Should this however not be the case, Sir John Simon is inclined to think that, if the views expressed above are sound, it may be necessary for the Government of Kenya to pass an ordinance removing the restrictions imposed on Japanese subjects as a consequence of the private contracts referred to above, even if this should constitute a breach of these

these contracts and render the Government liable for damages. Possibly legislation might also be passed exempting the Government from such liability.

7. Copies of this letter and of your letter of 14th January are being sent to the Board of Trade with a request for their observations.

I am,

Sir,

Your obedient Servant,

W. A. A. A.