

KENYA

1934

No. 23034 PART I

SUBJECT

CO 533/441

LAND COMMISSION

(SIR W. MORRIS CARTER)

Previous

3096/33

Subsequent

PART II

1. Gov. Bygone tel. 21 (P.S.P) 17 Mch 34. 2
 Gov's personnel of existing hand Joint
 Board. Awaits publication of Report before
 committing himself as to new Board. Re
 par. 1642 of Report, refers to p. 311 of Hutton
 Young Report.
2. To Gov Kya tel. (P.S.P) 1 amsd conv. 19 Mch 34.
 Sir J. Byrne (Col Tel) 15 March 34
 will telegraph replies to questions from Nairobi
 Col Sec Gibraltar
3. Was copy of text of tel duly despd to Nairobi
 on 13 Mch 34

? P.W.K. by

M. Davies: 21/3

J.P. Prentice
 21

J. W. Jones

4. Gov tel (P.S.P) _____ 23 Mch 34
 Agrees with interpretation of records
 in his 3 letters that it will be agreed
 that he should not be committed at this
 stage on question of local Board Air Mail
 letter despd: 23 Mch

The P.S. has a copy of this

? P.W.K. by

M. Davies: 21/3

J.P. Prentice
 21

J. W. Jones

26 June

(2)

A^A To Gov. Tel - copy (copy) 6 March 34

H^B To Gov. (Air Mail letter) (copy) - copy - 20 Feb. 34

- 5a. Gov. Kenya...tel. No. 55.....8th March, 1934. 3
 Agrees in principle to proposed reduction in the number of reserves but considers that the Provincial Commissioner concerned should be consulted as to details before final decision is taken.
- 6a. Gov. Kenya..tel.....8th March, 1934.
 Correction to No. 5.

Mr. Boyd

We have no knowledge (at present) of S. of S.'s letter to Kenya. Pending any further developments, will you keep this against S. of S.'s return?

B. Freestone
 10/3.

Mr. Freestone

The Governor's telegram was sent in reply to a cable sent to him by the S. of S. from the "Dunluce Castle" on the 6th of March which read as follows:-

"Land Report. Do you agree with recommendations for reducing numbers of separate Native Reserves? Secer."

Presumably this question is covered by the S. of S.'s Cabinet memorandum on the Morris Carter Report, and there is no need therefore for further action on this paper. If you agree, it can therefore be put by.

M. Hee

29.3.34

His shd. be entered on the Land Commission
 H.P. & the present registration cancelled

B. Freestone
 31/3 etc

6a. Enquiries regarding "forced labour" in connection with paragraph 2070 & 2071 of Report.

6a. To Sir J. Hayes (P.S.) ————— 26 March 34

7. H. M. M. Moore (SA) (A.M. Mail) — 21st March 34.

States questions regarding records of the Commission have been discussed with S. J. S. & state position regarding the London Board.

8. Sir J. Byrne (R.P. Bond) — 22nd March 34

States as to composition of local Board & Sir R. Williams negotiations to exercise his option over the Eldon & Goring Syndicate's properties.

9. Sir J. Byrne (R.P.) (A.M. Mail) — 23 March 34

States has had an interview with Mr. Seay, the Attorney General & Comm. of Lords who are anxious to see question of composition & personnel of the Land Trust Board should receive most careful consideration & sends a copy of memorandum handed to him at the interview.

Sir John Jeffrey.

I think we wd telegraph at once to Byrne. & I am sure anyone in the office will agree that to attempt to abolish the Bd. at top tier wd. tend as in hopelessly horrible.

If you agree telegraph (P & P) as in Dept memo.

P. L.

5/4

After discussion with Mr. Bond I have formed the best telegram. We entirely agree that this must be a Board, and I do not think that Sir Jeffrey need be consulted before we tell you. He showed me as soon as he comes back on Monday.

I send a letter which Mr. Bond has had from Mr. Moore on the same point.

The copy has been taken of the part of the letter of March 22nd relating to Sir R. Williams - the

point has been made
sub.

W.C.B.
6.4.34
Africa

See
9/14

I have seen that the
telegram has been sent

Esther
13/4/34

10. To Governor Tel. (P.P.) — 6 April 34

10B. Governor Byrne Tel. (P.P.) — 11 April 34

Transmits news of Provincial Commissioners
regarding the Board, suggestions regarding Cabinet
Memorandum & statements to the House.

With reference to No. 11 and No. 9, it
appears that the people in Kenya would prefer
not to have a Board at all, but it is quite
evident that there must be a Board, and the
Governor has been informed so in the S. of S's
telegram of the 6th of April (No. 10). The
passage in the Committee's Report to which
reference is made, paragraph 1526, proviso 2(a),
deals with the nature of the authority which is
required before land can be "set apart" from
native

native reserves and says that a Provincial
Commissioner should have power to 'set apart' land for
public purposes or as a step preliminary to the issue
of a lease which is, in his opinion, for the benefit
of natives resident in the tribal unit concerned,
either because of the use to which the land is to be
put, or the revenue to be expected from the land.
The special proviso to which reference is made is that
if the land set apart is over 10 acres, the Lands
Trust Board shall have the power to veto, if it
considers that the special purpose for which the land
is to be set apart is not such as will primarily be
of benefit to the natives. The people in Kenya
now suggest that this veto should be subject to
appeal to the S. of S. I do not myself think that
there is any real necessity for such provision for
appeal. For one thing, it puts the S. of S. in a
strange position as regards Kenya Colony. Normally
the S. of S., as such, does not enter into the
constitutional machinery of a Colony, and to make
him the final Court of Appeal from a local Board
considering questions of what land should or should
not be set apart from a native reserve, on the ground
that it is "set apart" for the benefit of the native
population is to put him in a most awkward position.
At the same time, one must recognize that Kenya is
a rather special sort of place, and it might be that
the notion would not in practice prove ^{or K}unworkable.
I think, however, that if there is to be an appeal,
it should be to the Governor, who might, perhaps, be
required to get the approval of the S. of S. for
"setting apart" anything over, say, 50 or 100 acres.
I do not even like this modification, and would
prefer

prefer to leave it to the Governor who, after all, is responsible to the S. of S.

It is quite likely that there will be difficulties in the practical application of the proposed classification of lands, and it would certainly not be easy to get the Commission's proposals into the phraseology of an Order-in-Council or a local Ordinance, but such difficulties have a habit of solving themselves when the actual drafting of the Instruments is being undertaken.

The Cabinet Memorandum is not, of course, a public document, and it will certainly not be made public either in this country or in Kenya. This being so, the Governor need not feel any apprehension as to any phraseology that may be adopted in it. In point of fact, the Memorandum merely points out that a Board in London would be unsound in principle and unworkable in practice, and says "if the Board is to function effectively it must reside in Kenya."

(Draft memo para 27)

With regard to the composition of the Board, or the alternatives to a London Board, the position is that the S. of S. is of opinion that there must be a Board, but he has certainly not come to any conclusion with regard to its composition. He has suggested to the Governor that the new Board should be composed of the Chief Native Commissioner as Chairman, the two members of the Legislative Council appointed to represent native interests, and two independent persons who are neither officers of Government nor members of the Legislative Council. In Conversation with Mr. Wade, the Chief Native Commissioner, Mr. Wade expressed

expressed the opinion that such a Board would command confidence and would in principle be less likely than any other to be faced immediately with a demand for native representation on the Board. Mr. Wade said that such a demand would certainly be put forward from the more or less educated sections of the Kikuyu, and if a Board as at present constituted were perpetuated such a demand would have some logical force and probably be more insistent than ^{in the case of} ~~would~~ an independent Board such as the S. of S. is inclined to.

So far, then, the S. of S. is not committed in any way to the composition of the Board. He has expressed his views, and we know that Kenya is busy considering what sort of Board is necessary. They realise that the existence of the Local Board must be accepted, but they want more Government strength. Also it appears from the Governor's letter of the 22nd of March (No.8) that what they really are asking for is time to consider and put in their local recommendations. As the Governor says, there is no particular cause to expect that the Board will act unreasonably, and if the people in Kenya would only accept that, all should run fairly smoothly.

The last sentence of the Governor's telegram deserves serious consideration. The only point on which a decision has been taken really is to have a local Land Board instead of one in London, though, of course, the general decision to accept the report as it stands, holds good. The report will be out for ^{a few days} ~~some time~~ before any ^(public) announcement is made, and if ^(in Kenya) anything serious is put up ^(and) by way of objection, there will be time for such objections to be considered.

With regard to strengthening the local Board

on

on the Government side, I should very much like to have the views of the Governor and his advisers. The only way that I can see of strengthening it in Government representatives would be to add a few more Government officials, such as the Director of Agriculture and the Attorney-General. But if the Board is loaded with officials, it is obvious that it won't be independent of Government. Personally, I don't regard its independence as a matter of really high import, because Government ought to be the safeguard of native rights; but I have seen in 1901 has grown up in Kenya that Government should be trusted and has to be hedged round with independent boards.

J.C.G. 16.4.34

(see now the letter of 6 April, attached). The telegram is of course later and supersedes it; but it is of interest to see that the Governor & his chief advisers have no criticisms of the latitud memo.)

I submit a suggested draft reply to the telegram for consideration: I do not know whether it represents the S. of G.'s views or not.

The last sentence of the first para of the Hon's draft attracts me a great deal. There would be much gained by an authoritative pronouncement that the care of native interests is an important duty of the Govt. of Kenya. There would be much lost by an implication that the Govt. of Kenya is not interested or not to be trusted with these interests.

I have not read the

expressly, to the S. of G. to
fact, there is an appeal to him
on every thing.

W.C.S.

18.4.34

I send this on at once.

J.C.G.
18/4

12. Sir J. Byrnes (P.P.) (H.M. Mail) (copy) 6.11.1934

States has no suggestions or criticisms to offer regarding Cabinet Memos & will endeavour to offer constructive suggestions about Land Trust Board.

13 To Gov. Tel. — 11 answer — 14 April 34

Yesterday the Secretary of State had a long talk with Sir Morris Carter; the telegram (No. 1 on file) was sent after the discussion.

The Secretary of State also directed that the Governor should be asked by telegram to get ahead with drafting the Bill to amend the Native Lands Trust Ordinance so as to enable mining leases to be issued in accordance with the new procedure. Draft telegram herewith.

(The Secretary of State said he did not wish to see the Bill in draft)

J.C.G.
19.4.

W.C.S. 19.4.34

14 To Gov Kenya Tel Pt. K. P. 19 April 1934

15 Governor Kenya ~~Mr. King~~ (Mr. Marshall) — 22 March 34
Rans. an extract from notes of a discussion with the
S. of S. on 16 Feb 9 submits proposals for the extinction of
native rights outside land of Class A, B, or C.

S. of S. will wish to see. No reply seems
necessary, but the point must be borne in
mind when we come to consider the O. in C.

? Put by

Shaw
12/4

The S. of S. has seen and has no comments to make
at present.

2.14.34
164.

Then put by, for the present, as
proposed. When the time comes
up for decision, we shall be
done to have the Report of the S. of S.
available for reference.

20 APR 16 To Gov. (P. P.) Tel. ———— 19 April 34
16 To Gov. (P. P.) Tel. ———— 20 April 34
W. of S. 18. 4. 34

17. Extract from minute sent to Private Secy. 19/4/34
S. of S. saw this, but made no comment.

Put by

Shaw
23/4 34

not reviewed.

18 Sir J. Carter

22 APR 34

Furnishes his views on the last section of the Cabinet memorandum regarding the recommendation that money due to deceased carriers should be applied as compensation for injuries which natives sustained by alienation of land.

(See P.S.'s note on the letter).

? P. S. by

S. J. Carter
23/4

24/4

Yes - the Alliance: have gone to the

Colonist.

24.4.34

24/4/34

Mr. Ryan

R 297

Sir J. Carter

Sir C. Bottigley:

Mr. Ryan of the Treasury rang me up late last night in a state of some wrath about the recommendations regarding finance in the Morris Carter Report. He wanted to know under what terms of reference they thought fit to incline the recommendation that E.M.C. should pay for the carrier gratuity money. I said that in my opinion they were quite justified by terms 3 and 4 of their terms of reference which directed them to make recommendations for the adequate settlement of claims, whether by legislation or otherwise, but Mr. Ryan said that while this might be so, and while the Commission might have been justified in saying that they thought it ought to pay, ~~nevertheless~~ they had a right to drag out the carriers' claims, which they must have known had been the subject of agreement between the Treasury, the Office of the Colonial Secretary and the Department of Governmental Services, and that the Commission was not empowered to do this now, because both Sir Morris Carter and I stipulated that neither and I left it at that, regarding that no doubt they thought that they had a perfect right to call attention to this dispute itself, the existence of which is well known to everybody in Kenya. I did not tell Mr. Ryan that Sir Morris Carter had told me that he rather ^{feared} ~~feared~~ this recommendation would flutter some dove-cots, but in his opinion the opportunity of getting the Kenya grievance forward was one that ought not to be missed, and ~~in his opinion~~ it would be only right and proper that the money should be paid over and used as the Commission recommend.

Re J. P. L. ...

25.4.34

25.4.34

25.4.34

25.4.34

26 Copy of Cmd 4580.

26^A Copy of Cmd 4556 (Repat).

27 Distribution list of Cmd 4556 & Cmd 4580.

DESTROYED UNDER STATUTE

28 To Sir W. M. Carter - (4/6 Cmd 4580) - 14 May 34

29 To Tanganyika Commissions - (4/6 Cmd 4580) - 14 May 34
(Draft on 20028/34).

30 To T. S. Nettleton (S.O) (4/6 Cmd 4580) - 14 May 34
(Draft on 23168/34).

It will be necessary to say something at one to Kenya
9 Mr. Keating has prepared the attached draft despatch. The
idea of asking for a periodical return is that the S. ops. may
be troubled with enquiries as to what is being done and the return
will give some information anyhow.

J. S. W. Head

By time is short ^{14.5.34} do not think we
need trouble the S. H. with these 28,
which I have found.

J. S. W.

14.5.34

By air mail
15/24

31 To Kenya, 375 (4/6 Cmd 4580) memo 15 1034
15/1

J. C. W. Hobley

DESTROYED UNDER STATUTE

Also, receipt of copy of Repat.

16 May

? hit by.

G. R. Killis

17.5.34

33 Sir Morris Carter (5.0) _____ 20 May 34
Furnishes his views as to the constitution of the
Lands Trust Board.

34 Sir J. Byrne (P.V.) _____ 10 May 34.
Furnishes remarks regarding the constitution of the
Lands Trust Board & states bill to deal with mining
leases is being sent home.

I have acknowledged No. 33 promising that
it should be brought to the Secretary of State's
notice.

No. 34, paragraph 12. The letters enclosed
at the Commission is unanimous in
the Secretary of State's interpretation
of 1526(c)2 - see No. 13 on file; i.e.
that the Lands Trust Board will not be justified
in vetoing "a setting apart" for mining purposes
merely on the ground that mining is not
primarily in the interests of the natives.

Captain Wilson's letter is not very clear.
Paragraph 1526 does not provide for an appeal
to the Secretary of State against the Lands
Trust Board's veto. He is no doubt referring to
the recommendation in paragraph 1521, which is
repeated in 1539; namely, that the Board's veto
might, in given conditions, be circumvented by
invoking the Land Acquisition Act, the Secretary
of State's approval having first been obtained.

Paragraphs 3 to 5. The senior officials
support Mr. Moore (No.7) and the Provincial
Commissioners (No.11) in pressing for the
inclusion of a strong Government element in the
personnel of the Lands Trust Board. This is
flatly opposed to Sir Morris Carter's view set
out in No. 33. The difference of opinion on
this point is, of course, fundamental. The
officials

officials in Kenya wish the Board to be regarded
merely as the instrument by which the Kenya Government
discharges one part (i.e. the "protective") of its
responsibilities towards the natives and their lands.
The Commission, as interpreted by its Chairman,
envisages a Board which shall itself discharge this
"protective" function independently of the local
Government.

The decision must, of course, rest with the
Secretary of State, who may wish for a discussion,
but in any event, there is much force in Sir Morris
Carter's plea that the Chief Justice, not the Chief
Native Commissioner, should be Chairman of the Board.
It is difficult to see how the C.N.C. could be
expected to exercise an independent judgment quâ
Chairman in a case put forward by himself quâ C.N.C.
And, in the meantime, no harm would be done if the
substance of Sir Morris's letter were telegraphed to
Sir Joseph Byrne.

Paragraph 5. The few weeks' delay may not
matter to Kenya, but Sir Robert Williams and others
^{may} take a different view. The draft Ordinance, however,
should be received by next week's air mail; and
unless it calls for extensive criticism, it may be
possible to telegraph directions for its introduction
into the present session of Legislative Council.
(See the Secretary of State's intentions as expressed
in No. 14 on the file).

L.B. Austin
24/5
(It may not be irrelevant to recall the "Times"
suggestion - "It may well prove advisable to regard
the membership of the Board as a kind of legal
office, to be properly remunerated")

on 25/2/6

As Mr. Freeston says the decision on this matter must rest with the Secretary of State, who has been into the matter in Kenya and considered it since he left. In No.1 on this file the Governor pointed out that the composition of the Board was of paramount importance and in No.4 the Governor again expressed the hope that he should not be committed as to the composition and powers of the local Board. In No.7 Mr. Moore raises the question from his point of view. He has doubts whether the powers given to the Board could be handed over to a local Board unless there was Govt. representation on it. He goes on that the grounds for objecting to the London Board are equally applicable to the local one, namely, that they cannot be reconciled with the ultimate responsibility of the Governor and the Secretary of State for the proper administration and development of the areas in question. It has been decided to get rid of the idea of a London Board and what we are now concerned with is the future composition of the Kenya one.

X Sir Morris Carter takes the view that no executive Govt. Official should be on the Board and that in his opinion the Board should be "real trustees independent of the local Govt," and one in which the natives should be able to have confidence.

This goes clean to the root of the matter. In no place that I can think of except Kenya is it suggested that the Govt. is incapable

of

13
of governing and requires to be tied up by mandatory Ordinances (such as the Lands Trust Ordinance) and watched and hampered at every turn by the existence of Boards or other independent bodies. I know that the theory has gone abroad that in the matter of relations with natives the Govt. of Kenya is suspect and cannot be trusted to give the native population any kind of a square deal. In the past, it must be admitted, there has been some foundation for this view, but I submit that we should not always live in the past but should aim at devising something that should work for the present and for the future. If the Governor and his officials can be trusted, (and if they are not trusted they ought to be removed) then the responsibility for looking after the interests of His Majesty's black subjects must fall on the Governor, and it is not proper to attempt to delegate that responsibility on the one hand, or to set up a body to relieve the Governor of that responsibility and exercise his powers for him on the other. For what my opinion is worth, I am convinced that the only satisfactory solution is to recognise that the Governor and the Govt. are the people responsible for looking after the interests of the natives.

The Chief Native Commissioner is the Governor's adviser on native affairs inter alia. But he is also the man whose duty it is to see that the interests of the native population are properly looked after and in my opinion he is the man of all others who should be Chairman of the Board. He can be trusted to represent the native point of view quite as fully as the "native" members of Council. To argue that

that the Governor and the Chief Native
Commissioner ^{cannot} ~~be~~ be trusted with
looking after the natives is little short of an
insult to them and betrays the most regrettable
attitude of mind towards Kenya.

In short, while it is perhaps early
to say anything definite, my present opinion is
that whatever happens we should take the line
now that the responsibility for safeguarding
native interests and native lands belongs to the
Govt. of Kenya whether it chooses to exercise
responsibility through a Board or direct.
committed to a Board of sorts and it
what if the Govt. is to be able to
shoulder what I regard as its proper
responsibility, that Board must be composed to
some extent of Govt. Officials. Anything else
would lead to confusion, friction, and chaos.
It is no use saying that the natives would have
no confidence in a Govt. Board. They have got
to be trained to have confidence. Of course,
people like Mr. MacGregor-Ross will be able to
produce lots of opinion to the effect that a
Govt. Board commands nobody's confidence, but
in the interests of ~~the~~ same Govt. ⁱⁿ of Kenya I
think that all such expressions of opinion should
be politely disregarded. In other words, the
Govt. of Kenya rests with the Governor and we
now have a chance of getting back to that
cardinal principle in our colonial policy as
far as regards land in Kenya.

A
It might be as well to telegraph Sir
Morris Carter's suggestions to the Govt. but I

14
am inclined not to do so, at any rate until we get
something further from the Governor.

11.6.55
A.S.

A. The principle is excellent, but it is not
every Governor of Kenya who can, or cares to,
maintain an absolutely independent
position. While I should welcome
a decision on the lines now proposed
locally - among other things a
vote of confidence in Sir J. Byrom -
it may not be the best way of securing
a respite from criticism. But it is
the best way of getting well qualified
men.

W.C.S.
25-55.

B. A decision on the lines now proposed by
Sir J. Byrom might provoke criticism
of an unbalanced kind and the result of any
proposal which does not fit in a broader context
with Sir Morris Carter's opinion that the Governor
shall be "independent of the local Government".

It is one thing for a Justice, who
administers a defined code of law to be, in a sense,
independent. It is another matter for independence
to be conferred on a non-judicial body which
will make decisions on important issues in
the administrative field.

Divided responsibility, dual control, independence
in empire, two Kings in Bombay,

— it is an old story. These Kings do
not work. The protection of native interests
is not a matter for an independent body,
it seems to me to be the duty of the
State Office to stand firmly for the
due discharge of responsibility, and that which
will work for the state.

It is not the case that we are
at all anxious to have a separate
body. The main thing is to
have Mr. Carter as being in
charge.

RM
28/5/34

Confidential

Sir J. Meffry.

Will you discuss this in the Dept.
I don't think I should much object to
the proposed Board, which gives an
unofficial majority. I suppose he would
a P.C. to give to the benefit of
local administrative experience.

I am rather surprised that such
a Board wd. be acceptable in
Kings. I should have thought the
desires members wd. object to their
two members being suppressed,
two Govt. officials (in addition to C.W.C.)
being retained. But I am pretty sure
that the elected members have got to
be excluded.

RM
25/5

Sir J. Meffry

The S. A. had not seen the minutes
taken on the day of the Governor's letter. There is
general acceptance in the Office of the
proposed constitution of the Board and
perhaps discussion is not now wanted,
unless on the question of the different

Chairmanship, proposed
by Sir M. Carter.

It would involve Sir M.
Carter and half our critics
here. I do not myself like
C.J. being concerned in
any way with questions which
have an administrative character,
and it would very greatly impair
the Governor's authority

authority - during it, in fact, if
we got a C.J. of the type which
delights in opposing the Executive.

The other half of our critics
would say that this is just the
sort of independent position
which the Joint Select C^o
wished the C.N.C. to hold.

The suggestion might be
sent to the Governor, but I
do not much like it.

W.C.S. 29.5.34.

I regard it as an unworkable suggestion.
The C.J., while he is one of the advanced type
suggestion above, or while he is one or more from
Heaven, could sit in judgment on the
Governor's administrative proposals. But Sir
Thomas Carter has gone to the end in regard
to the Land Trust Board or its powers.
The suggestion that

16
SIR J. MAFFEY.

I submit a draft private and personal telegram
based closely on the general directions given by the
Secretary of State when we saw him yesterday.

The variations are as follows:-

(1) The words "Chief Native Commissioner attending
meetings in capacity of liaison officer" is put in
so as to do full justice to Sir M. Carter's proposal.
Arising out of this, research has shown that Mr. Amery
at one time suggested that the Chief Justice might be
Chairman of the Board. Please see ^{No} paragraph 6 in
file X/1.027/28 where the Chief Justice was suggested
as an alternative to a specially appointed officer
to be found from outside. Sir E. Grigg took
exception to this, partly on the ground that the
Chief Justice would not be prepared to accept the
Chairmanship of a Board which has an executive
function. (No. 63).

[It has to be remembered that at that time
Mr. Amery had before him the fact that the Hilton
Young Commission, which reported at the end of 1928,
contemplated (with the appointment of a Governor-
General) an unofficial majority in ^{the Legislative Council} Kenya and that,
with the exception of the Chairman, the Commission
were about to make special representations in regard
to the protection of native lands. In the letter
which they finally sent, these members of the
Commission definitely attacked the Native Lands
Trust Bill as it then stood.]

(2) It would ^{be} altogether accurate to attribute
the constitution of the present Board, with its
official element, to the Labour Government. An
unofficial element had been contemplated from the
very beginning in 1927 and remained through various
alterations.

and 3234

20 p: 340

alterations of the ^{relative} members of officials and unofficials. It ~~was~~ true, however, that the Board, as now constituted, was finally approved by Lord Passfield. Sir E. Grigg's reference to the fact that the present Board has largely executive functions has some bearing on this point, as with such functions there is more reason for an official element. I do not think that this at all weakens the case, and I record the two points, not so much as being relevant to this private and personal telegram, but in order that they may be given whatever weight they may deserve when the matter gets beyond the private and personal stage.

LCS 25.5.34

- 35 Tel 16 Gov Kenya (Private & Personal) con 1st June
 Parliamentary question by Mr. D. Greenfell - 23/6
 No 1 on P.P. file
 Parliamentary question by Mr. D. Greenfell - No 2 on P.P. file
 36. Extract from (P.C.) letter from Sir J. Byrnes to S. of S.
 dated 31st May 34
 37. Extract from (P.C.) letter from Sir J. Byrnes to S. of S.
 dated 31st May 34
 38. Extract from letter from S. of S. to Sir J. Byrnes dated
 11th June 34

Put by
 J. D. Martin
 30/6 at

Recd. Mr. D. Martin

Please see 35. ? any

remains necessary

& Pacific union no
 copy of main ?

Yes, we can wait (This is a relevant part
 of about a month ago
 in the draft about the Native Lands Trust
 (Amendment) Ord 4.)

J. D. Martin
 5/7 at

39. Sir J. Byrnes 5/6 (Copy) P.C. (Personal) 28 June 34

Summarises views of Mr. Wilson & Mr. Hornstead on the
 personnel of the Land Trust Board & states they agree with Sir J.
 Byrnes accepting they do not want a Judge as Chairman.

40. Note & documents regarding the position as to the
 reservation of Kenya highlands
 C. D. Highlands Committee

X 41 Copy of Official Report of Parliamentary Debates, H of C
 Thursday 12th July 34

39 can be ? put by

40. This was asked for by S. of S. yesterday morning.
 The memo
 It is taken verbatim from a note of 10.6.34
 by Mr. Parkinson on 16.5.34. It has already
 been card-indexed, & may be ? put by.

41. D.R. There are various corrections to
 be made; Mr. Boyd has the list. The only
 one of real importance is in col. 589.

J. D. Martin
 13/7

AIR MAIL 7/10 2% Kenya 5/10 (copy to Mr. D. Martin) 16 JUL 1934

Deep Section
to make sure
that Col. 5044
is amended in
copy transmitted
to Kenya. *ME*

to Kenya 504 (with copies transmitted) 19 JUL 1934
to Kenya 504 (copies for date of 19/7) 23 JULY 1934
AIR MAIL 24/7

Governor Bygone Tel 1146 29 June 34
Requests may be filled with 50 copies of Comd. 4500.
Enclosure on head Commissioner Report.

DESTROYED UNDER STATUTE
Whitney

Can you obtain them in time for
next week's Annual (Tuesday)?

W. Freeston
29/6

Mr Freeston,

Yes - 50 copies herewith. S.O.
have been told that the C.A. will pay for
them. ? The C.A. should be informed.

W. Freeston
Library
30/6/34

299

Please send them off by Air Mail *F* ref 25

Then return to me - a q^{ty} of cost.

W. Freeston
30.12

By air mail 31/7/34 *Lab* To Kenya, 524 (w/50 copies of Comd. 4500) A/1 3 JUL 1934
(as answered)

W. Freeston

Send copy of 25, with the attached above note
in orig. to CA, saying that the copies were
despatched by air mail of 24th July, a request
then to meet the Stationery Office charges from
Kenya's local funds.

Copy above (without encl) to Gen. Lt. ref. 2
W. Freeston 21/7 34

47 To S. U. (with + some note) 6/7/34

48 To Kemp, 546 (w/c^m) A/1 - 6 JUL 1934

49 The Archbishop of Canterbury (copy) — 10 July '34

States his views regarding the proposed distribution of land between different races & the adequacy of the machinery which is proposed to set up for the protection of native rights on lands assigned to them.

50 1st Lt. of Canterbury (copy) — uncorr. — 13 July '34

51 To Carter (s.o) — 14th July '34

52 Sir M. Carter (s.o) — 18th July '34

States as to his letter to 'The Times'

53. Extract from 'The Times' of 19 July '34
(letter from Sir M. Carter)

54 To Sir M. Carter (s.o) — 52 uncorr. — 19th July '34.

DESTROYED UNDER STATUTE

S. C. Campbell

This morning I had a talk with Mr. E. B. Horne who is just home on retirement from the position of Provincial Commissioner in Kikuyu Province. (He has spent about 23 years of his service in that Province.)

He told me (a) that in his opinion the Morris Carter Report gave the Kikuyu a "very square deal"; (b) shortly before leaving his Province he had held a meeting of representatives from all the local Native Councils at which he explained the Report in broad outline and announced that he had arranged for the District Officers to go into details with their people in Baraza. He added that the Kikuyu are taking a keen and intelligent interest in the Report and he has heard no expression of general dissatisfaction. He was not inclined to attach very much importance to the telegram of protest from Koinange whose right to represent the Kikuyu is large he disputes.

? Attach to Land Commission pp

B. Smith
17/7

S. C. Campbell
17.7

W.C.S. 17.7.34

R. 237

17/7

Times
10.7.34

20' 53

LAND IN KENYA

TRUST BOARD AND NATIVES

TO THE EDITOR OF THE TIMES

Sir,—In the Official Report on Parliamentary Debates in the House of Commons, on the occasion of the consideration of the Colonial Office Vote, an hon. member is reported to have said (July 12, page 578):—

I welcome what the Right Honourable gentleman said about the Land Board sitting in London. The Morris Carter Commission had no faith whatever that the people in Kenya knew how to be fair. They had no confidence in Kenya's impartiality.

If these remarks are to be understood in the sense that there is a statement in the Kenya Land Commission Report expressing these views, I am not aware of it. If, however, the remarks are to be taken merely as an inference drawn from our preference for a Lands Trust Board sitting in England and are meant to imply that the Commission considered that a Board of fair-minded and impartial men could not be found in Kenya, I submit that the inference is entirely erroneous.

The matter is dealt with in Chapter V of the Report, in which we state

that we recommend that the duties of administration and control (the "constructive need") should be the function of the Government, and that the duties of the Board should be limited to the protection and preservation of the rights of natives with regard to land (the "protective need").

This being so, we have said that the point of greatest importance is that the Board should command the confidence of the natives, and that it is essential that it should be removed from the sphere of local politics, a provision which we felt greatly narrowed the field of choice in so small a community.

But the fact that we thought there might be difficulty in finding in Kenya a Board in whom the natives would have confidence is an entirely different thing from whether there would be any difficulty in finding in Kenya a Board in whom the Commission would have confidence or one in which confidence ought to be felt.

Speaking for myself, and I feel sure that my colleagues hold the same views, I am sure that there should be no difficulty in finding in Kenya men to sit on the Board in whom I should have every confidence and in whom I consider every confidence ought to be felt.

It should be unnecessary for me to say that I have met in Kenya men who are as fair-minded as any who could be found there.

These trustees are to be found to represent particular interests and it is recommended that they should not be chosen as politicians who are at least equally concerned with other interests, such as representations should, I think, be made as only right and proper and as a reflection on the fair-mindedness and impartiality of the people of the country.

I am, Sir, yours faithfully,
WM. MORRIS CARTER, Chairman,
Kenya Land Commission,
10, Bedford Street, W.I.

52
25 Upper Berkeley Street
W. 1. 21

19th July 1934

Dear Sir John

Many thanks for your letter
of yesterday. I have written the letter and hope
that it will be published without delay.

You will see that I have not said anything
about the impartiality of the other members of the
Commission, as the Secretary of State left the matter
entirely to me.

Before I received your letter I had thought
of doing so but had come to the conclusion that in
a letter on the subject of a debate in which the
fairness of the unanimous proposals of a Com-

mission was in question it might favour too much
of giving the Commission a good 'chit' in this
respect, if one member questioned the impartiality
of the others.

As you know I bore testimony to my
colleagues' impartiality at the East African dinner.

Yours sincerely
W. H. Carter

Answer 3 No 52

5/22

17th July, 1934,

Dear Carter,

Reference our talk this afternoon on the subject of Mr. Linn's remarks in the House of Commons as reported on page 576 of Hansard of 17th July, 1934.

The Secretary of State is fully in agreement with your proposal to write to the "Times" on the lines you suggested to me. I doubt you will weigh your words so that you cannot be defeated by any quotation from your own Report being brought up as ammunition against you. The Secretary of State could not see you could probably like to mention the fact that I have provided you with the most careful and impartial people the Government had at its disposal. The Secretary of State does not wish to see in advance anything you say that is cogent, but desires the matter entirely in your hands.

Yours sincerely,

(Sgd) J. L. Maffey.

12th July, 1934.

My dear Archbishop.

Many thanks for your letter of the 10th of July.

You will have seen the report of the debate in the House of Commons in which I dealt pretty fully with both questions you raise. On the question of whether the Board should sit in London or Kenya, I note that you are inclined to change the view which you provisionally expressed when we discussed this matter. The alternatives were carefully considered by the Cabinet and we all came to the conclusion that the arguments in favour of a Board in Kenya were unanswerable. You will see that the same view was taken by, I think, every speaker except one who spoke on the subject in the debate yesterday. I think perhaps there is one point which you have overlooked. It is proposed to declare the boundaries of the reserves by Order-in-Council here. This was a recommendation of the Commission which the Government at home

have thought very sound. That more than anything else should, I think, give a sense of complete security, since it makes it impossible to alter the boundaries of the Highlands by local legislation.

I am not sure whether I understand aright the point you put about the proposed distribution of the land. The Commission was directed to do two things in this connection. In the first place it was directed to recommend what land should be added to the reserves to satisfy legal, historical and equitable claims, and also to provide other land for future demands requirements. The Commission has also been directed to recommend for large additions under both these heads, and I am prepared to carry out these recommendations. You would, I am sure, agree that these additions ought to be made. In the second place the Commission was directed to define the boundaries of the Highlands. It was not within the terms of reference of the

the Commission to reopen the whole question of the European Highlands. If you compare the map in the main report with the map which you will find with the evidence, and which sets out the various proposals which have been made from time to time to delimit these boundaries, you will find that in fact the delimitation of the Commission includes a smaller area of agricultural land than the area contained in any of the other proposals. If it is suggested that we should now reopen the whole question of the Highlands, that, as I explained in my speech last night, would mean a variation of all the pledges of the last thirty years and more. Is that seriously contemplated?

Apart from the question of the Highlands, the pieces of local legislation will be required. The first is an Ordinance to give power to grant mining leases in the way the Commission recommend. I think everyone agrees that this alternative ought to be legislated before any mining leases are given, and I have authorized the Kenya Government

to introduce the necessary Ordinance immediately, and I have had the advantage of Sir Morris Carter reviewing the draft. The second Ordinance, which will take a considerable time to prepare, will carry out the detailed recommendations of the Commission for the amendment of the Lands Trust Ordinance. Here again I think there is general agreement as to the division of functions between the Board and officers of Government. The recommendations were strongly approved in the debate last night. But that Ordinance will be a lengthy and complicated business and it will be some time before it can be drafted.

Yours sincerely,
 (Sgd.) P CUNLIFFE-LISTER

75
 A9

Lambeth Palace, S.E.

10th July, 1964.

My dear Cunliffe-Lister,

In the debate on the Colonial Office vote which will, I understand, take place in the House of Commons on Thursday, there will no doubt be a discussion of the Report of the Kenya Land Commission. I have not had time to master the details of the voluminous report but I have read the summary of its recommendations and the proposals of the Government regarding them in the White Paper and have taken counsel with some of those who have knowledge of these questions.

Answered 15 July 64

There is, I believe, general agreement that Sir Morris Carter and his colleagues have produced a report which is not only exceedingly thorough in its examination of the subject but is a sincere attempt to arrive at a just settlement between the races. Its chief recommendations go a long way towards that protection of native rights in land which practically all sections of public opinion have for some years recognised to be necessary.

The Report obviously raises two questions of great importance for native welfare. The first is whether the

the proposed distribution of land as between the different races is equitable and the second whether the machinery which it is proposed to set up for the protection of native rights in the lands assigned to them is adequate for the purpose.)

In regard to the first of these questions there will probably be a general disposition to acquiesce in the conclusions reached by a commission which has devoted prolonged labour to examination of the problem. At the same time the decisions to be taken are so momentous, that I hope that before the Government gives definite effect to the recommendations of the Commission by orders in council or legislation in Kenya sufficient time will be allowed for those interested in the matter to make representations to His Majesty's Government in regard to any points which, in their view, need further consideration and also for ascertaining so far as possible native feeling in regard to the proposals. I feel justified in pressing for this since in the debate in the House of Lords in February I urged very strongly that action should not be taken on the Report of the Commission until time and opportunity had been given for full public consideration of the Report. The Government will be in a much stronger position if its final decisions are reached in the light of comment and criticism in regard

16
regard to the proposals by those who are entitled or competent to express an opinion.

As regards the second question of the adequacy of the proposed machinery for protecting native rights in the lands assigned to them I find a widespread anxiety regarding the decision of His Majesty's Government to depart from the suggestion of the Commission that the Land Board should be constituted in London. A main purpose of the Commission was to afford the most complete security possible to the natives in respect of their lands, the necessity for which has been recognised on all sides since the Parliamentary Commission presided over by Mr. Ormsby Gore called attention to the matter some years ago. In the opinion of a number of those who have devoted study to these questions this object will be far more effectively secured by a Land Trust Board in London than by a local board in Kenya. I shall not attempt now to state the reasons for this view nor to meet the objections which might be urged against it and which are hinted at in the White Paper. I would most urgently beg, however, that this matter may be further considered.

The recommendations of the Commission go so

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The recommendations of the Commission go so

far towards providing a settlement of the land question in Kenya which would have the support of all parties and all sections of responsible opinion in this country that it seems desirable that time should be allowed to reach the largest possible measure of agreement and to remove such anxieties as still exist in the minds of those who desire to be assured that in a question so vital to the natives as their land we are fully ~~discharging~~ discharging our responsibilities towards them.

Yours sincerely,

(SD.) COSMO CANTUAR.

The Rt. Hon.
Sir Philip Cunliffe-Lister, GBE., MP.

23034 / 3rd Kenya.

C. O.

Mr. Gibbs 4/7
Mr. Vanning 4/7/24
Mr.

G. D.
R 4=JUL
D 5 4

H M
6 July, 1924

Mr. Parkinson.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Gentlemen,

I am to

transmit to you a copy of
a telegram from the Gov. of

Kenya ~~together with~~ ^{and} an
advice note, in original,

from the Stationery Office,
regarding the supply to

the Govt. of Kenya of
50 copies of Cmd. 4580.

(Conclusions of His Majesty's
Govt. on the Kenya Land
Commission Report)

2. Copies of the

Cmd. were dispatched

DRAFT.

The LA for the lols.

Tel. to Gov Kenya 20/6/24 (1)
Advice Note
(in orig)

Copy of small & Kenya (4)

X 1 of

FURTHER ACTION.

Copy of small
to Kenya Aff

by the air mail of the
14th of July, and I
am to ask you to
meet the H.M. Stationery
Office charges from
Kenya for

I am,

(Signed) L. B. FREESTON

C.D.

23024/34

28

44

Mr. Pym with 20/7/34
Mr. Flood 20/7/34

Mr. Parkison
Sir G. Tomlinson
Sir C. H. B. ...
Sir J. Shackburgh
Permt. U.S. of S.
Permt. U.S. of S.
Secretary of State.

23 July 1934

Sir,

DRAFT.

Kenya
No 596.
for

(42)

I have etc to refer to
my despatch No 574 of
the 16th of July and to
transmit to you, for your
information, an extract
from 'The Times' of the
19th of July containing
a letter addressed to
Sir William Lewis Carter
by the Editor, regarding
certain points raised
in the debate in the
House of Commons on
the Colonial Office etc.

(Reference M/7/34 - extract)
(copy in the file)

FURTHER ACTION.

I have etc

W. P. CUNLIFFE-LISTER

3302/30

42²⁹

Kenya

Air Mail 7/5/34

O. D.
R 13 JUL
D 14

18 JUL 1934

Sir

I have rec. to hand ^{enclos}

for your info, extract from
the Official Report (uncorrected)
of the Debate in the H/Comm
on the Colonial Office Vote, 4/3
which shows the ~~main discussion~~
and to invite your attention
to the discussion on the Kenya
Land Commission Report.

A further copy will be
sent by ordinary mail

[Faint handwritten notes and stamps, possibly including 'The Secretary of State']

4030

NOTE.

The position as to the reservation of the Kenya highlands is as follows:-

(1) The basis all along was that there is only a comparatively limited area in Kenya suitable for European cultivation. *colonisation.*

(2) In his despatch of 14th August, 1905, the then Commissioner of the East Africa Protectorate says "whatever decision is taken with regard to transfers they ought to be absolutely barred to Indians or natives in the districts suitable for European cultivation."

Although it was fear of Indian encroachment which was in evidence at the time, this at any rate shows that Sir Donald Stewart meant to keep an area for Europeans excluding all other races.

(3) In a resolution passed at a public meeting at Nairobi on 9th May, 1906, the white settlers offered the most determined opposition to the attempts of the British Indians to be allowed to take up land in the highlands.

(4) In despatch of 17th July, 1906 Lord Elgin said that it would not be in accordance with the policy of

H.L. 158
p. 27.

A

H.L. 158
p. 41.

B

His Majesty's Government to exclude any class of His subjects from holding land in any part of a British Protectorate, but in view of the comparatively limited area suitable for European colonization, a reasonable discretion will be exercised in dealing with applications for land on the part of natives of India and other non-Europeans.

Cd.4117
p.25.

(5) In despatch of 17th December, 1907

Sir J. Hayes Sadler, then Commissioner, wrote:-

"By all means let us keep the land in the uplands, known as the white settlement area, for whites only, but outside this I see no reason why we should give small allotments of land to agricultural Indians."

Cd.4117
p.29.

(6) Lord Elgin's despatch of 19th March,

1908 contains the famous decision, and the relevant paragraph begins:-

"with regard to the question of granting land to Indians,
"it is not consonant with the views of His Majesty's Government to impose legal restrictions on any particular section of the community, but as a matter of administrative convenience grants in the upland area should not be made
" to Indians."

(7) In Part II paragraph 8 of the 1923

White Paper the Reservation of the Highlands is dealt with at length. The two Elgin pronouncements are given, although

Cd.1923
p.15.

"Asiatics" is substituted for 'Indians' in the second (i.e. the last word in paragraph 6 above). There is no specific reference at all to natives.

(8) But there seems no doubt that it has been generally understood that by reserving this area to Europeans, the exclusion of all other races was meant. The question of acquisition of land by individual natives had not actually arisen, and it would be assumed that no reference to natives was necessary. The Native Policy Memorandum clearly must be read as accepting the view that the sale of agricultural land in the highlands is restricted to persons of European descent, and that all others including natives are excluded.

EAST AFRICA PROTECTORATE.

RETURN to an Address of the House of Lords, dated 27th June, 1907 *—for,*

PAPERS RELATING TO BRITISH EAST AFRICA

Colonial Office,

August, 1907.

FRANCIS J. S. HOPWOOD.

(The Lord Hindlip.)

Ordered, by the House of Lords, to be Printed,
August 7, 1907.

LONDON:
PRINTED FOR HIS MAJESTY'S STATIONERY OFFICE,
By DARLING & SON, Ltd., 34-40, BACON STREET, E.

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or E. P. SONBY, 116, GRAFTON STREET, DUBLIN.

1907.

TABLE OF CONTENTS.

Serial No.	From or to whom.	Date	Subject.	Page.
1906.				
1	Report of the Land Committee	May 25	Report of Committee appointed to enquire into matters relating to land in the East Africa Protectorate.	5
2	The Commissioner	August 14 (Rec. Sept. 16.)	Submits his comments on the Report ...	26
3	The Colonists' Association of British East Africa.	August 23 (Rec. in Colonial Office Nov. 13.)	Prays for reforms in the administration	30
1906.				
4	To the Commissioner	March 23	Conveys the observations of the Secretary of State on the report and Sir D. Stewart's comments.	36
5	Ditto	June 8	Replies to No. 3	38
6	The Commissioner	May 21 (Rec. June 18.)	Encloses letter from the Colonists' Association covering a resolution passed at a public meeting at Nairobi protesting against the ... of land to British Indians in the ... islands, and of other papers on the subject.	40
7	To the Commissioner.. ...	July 17	Requests him to inform the Colonists' Association that it would not be in accordance with the policy of His Majesty's Government to exclude any class of His Majesty's subjects from holding land in any part of a British Protectorate, but that a reasonable discretion will be exercised in dealing with applications from non-Europeans.	43
8	The Commissioner	July 30 (Rec. Aug. 22.)	Encloses copy of a letter from the Colonists' Association expressing gratitude for the concessions granted in reply to their petition of August 23.	43
1907.				
9	Ditto	December 19, 1906. (Rec. Jan. 9, 1907.)	Encloses a report by the Commissioner of Lands embodying his proposals for the revision of land laws, and submits observations thereon.	43
10	The Acting Commissioner ...	(Rec. Feb. 7) Telegram.	Enquires whether stone, clay, lime, and sand may be excluded from minerals reserved to the Crown under the Land Ordinance.	55
11	To the Acting Commissioner	February 11 Telegram.	Authorises exclusion of minerals named subject to the provisions specified.	55
12	The Acting Commissioner ...	(Rec. Feb. 20) Telegram.	Reports that the Commissioner of Lands now considers that lime and bricks should be excluded from the definition of minerals without reserve, and the Railway Manager fully concurs; asks if he may act accordingly.	55

Serial No.	From or to whom	Date	Page
13	To the Acting Commissioner	1907, February 26 Telegram.	56
14	Ditto	April 23	56
15	To the Governor	July 4	59

EAST AFRICA.

PAPERS

RELATING TO

BRITISH EAST AFRICA.

No. 1.
REPORT OF LAND COMMITTEE, PRESENTED TO HIS MAJESTY'S COMMISSIONER, EAST AFRICA PROTECTORATE.

MAY, 1905.

Mombasa, May 25, 1905.

Sir,
In accordance with your instructions, I have the honour to lay before you the Report of the Committee appointed by you on the 31st October, 1904, to enquire into matters relating to land in the East Africa Protectorate.

I have, &c.,
R. W. HAMILTON,
Honorary Secretary Land Committee

Sir D. Stewart, K.C.M.G.,
His Majesty's Commissioner,
East Africa Protectorate.

REPORT OF LAND COMMITTEE.

The Committee as originally appointed on the 31st October, 1904, to deal with questions relating to land in the East Africa Protectorate, consisted of Judge Cator, Judge Hamilton, and Mr. Barth, and the terms of the reference under which it was appointed appear in the *Official Gazette* of November 1st, 1904.

It was as follows:—
"I hereby appoint Judge Cator, Judge Hamilton, and the Crown Advocate to be a Committee for the purpose of enquiring into and reporting on the following questions relating to land:—

- (1) "The general terms and conditions upon which sales and leases of Crown Lands should be granted.
- (2) "The prices of Crown Lands.
- (3) "The desirability of reserving land for natives, Europeans and others.
- (4) "The survey of land and the working and organization of the Land Office.
- (5) "Native rights to or over land.
- (6) "The rights of the Crown and individuals to and over land within the Sultan's dominions and elsewhere.

"And I authorize the aforesaid Committee to call witnesses and take such evidence as it may consider necessary and to add such persons to its number as it may think fit."

D. STEWART,
His Majesty's Commissioner.

October 31, 1904.

Under the last clause of the reference the Planters' (now Colonists') Association were requested to nominate one of their number to act on the Committee, and Mr. Frank Watkins was so nominated. Lord Delamere was also asked to serve. The Committee therefore consisted of five persons, of whom Judge Cator acted as Chairman and Judge Hamilton as Honorary Secretary. Unfortunately, however, Judge Cator, owing in the first place to illness and in the second to his departure from the country, had to resign his position, and the Committee were therefore deprived of his services before half their labours were completed. But before leaving he put on record a short memorandum of his views on various points. The position of Chairman which thus became vacant was filled by Lord Delamere.

Some six weeks prior to the first meeting of the full Committee, a circular was issued to the Chief Government Officials and all representative bodies and Associations in the Protectorate asking for their views on all or any of the points which were mentioned in the reference to the Committee. In answer to this circular a large number of reports were furnished dealing with the questions raised from different points of view. These memoranda were of considerable assistance to the Committee, and largely formed the basis on which witnesses were afterwards examined.

Committee held in all eighteen sittings. Fourteen at Nairobi and four at Mombasa. The gentlemen were examined as witnesses, the number including Government officials, merchants and others interested in the development of the country. A full list of their names and occupations (together with a précis of their evidence) is printed in Appendix A.

In dealing with such a wide question as that of the land-laws of the Protectorate it was inevitable that other matters should be mentioned, which, though not strictly within the scope of the reference, were yet so closely allied to the main question that it was impossible for the Committee to pass them over entirely.

The question of native labour in particular is so closely bound up with the interests of landowners and the development of the country, and many witnesses attached such great importance to it that it was felt that it would be impossible to do justice to the general question without referring at some length to the subsidiary one of labour.

Many witnesses also who gave evidence emphasized the importance of questions connected with the laying out and development of municipal areas and townships, and though some of the points on which they gave evidence seemed to be ones which might be properly dealt with by municipal and township authorities still in many instances they raised questions of principle in the general rules that should be followed with regard to the laying out of townships in future. Seeing too, of what vast importance it is to the country that townships should be properly laid out and regulated, the Committee decided to deal particularly with the subject, and have made various recommendations thereon.

From the commencement of their labours to their close the Committee have met with the greatest kindness and courtesy from all those with whom they have come in contact, and they wish to express their thanks to all those, both Government Officials and others, who have so readily come forward and assisted them in every possible way.

The Committee feeling that they were appointed rather with a view to make practical suggestions which might tend to clear away difficulties in the future than to enquire into causes which had led to the existing congested state of affairs in the Land Office and the consequent check given to the general development of the country, have, as far as possible, directed their energies to enquiring in what way the present state of affairs may be remedied, and have avoided going into past history, and finding fault with, and attempting to apportion blame for, what has already happened.

The policy which has hitherto ruled the dealings of the Government with regard to land has not been of the most liberal nature. Strict covenants are inserted in leases, and assignments or transfer of interest is only allowed with the permission of the Commissioner.

Many leases have been granted for short terms, and in townships with the most stringent building clauses attached; and at the end of the term it is required that all the buildings put up shall become the property of the Government.

Additional members of Committee.

Resignation of Judge Cator.

Committee asks for views from public.

Sittings of Committee.

Scope of the Reference.

Labour.

Townships.

Assistance given to Committee.

Reference to past avoided.

A more liberal policy necessary to develop the land.

Property qualifications have been required from persons desirous of taking up land. In cases of breach of covenant of a lease the land is liable to forfeiture to the Government without any compensation whatsoever for any permanent improvement which may have been made to it. In cases even, where a purchaser has acquired a freehold title, it is provided that should he not develop his property to the satisfaction of the Commissioner the land may be declared forfeit.

The Government has, in fact, adopted the rôle of a strict landlord insisting on the development of his property by his tenants, and endeavouring, as far as may be, to create and maintain a personal and almost feudal relationship between itself and the holders of the land.

If the whole country is to be regarded as one vast estate, and the Government is to act the part of a private landlord devoting all his energies to the exploitation and development of his property, much might be said in favour of the system hitherto in vogue. As, however, there is in this country no representative Government it is a matter of great doubt whether it is desirable that the relationship between a private landlord and his tenants should be continued between the Government and the governed; and as the first object of the Government is, and must be, to secure speedy settlement and development of the resources of the country, it would appear from every point of view to be of greater importance that the work of settlement and development should be pushed forward in every possible manner, rather than to attain this end all restrictions on transfer and forfeitures without compensation should be abolished as far as possible, title and tenure should be made as secure and the terms for settlers as easy as possible, having due regard to the observance by them of the general conditions and obligations for development. In short, less care, time, and trouble should be expended in an endeavour to keep up the relationship of landlord and tenant, it being a matter of lesser importance to the Government by whom the land is developed than that any obstacle should be allowed to hinder its development.

The existing system is no doubt largely due to a desire to check anything in the nature of speculation; and should it appear that any recommendations made in this report may open the door to speculation in the immediate present or in the future, it must not be thought that these recommendations have been made without being duly weighed.

Speculation and particularly over-speculation is not good for any country, but it should be remembered that the evils that it may cause are far outweighed by the impetus given to genuine business and the attraction held out to capital where the greatest possible security is given to title, and the greatest possible freedom to transfer of interests in land.

It is a matter of common knowledge, and has been referred to by many of the witnesses, that there is a large amount of capital at the present moment awaiting investment in the country if secure and profitable channels for its employment can be found. Some has unfortunately been already lost to the country, as a number of capitalists who thought to employ some of their capital with benefit to the country and profit to themselves have, after making enquiries, determined to employ it elsewhere: the main reason for this being the restrictions placed by the Government on freedom of transfer and the insecurity of the titles offered them.

It can hardly be said at the present moment that land up country has any real and definite value. It is yet to be proved what crops or stock can be produced and profitably disposed of; and while the whole question of farming and stock-raising is in the present purely experimental stage, and the carrying of an experiment to a successful issue depends in many instances in the experimenter being able to borrow a sufficient sum to carry him over the critical period all possible steps should be taken to attract capital into the country, and to avoid doing anything which may frighten it away.

Should capital flow freely into the country, and there come some speculation in its train, it must be remembered that speculation is, after all, only a sign of activity, and that it is of greater benefit to the country to secure active life and freedom in business affairs than to shrink from taking the necessary steps to that end for fear that over-speculation will be indulged in.

The existing state of affairs is one of stagnation, which will end in failures and a general set-back to the prosperity of the country in the near future if something is not soon done to relieve the situation.

Government in the position of private landlord.

Relaxation of present system will tend to speedy settlement.

Speculation is a lesser evil than stagnation.

Value of land problematic at present.

Interest of Public and Government should be observed.

One point in connection with the general development of the country which has been brought prominently forward is that, owing to a variety of circumstances, there is little doubt that in the past the interests of the public and of the Government have not been as carefully observed as they might have been. It is of the utmost importance at this stage of the development of a new country that the Government should go to work with a policy well thought out beforehand, and clearly defined as to its intentions with regard to the general opening up and laying out of the land.

The use of water and waterways, the laying out and width of roads, the setting aside of areas for native reserves, the reserving of land for military purposes, townships, outspans, recreation grounds, public buildings, and requirements of this nature generally should, as far as possible, be provided for beforehand. Apart from the immediate benefits secured by working to a definite plan an infinity of trouble and expense which are certain to occur hereafter would thus be avoided.

Roads, Rights to water.

Frequent references were made to two of the abovementioned matters in the course of the evidence, namely, the making of roads and the right to use water. As regards the former it appears that the existing roads, though possibly the best that could have been laid out at the time with the means appropriated to their making, are in many ways entirely unsuitable to the existing and growing needs of the country.

The greatest importance that all new roads in districts which are taken up to be taken up by white settlers should be properly engineered, to be carefully graded, and equipped with strong bridges calculated to stand heavy traffic.

As to the right to use water.—This important question has not yet been taken in and it is very desirable that irrigation laws should be framed as soon as possible defining the rights and conditions under which neighbouring owners may utilize the water from streams and rivers for irrigating their holdings. If this is not done the question is certain to prove a fruitful source of friction and probably expensive litigation.

Locking up of large areas in concessions to be avoided.

The anxiety of the Government to avoid doing anything that might encourage speculation has been already alluded to, and special care should be taken to this end when concessions or leases of large areas are granted in future to prevent concession-aires or lessees acquiring the right to lock up large areas of land without any corresponding obligation to do anything towards its development.

The granting of large concessions is apart from the general law governing the land and is generally done by special agreement, there should therefore be no difficulty in any case in inserting a clause in the agreement which would prevent the concessionaire being able to exclude a large area from the general development of the country and afterwards sell it at a profit and benefit by the labour of others without having himself contributed anything to but rather retarded the general development of the country.

Crown Lands Ordinance.

The existing laws relating to land appear to be in the main sound, but should the policy outlined above be adopted it will be necessary that they should be modified in various respects.

To deal in the first place with the Crown Lands Ordinance (No. 21 of 1902). It may be as well without going too minutely into details to indicate the directions in which such modifications seem advisable.

Art. 9. Forfeiture of freehold.

Article 9 reads as follows:—
"9—(1) If any land sold under the provisions of this Ordinance appears to the Commissioner to have been unoccupied for a period exceeding twelve months, he may give notice that, if within the next six months the owner does not appear and afford reasonable proof that he intends to use and develop the land to reasonable extent the land will be forfeited.

"(2) Such notice shall be published in the "Gazette" and a copy shall be affixed to the land, and, if the address of the owner of the land is known, a copy shall be sent by post to him at that address.

"(3) If the owner does not appear within the six months, or if, having appeared he fails to afford reasonable proof that he intends to use and develop the land to reasonable extent, the Commissioner shall by notice in the "Gazette" declare the land forfeited and the land shall thereupon revert to the Commissioner."

The object sought to be obtained under this article namely, the development of the land sold is no doubt desirable; but it is questionable whether the article has not an exactly opposite effect.

Effect of article.

If a purchaser expends his money in buying freehold land he does not intend to let his money lie idle, he will in the natural course of things if it is to his own interest develop the land and endeavour to obtain a return upon his capital outlay. Should he, however, find that for any reason he is unable successfully to turn the land to account he will naturally be anxious to part with it to the highest bidder; but under the article in question it is open for the Government to step in and take the land from him without either returning him the original purchase price or giving him compensation for any permanent improvements which he may have made.

It is not to be supposed that the Government would lightly take such action, but the mere fact that the power exists to deprive a man of his freehold cannot but have the effect of diminishing the value of the title, thereby preventing a free employment of capital and retarding the undertaking of experiments, thus possibly preventing in the end the land being put to the use to which it is best suited.

As the desired effect of the article is to prevent the locking up of large undeveloped blocks of land it is to be considered whether the object in view might not be better obtained by limiting the area of land sold outright and granting instead leases with covenants for development than by granting a so-called freehold of which the purchaser is liable to be deprived.

Article 11 reads as follows:—

"11. In the absence of special provisions to the contrary contained in the lease, all buildings and Crown lands leased, whether erected by the lessee or not, shall, on the determination of the lease, pass to the Commissioner without payment of compensation."

Art. 11. Buildings revert to Commissioner at termination of lease without compensation.

This article though it might be well suited to the requirements of a private owner of valuable building property in a large town, hardly seems suited to the circumstances of this country at the present stage.

The object of the Government should be to encourage the making of permanent improvements and the erection of solid buildings and it is not to be expected that under an agricultural lease of which many are granted for a comparatively short term of years, the lessee will go the expense of putting up solid and permanent farm buildings if at the termination of the lease they are all to revert without compensation to the Government.

Article 14, sub-section (a) reads as follows:—

"14. Except where expressly varied or excepted, there shall, by virtue of this Ordinance, be implied in every lease under this Ordinance, covenants by the lessee.

Art. 14. Assignments not to be made without leave of Commissioner.

"(a) Not to assign, except by will, the land leased, or any part thereof, without the previous consent of the Commissioner"

This restriction on the freedom of assignment by a lessee interferes considerably with genuine dealings in land. If A a lessee of land from the Government wishes to assign the lease to B it is certainly right that the Government should have notice of this assignment but so long as B fulfils the covenant binding on him under the lease, it can be a matter of no import to the Government whether these covenants are carried out by A or B. There seems therefore little to be gained in requiring that the consent of the Commissioner to the assignment should be first obtained, and in practice the business of applying for and obtaining this consent, if it is granted, takes time and works unnecessarily to the detriment of ordinary business.

Effect of Art. 14 (a).

Sub-section (c) of the same article is as follows:—

"to allow roads made by the lessee upon the land leased to be used for the public service"

Art. 14 (c). Use of private roads.

"If public service" means the service of the public, this clause would give the Government large and arbitrary powers of interference with private interests. And, although again it is not to be supposed that the Government would thoughtlessly make use of their powers in this respect, still it constitutes a factor in the sum total of the causes which may tend to shake the confidence of both landholders and capitalists.

The maker of a private road would probably have but little objection to its being used in Government service only, but this is a different matter from allowing it to be used by the general public.

Art. 14 (d). The principle contained in sub-section (d) is thoroughly sound. This sub-section reads as follows:—

(d) to permit travellers to encamp with their servants, animals, waggons, and baggage, for a period not exceeding forty-eight hours, on any part of the land leased which is uncultivated, and which is not within a quarter of a mile of a dwelling-house, and to allow them access, with their servants and animals to any river stream or lake upon the land leased."

As it stands, however, it might work considerable hardship on a small landholder, and should be modified to exclude its application to holdings of less than 4,000 acres in which case the outspan should be definitely marked out and it should not be left to the will of the traveller to choose his own site for out-spanning.

Article 15 deals with implied covenants by a lessee in building leases of which sub-section (c) is as follows:—

"(c) to provide reasonable drainage and water supply, having regard to the situation and purpose of the building and the health of the neighbourhood."

It does not seem to be reasonable to expect a lessee of a building plot in a town-ship to provide for drainage and water supply. In practice it would be an impossible proposition that neighbouring householders should provide for drainage or according to such system or ideas as they individually might apply. It can in fact be no doubt that the provision both of water supply and drainage should be in the hands of one central body, whatever that body may be which is in the affairs of the town.

Articles 15 sub-sections (b) (c) are as follows:—

"16. In all leases under this Ordinance of areas of land for the purposes of agriculture or breeding or raising cattle or for the growth of india-rubber, cotton, tobacco or other vegetable productions, or as timber forest, there shall by virtue of this Ordinance be implied unless such covenants are expressly varied or excepted, covenants by the lessee.

(b) That the lessee, his servants and agents will not interfere with the settlement or villages of the natives, or for land allotted for native settlement or villages, and, so far as possible, will avoid all quarrels with the natives in or near the land leased.

(c) To refer all disputes between the lessee, his servants or agents, and the natives in villages or settlements in or near the land leased to the Collector of the district."

These covenants seem to be somewhat unnecessarily harsh and inelastic. The meaning of the word "interfere" is very wide. Though every precaution should be taken to prevent improper interference with natives, it is at the same time a matter of daily practice with the concurrence of the Government that arrangements are made with natives either to remove them from the land or for removing them from one part to another of it. Such arrangements are generally made with the approval of the Collector or some other Government official. It seems unnecessary also to lay down that all disputes occurring between a lessee of Crown land and the natives living on or near by, though as a matter of course they frequently do come to the Collector, should go to him and to no other person.

Articles 27 and 28 read as follows:—

"27.—(1) The Commissioner may at any time hereafter enter upon any land sold or leased under this Ordinance, and take therefrom stone or other materials for the making or repairing of roads, railways, canals or other public works.

(2) If the materials are taken from cultivated land, compensation shall be payable by the Commissioner, but not otherwise."

"28. The Commissioner may by writing under his hand authorise contractors, their servants and agents, to exercise the powers conferred upon him by sections 23-28 inclusive of this Ordinance."

This article must be read with reference to Article 3, which is as follows:—

"3. A conveyance, lease, or licence for the temporary occupation of Crown land under this Ordinance shall not confer any right to minerals in or under the said land or to the waters of any river or lake."

It would seem to be very necessary that the word "minerals" in this latter article should be defined for when read in conjunction with Article 27 and 28 it appears that the owner of a freehold has not the right to use the earth and stone on his own property.

The power reserved to the Government to enter on private property and to take

Art. 15 (c). Building leases drainage and water supply.

Art. 16 (b, c). Natives on land leased.

Art. 27 and 28. Right of Government to take materials from private land for public works without compensation.

Art. 3. Definition of "minerals" needed.

from it such things as stone, earth, and timber or to authorise their contractors to do so, for the making of public works is of a far-reaching character. If it were impossible for the Government to provide beforehand for quarries and timber reserves on which they might draw for building roads and bridges, or if compensation were given to the landholder for the materials removed from his land the matter might assume a different aspect; but as this article provides that compensation shall only be given when materials are taken from cultivated land, there is great danger of landholders' interests suffering, and the mere existence of such a right diminishes the value of their title or interest.

Article 29 which is practically the same as the implied covenant in Article 14 (d) is subject to the same remarks that have already been made with reference thereto.

After dealing with the Crown Lands Ordinance the next matter that naturally suggests itself for discussion is that of the rules made under the Ordinance. The existing rules relating to the purchase of land generally and of homesteads in particular appear at page 25 of the "Gazette" of the 1st January, 1903.

Any attempt at the present moment to fix the price of land is surrounded with difficulty. Allusion has already been made (cf. page 7) to the problematic value of land generally in the Protectorate. It was felt that the want of information at the disposal of the Committee combined with a want of technical knowledge rendered it practically impossible for them to make any suggestions as to the alteration of prices at which land is at present sold that would be of any real and practical value.

To arrive at a scale of prices that would be fair both to the purchaser and the Government needs the application of combined experience and expert knowledge. There is little doubt that in the past lands have been classified and sold by the Government in a somewhat haphazard fashion. The Land Office have had neither the technical knowledge, the staff, nor the means at their disposal to make even an approximately satisfactory classification of various classes of land. As a result pastoral land has in some instances been dealt with as agricultural and agricultural land as pastoral, and land which is partly agricultural and partly pastoral as either wholly agricultural or wholly pastoral. Further than this, it is not sufficient to class all agricultural lands under the simple head "agricultural" and fix a general price. But the quality, position and situation of land in any given district relative to roads, water, and the railway should all be taken into consideration before the land can be assigned to the class to which it may be said properly to belong.

It is of the utmost importance to obtain a satisfactory solution of the land question that this work should be thoroughly and efficiently carried out; and one of the best methods that could be adopted to secure this end would be that it should be left in the hands of a Board constituted to deal particularly with the matter. This Board should consist of a small number of persons of experience, having at their command the requisite technical knowledge.

The classification of land would not be the sole duty of the Board but it would be entrusted also with the general management of all matters concerning land. A more detailed reference to this Board and its composition will be found on page 21 under the head of "Departmental Re-organization."

No objection has been taken to the prices as at present fixed for homesteads and for this as for the other reasons already alluded to above it does not seem desirable that any alteration should at the present moment be made.

The question of homesteads and homestead selections stands on a somewhat different footing from the selections of land in larger areas.

Homesteads provide for the wants of a class of small settlers who intend to live with their families upon the land and make a livelihood from the work of their hands rather than from the outlay of capital, and who may be looked-to in the future, if the present prospects prove favourable, to supply the country with a class of sturdy yeoman farmers." Having this object in view it seems desirable as far as may be to encourage the taking up of homesteads by those persons who from their birth and training may be expected to be best suited to make a success of their calling. In order, therefore, to induce selectors of homesteads to obtain a stake in the country for which it is worth while to put forward their best energies it might be of advantage that their wives, and children of over sixteen years of age, should also be allowed to take up selections. In order, however, to keep a check on anything in the nature of land grabbing and the accumulation in the hands of one person of land which is more particularly intended to be for the benefit of and

Art. 29 of 14 (d).

Rules made under Crown Lands Ordinance.

To fix prices, land must be classified.

Means to be adopted to classify land.

Creation of Land Board.

Home-steads.

Encouragement to be offered to families of homesteaders.

support a large number of settlers, the law should forbid any one person to hold more than one homestead, as is the case in New Zealand, Australia, Canada, and other Colonies.

The area which a selector may take up at present for a homestead is limited to 640 acres, i.e., 160 acres originally carrying a right to a pre-empted area of 480 acres. On a general view of the whole question, keeping in mind the class of small settler without command of large capital for whom homesteads are particularly intended, this area of 640 acres appears to be, in many cases, beyond the means of a single settler to work, and it would seem to be of greater benefit to the country generally if the limit of homestead selections were in the future reduced from 640 to 320 acres. These 320 acres should be granted outright and carry no rights to reserve a pre-empted area. At present the right of pre-emption over so large an area as 480 acres has the undoubted result of tending to lock up land which might otherwise be developed.

Should, therefore, any of the existing selections for any reason revert to the Government they might with advantage be subdivided and disposed of again in the suggested smaller lots. There is no doubt that in the majority of cases a man will ask for never he can get and if the area of homestead selections was 2,000 acres he would pay for 2,000, but there is also no doubt that, as a general rule, 320 acres is the area as a small settler can reasonably expect to bring into a proper state of cultivation.

The mode of payment of compensation by the Government for permanent improvements in all cases where land reverts to the Government has been already touched on (page 9) and the remarks made there should apply equally in the case of forfeiture of homesteads. That is to say it should be a rule of general application that whenever land reverts to the Government for whatever cause compensation should be given for any permanent improvements that have been made on it.

A considerable amount of evidence was taken on the manner in which land should be disposed of by the Government and this question is dealt with more fully at page 19, where it is recommended as a general practice that land should be taken up by selection at a specified rate, but there seems no reason why in the case of districts which are more or less settled, as, for instance, in the neighbourhood of Nairobi, that should any homestead land revert to the Government it should not be put up for public auction.

As regards the method of payment for homestead selections being spread over a term of years there is only one point to which particular attention has been called and it seems to be one that is deserving of attention. It is that more elasticity should be given to the present rule and it should be in the power of the Government for good reason shown such as drought, failure of crops, from blight or locusts, or from loss of stock from epidemic disease to extend the time within which payment may be made.

Rules Nos. 17 and 18 relating to the compulsory development of homesteads read as follows:—

"17. In every year for the first three years the settler shall bring one-tenth of his original holding under cultivation and shall keep all cultivated lands in good heart and condition until he acquires a final certificate.

"Provided that as soon as he has cultivated three-tenths of his holding he shall not be compelled to cultivate any further portion.

"18. The right of pre-emption to pre-empted land shall subsist for three years, within which time if three-tenths of the original holding have been brought under cultivation and all other conditions respecting the original holding have been fulfilled, the settler may proceed to cultivate the pre-empted land, but he shall not enter into possession thereof until he obtains permission from the Land Officer in writing, and such permission shall contain a certificate that all the conditions relating to the original have been fulfilled.

"The settler shall cultivate one-eighth of the pre-empted land in each year after he has entered into possession thereof and shall keep the cultivated land in good heart and condition.

"Provided that as soon as he has cultivated three-eighths of such pre-empted land he shall not be compelled to cultivate any further portion."

Now it is clear that these rules work somewhat harshly, in fact the amount of pre-empted area which the settler is required to bring under cultivation is out of proportion to the work which he is required to do on his original 160 acres.

All of the witnesses representing the settler class insisted most strongly on

Areas of homesteads should be reduced.

Payment of compensation for permanent improvements.

Payment for homesteads.

Conditions of acquiring freehold.

this point, and further than this, it is to be observed that the only conditions on which the settler can perfect his title are those of breaking in and cultivating a fixed area of land within a definite period if time.

Rule 19 also provides that he must within three years "erect a living house of a reasonable permanent character on his original holding." Now, seeing the variety of the nature and class of land which settlers take up, that some is not broken in, and that other is land already cultivated, some covered with bush, and some partly clear, and some land is light and some heavy to work, that it may be necessary that a settler before turning his attention to anything else should drain a swamp, make a water lead, put up a fence, or make a road, it is unreasonable to require him at the commencement of his holding to put down crops which may bring him nothing but loss or to spend money in building a permanent house out of his small capital which might be better expended in making other improvements while he lived, in the meantime, in a hut. To obviate this difficulty the true test of the work of development done by a settler on his land should be the extent of his "beneficial occupation" expressed in terms of money.

The term "beneficial occupation" would include such work as reclamation of swamps, clearing of bush or scrub, cultivation, planting with trees or live hedges, the laying out and cultivating of gardens, fencing, draining, making roads, sinking wells or water tanks, constructing water races, sheep or cattle dips, making embankments or protective works of any kind, or in any way improving the character or fertility of the soil, or the erection of any building.

The settler should be required to show beneficial occupation of a certain value per annum, and it would be the duty of the Land Board to see that he had done such work as mentioned above to the value of the amount required.

Two of the rules which appear to give cause for considerable complaint are those relating to timber and forests and fencing, namely, Rules Nos. 5 and 8.

Rule 5 reads as follows:—

"5. Ten per cent. of the area of every selection shall be kept in perpetuity as forest land. Selections where less than ten per cent. of the area is forest shall be planted with forest by the holder to bring the area under forest up to 10 per cent. of the total area."

"Provided that if there be no forest on a selection the holder shall not be required to plant more than 2 per cent., and it shall be in the discretion of the Conservator of Forests to dispense with the obligation entirely.

"Provided that the said planting shall extend over a period of 16 years from the date of agreement and provided a reasonable proportion of forest be planted every year, and that forest be maintained to the satisfaction of the Forest Officer. For the purpose of this rule any belts of forests of not less than one chain in width shall be accepted as forest."

The actual drafting of this rule is inequitable for it provides that for instance in the case of a man who has 3 per cent. of forest on his land he must bring it up to 10 per cent., thus, he must plant 7 per cent. whereas a man who has no forest on his land is only required to plant 2 per cent.

Apart, however, from the unequal working of the rule it is a self-evident proposition that every man will plant timber where it is to his own advantage to do so; on the other hand, where it is not to his own advantage it appears to be unreasonable to compel him to plant timber when his capital and labour might be more profitably employed in other directions.

It is not to be supposed that the rule that a man has to maintain 10 per cent. of his land under forest can be of general advantage to the country by securing rainfall or for any other reason, for, in the first place, the total area that could be so planted is infinitesimal, and in the second place, the land which is granted to and taken up by small selectors, is naturally not forest or heavily-timbered land. It may be of the utmost advantage for a settler that he should be able when entering into possession of his land to make use of the timber to be found upon it. He may wish to use it for building or fencing, or for any other of the multifarious requirements of a farm, on the other hand, it may be to his interest that such timber as there is upon his land should be entirely removed from it.

If, as has been suggested, homestead selections should be limited in the future to 320 acres, it is not likely that more than 1/10 of this area or 32 acres would be forest land, and up to this amount a settler should be at liberty to make whatever use he thinks fit of the timber on his land, but should there be a larger amount on the selection, and the timber, say, for instance, cover 52 acres, he should be required

Beneficial occupation.

Rules for forest and fencing.

Forests.

Compulsory planting of forests should be abandoned.

to pay for the timber on the 30 acres over and above the original tenth on 32 acres at its assessed value. He will thus acquire the right to make use of it on the same footing as that contained in the original tenth of his acreage.

This question of the right to make use of timber is closely connected with that of fencing.

Fencing should not be compulsory.

Many of the witnesses appeared to be under the impression that fencing is compulsory, but, though it is not made compulsory in so many words, rule 8 requires that every settler who keeps live stock should provide fences to prevent his stock from straying out of his own land. And until proper fences are provided a settler shall be unable to impound any cattle found trespassing on his land or bring any action in respect of damages caused thereby. This rule in practice goes a long way towards compelling a settler to fence, for if he does not do so he is deprived of the right to recover any compensation for damages that may have been done by cattle straying on his land.

Now, as in the case of planting forest so in the case of fencing. Every settler will fence in his own interest as soon as he is able to do so. But fencing is a costly matter in this country, and most settlers are unable to undertake the work of fencing on a large scale immediately on entering into occupation of their land. It is not, therefore, seem equitable that while a native could obtain compensation from a whiteman who allowed his stock to damage the native's share of the land, a whiteman should be put in a worse position, and not be able to obtain damages from a native who allowed his stock to harm his crops.

Application of this rule would cause no hardship to either party. It is the custom of the country for all live stock to be herded and there can be no question of the responsibility attaching when stock is allowed to stray and cause damage to another person's crops.

Should it become necessary to insist on fencing on a large scale in order to prevent the spread of cattle disease the whole question would assume a somewhat different aspect; and under circumstances such as these in order to make the fencing effectual it would in all probability be a necessity that the Government should lend assistance.

Cattle branding.

In connection with the general question of cattle in the country it may be incidentally mentioned here that it has been brought to the notice of the Committee that it would be a desirable thing that steps should be taken to insist on all cattle being clearly branded or marked. A law in this direction would go a long way towards checking the prevalence of cattle lifting, securing the recovery of the cattle lifted, and bringing to justice thieves and receivers.

Date of occupation.

No objection has been taken to the requirement that a settler should begin to occupy his selection within six months from the date of the agreement, but it should be clearly understood that that means within six months from the date on which he signs the agreement.

Monetary qualification should not be required from a settler.

On the other hand very great objection has been taken and it appears rightly taken to the requirement of the Land Office that a selector should show that he has a certain monetary qualification before he is allowed to take up his selection. There is scarcely anything to be said in favour of this restriction.

The man who may in the end prove to be the best settler on a small holding may have little or no capital beyond his brains and sinews. On the other hand if a man is required to show to the Land Officer possession of three or four hundred pounds nothing is easier than for him to borrow the necessary amount for twenty-four hours.

When the Government is dealing with the disposal of large areas or concessions on special terms it is a different matter, but when the small selector is required to show the possession of three or four hundred pounds it may have the effect either of turning away an otherwise desirable person or of failing to keep out another who is equally undesirable. In fact in practice it has no effect at all except to increase the work of the Land Office and cause irritation to the intending settler.

The present Land Officer, it is true, is of opinion that the rule has been of some value in keeping out paupers but seeing how easily it may be evaded its value in this respect may possibly have been overrated by him.

The existing restrictions on the assignment of leases has already been alluded to on page 6,* and a similar restriction on the freedom of transfer of a selector's interest in his holding is introduced by rule 30.

Freedom of transfer.

Rule 20 reads as follows:—

"20. Until a final certificate has been granted a settler may not deal with

* Page 9 of this book.

his interest in his holding by sale, lease, mortgage or otherwise except by consent of the Land Officer. But on a final certificate being granted he shall be free to deal with the property as freehold subject to any conditions imposed by the Crown Lands Ordinance (No. 21 of 1902) or by these rules."

Although it may be said that a selector has not perfected his title before completion of the conditions under which he acquired his holding, yet he has a certain and definite interest in that holding, and if the conditions which are attached thereto are fulfilled by the person to whom he may transfer his interest, the requirements of the Government should be satisfied.

The rule as it exists at present, not only has effect of preventing a person who is unable to develop his holding selling his interest therein to someone else who is able to develop it, but also prevents him from raising money on it by loan or mortgage and obtaining the capital which is necessary to enable him to turn his farm to account.

The position of affairs at the present moment if not relieved can only have one termination. A settler without sufficient means, though having an interest in a potentially valuable property into which he may have put his whole capital will be ruined because the law prevents him either from developing or parting with it.

Present position of settlers.

Until the law is altered in this respect money will not be put into the land, and as soon as it is altered a natural and wholesome impetus will at once be given to the farming interests of the country.

It has been raised as an objection to the suggestion that transfer should be made easy that a great deal of land will, in a very short time, pass into the hands of Indians. There is of course no objection to the general proposition that Indians should hold land in the Protectorate, but considering that only a comparatively small area of the Protectorate is suitable for European settlement and colonization it is desirable that land within the area should be reserved for the support and maintenance of a white population.

Objection to free transfer.

Reserved areas for white colonization.

The area lying between Kiu and Fort Ternan has already been proclaimed as one suitable for European settlement and without wishing to bind themselves too closely to that area or to restrict its limits the Committee think that a European reserve should be maintained more or less on the lines laid down, and that within that area Asiatics should not be allowed to hold land (with the exception of such plots that have already been granted) and that outside the towns within the limits of that area, they should only be granted leases of market-garden land on short terms.

Some witnesses suggested that if an area in the highlands should be reserved for Europeans other areas equally suitable for agriculture should be reserved for Asiatics. Judge Cator favours this proposition which has the advantage of appearing logical. There is, however, no doubt that while in practice it might be possible to exclude Asiatics from the areas reserved for Europeans it would not be possible nor would it be politic to restrain the energies and capital of European planters within limited bounds and not to permit them to be used for the development of the resources of the country outside those bounds.

As a matter of fact there is an enormous area of land eminently suited to the needs of Indian agriculturists outside the area which it is proposed to reserve for European colonization, and it seems therefore detrimental to the best interests of the country to throw open to Asiatic immigration a small area suitable for European colonization whilst there is a far larger area suitable for Asiatics but not for the European colonization still awaiting development. At the present moment a large block of land on the Guasa Ngiabo plateau in an area suitable for European colonization has been offered for settlement to some Jews. The offer was first made in 1902 and since that date nothing has been done to put a term to the option or to insist on the development of the land. The option that was then offered still remains open. If it is possible to put a term to what appears to be an indefinite option it should be done as soon as may be and this block of land which is at present held up may then be thrown open to European colonization.

Zionist option.

In dealing with the question of the desirability of reserving areas for Asiatics others the next point which arises is that of making reserves for natives. This matter is one of the greatest importance and requires the closest care and attention on the part of the Government. There is no doubt that the future success or failure of the country depends entirely on the methods that will be employed in dealing with native labour. The country must look for its development to the labour of the

Native reserves.

natives, and if proper steps are not taken with due care and forethought to render the natives contented and their labour easily available, and if the laws dealing with natives are not framed in a wise and liberal spirit, and enforced with a firm hand the future prospects of the country may be irretrievably damaged.

Mention has already been made of the necessity of the Government taking care beforehand in setting aside areas for native reserves.

There is considerable difference of opinion as to the policy which should be followed in making these reserves; whether they should be few in number and large in extent and far removed from centres of European population; or whether they should be of lesser extent and more numerous and scattered up and down through the country. But everyone is of one opinion in agreeing that when once the Government has given its word to the native in fixing a reserve that the reserve so fixed should be absolutely inviolable. It therefore becomes of all the more importance that the greatest care and forethought should be taken to prevent any subsequent interference with an area which has once been fixed by the Government as a reserve.

Recommendations of Committee as to native Reserves.

After considering the whole question in its various bearings, and particularly with regard to the supply of native labour, which will be required for the development of the country's resources, the Committee are of opinion that the following are the best lines on which to proceed—

The reserves made should be few in number but of large extent and far removed from European centres. In fixing these reserves care should be taken that plenty of land is set aside for the support of the number of natives which the reserved area may be reasonably expected to maintain. At the same time settlers should encourage natives to live in small villages on their farms making with them arrangements by which the settler will be able to obtain the labour that he requires and the native will obtain the right to cultivate crops for his own consumption without being liable to be arbitrarily turned out.

Agreements with natives to be registered.

All arrangements of this nature, as well as those under which a native is removed from a settler's holdings and receives compensation for his crops upon the land, should be entered into before a Government officer and put into writing and registered in order to prevent disputes in future.

All the natives who have not entered into an agreement to live on a settler's holding should be required to remove within a native reserve. By this means both the main body of the tribe living within the reserve and the individual natives who had entered into agreements with settlers would be easily amenable to control: and should the main body of the tribe living within the reserve increase and overflow its bounds, such overflow would be available to meet the demands of the general labour market of the country.

The whole question, however, of natives and native labour is of such infinite importance to the well-being of the country that the time would seem now to have arrived when it is necessary that a Commissioner should be appointed, to whom should be entrusted the entire supervision of native affairs.

Such an officer if appointed would be *ex officio* a member of the Land Board, and the duties which would devolve upon him with respect to these and other matters are referred to in more detail on page 22* under the head of Departmental re-organization.

Reserves to be made if possible before settlement.

Though the fixing of native reserves should as far as possible precede the opening of the country to settlement, it is not of course possible that this could be done in every case, but there is no reason why it should not be followed in most districts as a general rule.

Necessity of survey. A reference to the map made by Mr. Waring (placed in the appendix) will give a general idea of reserves.

In order, however, that reserves may be reasonably and intelligently fixed with reference both to the area required and the natural features of the country in which they are placed it is necessary that there be a survey. This raises perhaps the most important question of all with which the Committee have had to deal, for not only is it intimately connected with the great question of the control of natives and native labour but it goes to the root of nine-tenths of the difficulties which have arisen with regard to the land.

With large areas of land to dispose of but without a survey to assist them in disposing of it, the Government is in much the same position as a grain merchant without weights or measures, who, in answer to his advertisements has received numerous applications for grain which he has undertaken to deliver but which he

* Page 21 of this book.

† Not reproduced.

is unable to do because he has no means at his disposal for weighing or measuring his goods.

and congested areas as mentioned in his evidence.

The absence of survey has led from one difficulty to another. The land in some districts is said to have been applied for many times over, other districts partially settled have been closed for further settlement, other districts again have not been opened for settlement at all, and in no case is the Government able to proceed either with the work of getting rid of arrears of applications which have accumulated during the last two years, or of turning its attention to the throwing open of uncultivated districts for settlement. As a consequence the general development of the country has received a severe check.

Present system practically valueless.

The necessity of seriously and at once dealing with the question of survey cannot be over estimated. The present system of survey, if indeed it can be called a system, under which the Land Office require the making of plans of holdings, as all the surveyors themselves testified in their evidence, is both expensive and of comparatively little value. Isolated plans of holdings in different parts of the country are made which are not tied on to anything; and when a general and accurate survey comes to be made nearly the whole of the work will have to be done over again.

The ideal plan is naturally that a trigonometrical survey should be made of the whole country, but this would entail enormous expenditure which, as regards a large part of the country, for many years to come would be entirely out of proportion to its immediate needs. There is, however, no reason why the work should not be begun at once, and a proper survey be first made in those districts where the need of it is most felt.

Trigonometrical survey recommended.

According to the evidence, the most urgent necessity for survey exists at the present time in the strip of country lying roughly along the line of railway between Nairobi and Fort Ternan, and at the coast, and more particularly on Mombasa island itself.

The witnesses who gave evidence as regards the state of affairs on Mombasa island show that not only is the island at the present time unsurveyed, but it is actually impossible to get even a small survey made. That steps should be taken to remedy the state of affairs in Mombasa with as little delay as possible seems to be of no less importance than that of taking in hand surveys of larger areas up country.

Needs of survey of Mombasa island.

The position of the island, with its town, harbours, and railway terminus with regard to the whole of the rest of the Protectorate is unique. Any increase in the general prosperity of the country would be immediately reflected in greatly enhanced values of the land on the island, and at any moment land that is now sold by the acre might be sold by the square foot.

Unique position of Mombasa island.

While fully realising that the cost of such a survey as that proposed would be considerable, it must be remembered that any expenditure in this direction, although it may appear large, is as nothing compared to the general benefits that the country will reap therefrom, and while avoiding expenditure in unnecessary survey that is not proportionate to the wants of the country the Government should not hesitate from any notion of false economy to spend whatever sum may be required in making such survey as is absolutely necessary.

In those areas in which land has been over-applied for, where great congestion of arrears of work exists, something should be done as soon as possible to relieve the tension.

Arrears should be cleared off.

Instances occur again and again—in the course of the evidence—of persons who have applied for land and who have received favourable answers to their applications, waiting for months in the country and spending their time and capital doing nothing, and finding themselves at the end of that period apparently no nearer to obtaining their object than at the date when they first applied. This state of affairs is not confined only to those applications which are made for land which has been over-applied for, but to applications for land in other districts as well. Although this is partly due to the methods that have been adopted in dealing with applications for land it is also to no small extent due to the fact that the Land and Survey Offices have been worked practically as a combined department, and that with a very inadequate staff.

In order to secure greater efficiency in both these Departments in future it will be necessary that their duties should be clearly and distinctly separated, and that each Department should have a staff of sufficient strength to deal with the

Land and Survey Departments need

separating and strengthening. current work of the country. The recommendations of the Committee in this respect are more fully set out at page 22* under the head "Departmental Re-organization." But apart from the steps that it is proposed to take to secure greater efficiency in the ordinary work of these Departments in the future, steps of an extraordinary nature should at once be taken to deal with the existing accumulation of arrears, and to get rid of all applications which are in excess of the land available in certain districts, more particularly in the Rift Valley and in the Kikuyu country near Nairobi.

There are great difficulties in the way, and objections will doubtless be taken to any proposal that may be made. But the need for action is urgent, and whatever action may be taken should be as thorough as possible, and though it is inevitable that many of the applicants for land will consider themselves to have been hardly treated in any settlement that may be arrived at, considerations of this nature should not deter the Government from taking steps to arrive at some definite settlement without delay, due regard being had to priority of application and effective steps taken by the applicant towards occupation.

Recommendations for dealing with arrears. The Committee believe that the best means that could be adopted to secure these objects would be the formation of an independent Board consisting of a small number of persons who would be to go on the land and definitely fix the boundaries of existing titles, the amount of land remaining at the disposal of the Government would be ascertained, and it would then remain for the Board to deal with the applications, giving an answer, and decide which of them were entitled to preferential treatment, and after disposing of such land as might be found still available to wipe the remaining applications off the slate entirely.

Settlement should not be delayed pending survey. Although the congested areas undoubtedly call for treatment in the first place, and although the general work of survey should be proceeded with as soon as possible, there is no reason why the attention devoted to these two subjects should be allowed to interfere with the continuous settlement of the country.

The object of the Government being to get settlers on the land as soon as possible, the selection of holdings in such districts as the Government may declare to be opened for settlement should be permitted even though there has been no survey. In such cases a settler should be allowed to peg out the land he selects, and to roughly mark its boundaries with well-defined beacons, and to enter into occupation of the land forthwith.

Selection by pegging. The whole of the business of selection and marking out the boundaries should be under the supervision of Land Rangers who would act as ground officers under the general direction of the permanent Land Board. The Rangers acting in accordance with their directions would see that the selections were roughly of the required area, that they were as far as possible contiguous, and made with due regard to the natural features of the country, so that any one selector would be unable to acquire for himself an undue proportion of water frontage or a block of an irregular shape that would be detrimental to the interests of neighbouring selectors. Selections thus made would be subject to subsequent survey, and when the survey was made, the areas properly defined, and mistakes in boundaries corrected any surplus land that might be found remaining over would be at the disposal of the Government to be sold to the highest bidder or disposed of as it might think fit.

Before districts are thrown open for selection in this manner reserves for all purposes should as far as possible, as already indicated, be made beforehand; but there are many districts in the Protectorate which are thinly or not at all inhabited by natives, and which in consequence might be thrown open for settlement with very little delay.

When once the survey of the country becomes general, or at any rate in those districts where it has been completed, there is no reason why title should not be given by Registration. All the witnesses who spoke on this point are unanimous in favour of the introduction into East Africa at the earliest possible opportunity of a system similar in principle to that of the Torrens' Act now in use in Australia.

Existing registration of deeds. The present law requires that all documents relating to land should be registered and if possible a plan attached, but this registration though it is compulsory gives no title, and is, in fact, little more than evidence of the particular dealing to which it relates. The introduction of such a system as that proposed is dependent entirely on survey, but there can be no doubt that as soon as the survey is in a sufficiently advanced state to permit of it, it would be of enormous benefit to the country that it should be introduced.

* Page 21 of this book.

The cost of working this system would entail considerable expenditure beyond that necessary for the existing system of registering documents. But seeing that for the fees payable at present the land-holder gets little or no real value, there can be no doubt that he would be willing to pay a slightly increased fee, and obtain in return therefor an enormously increased value in his title. The Committee are consequently of the opinion that, in order to meet the increased expenditure that title by registration would render necessary, an increased charge should be made for registration.

The present charges are Rs. 3 where the property affected is less in value than Rs. 100, and Rs. 5 where it exceeds that amount, and for every additional hundred words after the first hundred, eight annas. Without going into greater detail than it was possible for the Committee with the time at their disposal, and without binding themselves to any particular view, they would suggest that a general fee charged at the rate of 2 per cent. in all cases should be sufficient to cover the increased cost.

Need for immediate action in Mombasa island. One of the first places where the system might be put in operation, where it is most urgently required, and where its effects would be most beneficial is undoubtedly the island of Mombasa.

The total acreage of Mombasa is some 3,400 acres, of which only 770 belong to the Government, the rest being the property of private owners; but for the most part the titles are so uncertain that any person investing capital in land on the island does so at extreme risk. From the evidence given on the subject there is little doubt but that it would be a proceeding of the greatest benefit if the land were accurately surveyed, and the private owners were called upon to prove their titles and where they succeeded in substantiating them, to receive a fresh title from the Government. The whole island might thus be dealt with in a comparatively short space of time. One of the chief reasons for urging that it should be dealt with as soon as possible is that there are living at the present time a small number of persons whose knowledge of the existing titles on the island is unique, and every year that passes their number gets smaller, so that, what at the present time would be comparatively easy, will, in the course of a few years, become a matter of the utmost difficulty. Should the matter be taken in hand the best method of dealing with it would probably be by a specially constituted Board endowed by law with special powers for the purpose. The cost would not be great in any case, and would be as nothing when compared with the resulting advantages.

What has been said with reference to Mombasa in particular applies in principle to many other of the Coast lands such as those at Malindi and elsewhere, but it is particularly at Mombasa that the need for action is most crying.

Delay in dealing with applications. Dependent on the question of survey there is another matter which has been the cause of considerable annoyance to intending settlers, and that is the delay which almost invariably ensues after application for land has been made. Though this delay is undoubtedly due, in the first place, to the absence of survey, there are a variety of other contributing causes. Some of these have already been touched on, such as the combination of duties which have been placed on the shoulders of the joint Land and Survey Office, the officers of which have had to deal with an extraordinary pressure of work with an entirely inadequate staff. But in addition to these there is also observable in the past a marked want of co-ordination between the various offices whose duties are in any way related to the land. This has been more particularly noticeable with regard to the office of the Conservator of Forests, and to such an extent has it existed that areas have been actually declared to be Forest Reserves without any intimation being given to the Land Office. As a consequence it has happened that applications, to which favourable answers have been returned in the first instance by the Land Office, have afterwards been rejected because the land which the Land Office intended to grant was subsequently discovered to be in a Forest Reserve. An intimation of acceptance thus given, and afterwards withdrawn brings discredit upon the Land Office, and causes a natural annoyance to the applicant, and may prove to have disastrous effects in keeping away intending settlers.

Want of method in dealing with applications. Further than this, the ordinary method which has been hitherto adopted in dealing with applications appears to be open to improvement in several respects. At the present time an application is referred backwards and forwards from one Government Office to another, it gets pigeon-holed in one place, and then after being at considerable pains dug out, it is as often as not forwarded on to another office there to suffer a like fate.

There is a want of responsibility and finality in this mode of transacting business which can only lead to dissatisfaction and delay. In order to secure a continuity of policy and method in dealing with applications, and a speedy procedure for obtaining final decision, it is evident that all applications should, in the first instance, pass through the same channel, and be dealt with finally by the same authority.

The best means for securing this end will probably be found in the constitution of a permanent Land Board to which reference has already been made. This body, whose sole duty would be to deal with matters relating to land, would be able to combine a continuity of action with a suitable procedure that would ensure a ready attention to the business in hand, and would also avoid the difficulties and delays that so frequently occur in this country, owing to the constant and unavoidable changes of individual officers.

Incidental to the question of the manner in which applications for land should be made is the demand that the Government now makes that all survey fees should be paid in advance. Complaint as to this appears frequently in the course of the evidence, and seeing that all survey fees are returned in full when an application is granted, it does not seem fair that an applicant should be required to pay down the whole amount of the fees before receiving intimation that he will get the land which he has applied for.

On the other hand, it is thought necessary that the *bond fides* of an application should be guaranteed, this would be amply met by requiring that a small fee (say one shilling) should be deposited with every application, which, in the case of the application being refused, would go towards payment of the survey fees, in the case of it being refused would be returned to the applicant, and in the case of it being granted but not taken up by the applicant would be forfeited.

Though the preceding remarks apply in the main to questions relating to land lying outside township areas, many of them apply with equal force to land within those areas. But there arises a new set of considerations with respect to township lands that calls for some separate treatment.

As the majority of the witnesses who gave evidence in this respect spoke chiefly of Nairobi and its suburbs the following paragraphs must be held to apply more particularly to that township; but the principles that underlie the recommendations of the Committee will be found to be equally applicable both to other townships that now exist or that may hereafter be made.

In the first place, as with the land in the Protectorate generally, so is it especially important with regard to townships that they should be carefully laid out with due regard to the reservation of sufficient land for Government and Municipal purposes, and that attention should be given to provide for all requirements both for the purposes of business, pleasure, and health that may arise in towns comprising a variety of nationalities and situated within a few degrees of the Equator.

In Nairobi much has been done in the past that it is now difficult if not impossible to undo, but at the same time much may be done to save and improve those portions of the township area which are not yet taken up.

There is a unanimity of opinion in favour of keeping locations in towns distinct for separate races. Considerations of every nature, both of business, and health, and Municipal control, and the general good governance and administration of the township would impose this as a necessity in up-country districts. Where, also, there is certain to be a large and floating population of Africans in every town, which, as experience has shown, if not kept under proper control is likely to become a nursery of thieves and vagabonds of every description, it would be of great advantage that a system of passes should be introduced and enforced by law. Experience in South Africa has shown that this may be made an effectual means of keeping such a population in check.

Another important matter is the width of the roads, and the Committee are of opinion that where new townships are being laid out the roads should in no case be less than 60 feet in width. It would not perhaps be necessary at first to keep up and metal the whole of the width of such a road, but once the line of the road is laid out it would allow of ample space for any requirements that might arise in the future, and save the expense of having to widen the road at a later date.

In townships already existing, where there are roads of less width than these, if it is now impossible to widen them, such new ones as may be required should be made of the width suggested.

Recommendations of Committee.

Survey fees should not be required in advance.

Land in townships.

Laying out of townships before-hand.

Separate locations.

System of passes for natives desirable in towns.

Roads should not be less than 60 feet wide.

The size of building plots as at present laid out, namely, 75 feet in depth with a frontage of 50 feet, does not seem sufficient to allow of the erection hereafter of permanent and substantial buildings with their adjuncts. While allowing the frontage to remain as it is at present, *viz.*, 50 feet, the depth might with advantage be increased from 75 to 100 feet.

Many of the witnesses recommended the enfranchisement of leasehold building plots, but though some arguments may be advanced in favour of this recommendation, the Committee think that the requirements of the case would be met by making all township building leases of a uniform 99 years term. This extension might be made to apply equally to suburban building plots outside the limits of the actual townships, and if this were made a general rule, opportunity should be given to existing leaseholders of leases for shorter terms to take in exchange for them fresh leases on the new terms.

As regards the actual requirements as to building on town plots there was a large balance of opinion in favour of the time within which the building has to be erected being extended to 10 years. In fact, the only opposition to this recommendation emanated from a building firm, anxious, no doubt to receive immediate orders.

The time of grace allowed for building is at present three years only, and it seems unreasonable to require that a man who has taken up a plot in a new township without knowing how it is going to develop, if at all, should at once proceed to erect a substantial building in order to secure the full term of his lease. It is also very doubtful whether the enforcing of this requirement would ultimately be of the greatest benefit to the township; for the building that is compulsorily erected might become derelict and unsightly and represent only so much lost capital, or on the other hand it might have to be pulled down almost as soon as it was built to make room for another and more suitable structure.

In order, however, to prevent a mere speculation in building plots and to prevent the owner allowing his plot to lie absolutely unused while he was waiting for a rise in the market, without contributing to the improvement of the town, all plots which are unoccupied should be rated in the same manner and on the same scale as if occupied. If this were done the Committee think that it would not be unreasonable to meet the wishes of landowners in granting an extended time for building.

With the state of affairs existing at present in Nairobi, where the rates are largely aided by a direct Government grant in money, and by assistance in labour and other directions, it would not be possible to place the management of the affairs of the town entirely in the hands of an elective municipal council. But until the time comes when the Municipal Committee is able to stand independently of the Government, so long as its members remain as at present, partly official and partly non-official, the Committee agree with the witnesses who spoke on this point in recommending that the non-official element of the Committee should be elected by white ratepayers and not nominated by the Government. By this means the non-official inhabitants of the town would obtain the fullest opportunity to give expression to their wishes and ideas on Municipal matters, and the hands of the Government would at the same time be strengthened by having on the Committee men who spoke with independent voices and were not answerable to the Government for their position.

To carry out the general proposals of the Committee and to create a machinery which will in their opinion be suitable to the necessities of the situation it will be necessary, as has been indicated from time to time in the course of the foregoing pages, to make considerable changes in the organization of the existing departments whose duties in any way relate to the land. Before entering on these proposals it would be as well in the first place to point out that though they cover a variety of offices and duties every proposal is in direct bearing and relationship with some other.

The scheme, whatever may be its defects, has been drawn up in the hope and with the belief that it will be found workable as a whole, but its value would be largely diminished, if not entirely destroyed, should the various recommendations be considered piecemeal and some adopted and others rejected. Should the proposals of the Committee be favourably received it might not be out of place to point out that the future successful working not only of the proposed departmental re-organization but also of the general recommendations which they have made must to a very large extent depend on the ability and efficiency of those officers who may be appointed by the Government for the execution of the work.

Size of building plots should be increased.

Freshhold building plots not recommended, but 99 years' leases.

Requirements as to building time should be extended to 10 years.

Unoccupied plots should be rated.

Non-official element on Nairobi Municipal Committee should be elected and not nominated.

Departmental re-organization.

Post of Forest Officer should be combined with that of Commissioner of Agriculture.

In the first place, the Committee are of opinion that the post of Conservator of Forests should be abolished. Hitherto there has been a want of co-operation between the office of Forestry and that of Agriculture, and there seems to be no valid reason why the duties of both these offices should not be carried out under the control of a single officer who might be styled Commissioner of Agriculture and Forests.

The particular duties which would have to be discharged by this officer would be:—

- (1) The supervision of all matters connected with agriculture, forestry, stock-farming and the development of the economic resources of the Protectorate.
- (2) He would be a member of the permanent Land Board.

The necessity of the creation of a post of Commissioner for Native Affairs has already been touched on (cf. page 16).

This officer's duties would be:—

- (1) The general supervision of all matters affecting the rights or interests of natives in the Protectorate.
- (2) To safeguard the rights and interests of natives and to promote their moral and material improvement.
- (3) To collect and record information concerning various native tribes such as their origin, language, customs, history, religious beliefs, morals, food, habits, &c.
- (4) To collect and publish periodically information concerning the supply and rates of payment of native labour.
- (5) To take such steps as may be necessary to secure harmony and to avoid disputes between the black and other races in the Protectorate.
- (6) To supervise matters relating to native labour generally and to devise methods best suited to secure the carrying out of contracts for labour with equal justice to the employer and employed.
- (7) To advise the Commissioner on all matters in which the rights of natives are involved.
- (8) To be a member of the permanent Land Board.

The most important post, however, required in the proposed scheme would be that of Commissioner for Lands, who would be Chairman of the Land Board, and as such would have general and chief control over all matters relating to land in the Protectorate.

The Board, of which it is proposed that this officer should be the Chairman, would thus consist:—

- (1) Commissioner for Land, Chairman.
- (2) Commissioner for Agriculture and Forests.
- (3) Commissioner for Native Affairs.

These three officers would form the permanent, *ex officio* members of the Board, and should have powers to add to their number two or more Assessors of local experience, who should be appointed with the approval of His Majesty's Commissioner, and whose services might be remunerated by fees to be levied by the Board in connection with the execution of their ordinary duties.

The duties of the Land Board would comprise the following:—

- (1) The general supervision of all matters concerning the development and settlement of the land.
- (2) The classification of land, and the assessment of land value.
- (3) To make provision for reserved areas, stock and other roads, bridges, drifts, outspans, &c.
- (4) To receive and deal with all applications for land.
- (5) To report to His Majesty's Commissioner on all special applications for land which are not provided for by general land laws of the Protectorate.
- (6) To give all necessary instructions regarding survey to the Survey Department.
- (7) To have power to take evidence on oath and to examine witnesses in which land claims are made, and to make recommendations to His Majesty's Commissioner.

Commissioner for Lands.

Composition of Land Board.

Duties of Land Board.

(9) To decide all matters of dispute relating to land between landholders and the Government, and to act as arbitrators between landholders when so requested by either party.

(10) To keep records of all their proceedings.

(10) To fix with His Majesty's Commissioner's approval a scale of fees to be charged in connection with their duties and the remuneration payable to the Assessors.

By these recommendations it is hoped that matters of dispute regarding land might to a large extent be kept out of the Law Courts. But as it is impossible to hope that this will be so in all cases, an appeal should lie from a decision of the Board within 30 days to the High Court, in like manner as an appeal lies from a Provincial Court to the High Court.

For the convenience of parties referring disputes to the Board it should be provided that they might be represented by Pleaders of the High Court, whose costs would be on a scale similar to that provided for Pleaders appearing in Subordinate Courts in the Protectorate.

The duties of the Director of Survey should be kept absolutely and entirely distinct from those of the Land Board.

They should be:—

- (1) The general supervision of the survey and mapping of the Protectorate.
- (2) To act as advisor of the Commissioner of Lands.
- (3) To execute such instructions as might be issued by the Land Board regarding surveys.

In order that the Land Board may be in a position to discharge their duties with the assistance of independent local information it will be necessary that Land Rangers should be appointed who would act generally as agents of and supply the Land Board with information regarding the land in the particular districts in which they might be posted. They should have some knowledge of surveying, sufficient at least to enable them to make a rough survey. Their duties should comprise the following:—

- (1) To make themselves thoroughly acquainted with the land in their districts and with its configuration, the climate and rainfall, the nature of the soil, the number and extent of holdings, and the manner in which they are worked.
- (2) To act as local advisors of the Land Board, and to appear and give evidence before it whenever required.
- (3) To supervise the selection of land in their districts, to see that beacons are properly placed and maintained, and to make such rough surveys as may be required by the Survey Department.

These Land Rangers would need to be active men properly equipped with horse or mule transport to enable them to discharge their duties quickly and effectively.

The last matter connected with the subject of Department re-organization in which some change is desirable affects the office of Crown Advocate. This gentleman has a great variety of duties to perform, which absorb more than all the time at his disposal and the constant delay which takes place before applicants for land can get their titles completed, is to no small extent due to the pressure of work in his office.

With the growing needs of the Protectorate it is beyond the powers of a single man to act as Crown Advocate, Legal Adviser, and Conveyancer with satisfaction either to the public or to the Government, and the time would seem to have arrived when his office should be strengthened by the addition of an Assistant. It would then be possible for either the Crown Advocate or his Assistant to be constantly resident in Nairobi and thus help to obviate the delay that is now caused by matters having to be referred backwards and forwards between Nairobi and Mombasa.

The whole scheme of departmental re-organization, as outlined above, would, in past years, need some elaboration in various respects and in the event of the creation of such posts as have been recommended it would be a matter of the greatest importance to see that the officers who fill these posts were supplied with a sufficient number of staffs through their being sufficiently equipped to carry out the duties laid upon them.

Appeals to lie from Land Board to High Court.

Director of Survey.

Land Rangers.

Crown Advocate's office needs strengthening.

Scheme suggested for re-organization would require increased staff.

Well arranged offices necessary.

Of hardly less importance than a properly equipped staff is the supply of well arranged offices. At the present time the Land and Survey Office is housed in a building entirely inadequate to its needs, which offers no convenience either for the work of the Department or for the requirements of the public with whom it has dealings. Added to this, it is constructed of wood and runs considerable risk of damage by fire. It would not be a matter of great difficulty to house the Departments of Land, Agriculture, Survey, and Registration of Deeds in one block of buildings arranged in such a way that the public might have access to all information available relating to the land at the least cost of time to themselves and trouble to the staff. Were this done the saving of the time alone in matters which have to be referred from one department to another would be incalculable.

Head office of Land Board at Nairobi.

The head office of the Land Board and of the various other departments mentioned should be at Nairobi, which would be the ordinary place at which the Land Board would hold its sittings. There exists, however, a distinct need for a Branch Office of the Land Board at the Coast where intending settlers, on arrival, and even passing passengers, would be able to obtain the latest information available as regards land open for settlement.

Native title to land.

It may be stated as a general proposition that title to land is almost unknown at the natives outside the limits of the Sultan's dominions. Throughout the Protectorate the agricultural natives lay claim to no more than a usufruct, so that when a native has received compensation for the work done on his immediate patch under cultivation he admits that he can make no title to the land itself. The Government therefore claiming to be the owner of land to which no title exists, whether occupied or not, is subject only to the limitation, that should it for any cause remove or consent to the removal of natives from any particular area or district, it would remain an obligation of the first importance on them to see that the natives so removed obtained an equivalent area for their maintenance elsewhere.

Title to land within the Sultan's dominions.

Within the Sultan's dominions the case is different. There, title to land is recognized, and there are a large number of private owners who derive their title from a variety of sources. At the same time there is also a large amount of unoccupied land, that is, land which either has never been occupied or which the owner, having abandoned, has consequently, under Mahomedan Law, reverted to the *Hakim* or Government.

Of this unoccupied land a great deal has lately been, and is being constantly taken up by squatters, who if allowed to live in undisputed possession for a sufficient time (the necessary period according to local law is 12 years) may before long acquire a possessory title as against the Government. For this reason therefore it again becomes a matter of urgent necessity that the survey of the Coast land be taken in hand and claimants called upon to prove their titles.

The remarks already made in this respect with regard to land in Mombasa Island, where the need is most immediately pressing, apply in principle and in fact with hardly less force to the whole of the land within the Sultan's Dominions.

Two systems of law appertaining to land in the Protectorate.

Many people perhaps do not fully recognise that there are two systems of law at present in force in the Protectorate regarding land, and that all lands within the Sultan's mainland dominions, however owned, are as laid down by the Privy Council in the Charlesworth case, subject to the *Lex loci*, which is the Law of Islam. Consequently, such important questions as those relating to trespass, mortgage, trusts, and gifts, to mention only a few, are on the coast subject to an entirely different system of law from that which obtains in the hinterland.

It is unnecessary to comment on the inconveniences and worse into which such a dual system may lead the unwary, nor to enlarge on the great advantages that would accrue were it possible to unify the system of law appertaining to land throughout the country.

Desirability of placing Coast Strip under British Flag.

One of the witnesses strongly urged the desirability of effecting some arrangement with the Government of the Sultan of Zanzibar by which his coast land dominions might be transferred entirely to the British Flag. Any recommendation by the Committee in that respect might at first sight appear to be somewhat beyond the scope of their reference, but it is nevertheless a matter which is deserving of the most serious consideration by the British Government. These territories are held on a lease with a fixed term, and so long as this arrangement exists, the right of the Government, the lessee, though standing in the Sultan's shoes in other respects, to grant freeholds must remain open to question.

The general future development of the country must be looked for in a combination of capital from abroad and native labour, and it is open to question whether it would be sound policy to encourage the immigration of Indian agriculturists on a large scale. So far as experience has shown, hitherto, the contact of the Indian with the African native has proved but an indifferent blessing to either race. Should Indian agriculturists, however, desire to try their fortunes in the country there is plenty of land available for them, but the Committee think that the settlement of Indian agriculturists should be left rather to private and individual enterprise, as is the case with white settlement, than be undertaken by the Government.

Question of Indian Immigration.

In conclusion the Committee desire to say that the objects which they have had in view in making the foregoing recommendations are on the one hand a desire to see the country opened up as speedily as possible, difficulties removed from the way of settlers, and the future administration of all matters relating to land rendered as simple and as effective as possible, and on the other that the Government, while reaping a due benefit accruing from the development of the land, should be equipped with an efficient system for administering it in the future in the interest both of the individual settler and of the community at large.

Concluding remarks.

Many of the complaints which have been laid before them and much of the irritation which has been felt in the past can be removed at once by a stroke of the pen; but at the same time the Committee believe that the interests of the country will best be served if a somewhat more liberal policy in connection with the land is adopted by the Government in the future. The cost of carrying out such recommendations as the Committee have suggested would not be small, but it must be remembered that at the present moment the whole development of the country is checked and the Government is daily losing revenue both directly in rents and indirectly in general revenue owing, as the Committee believe, to the immediate want of action on the lines of these recommendations which they have felt it their duty to make.

They would therefore express the hope that in the event of it not being found advisable to adopt their recommendations, other and better ones may be adopted and put into force without delay.

DELAMERE.
FRANK WATKINS.
J. W. BARTH.
R. W. HAMILTON.

APPENDIX A.—NAMES AND OCCUPATIONS OF WITNESSES WHO GAVE EVIDENCE BEFORE THE COMMITTEE.

Names.	Occupation.	Residence
V. M. Newland	Land Agent	Nairobi
D. O. Roberts	Licensed Surveyor and Land Agent	"
A. Flemmer	Landholder	"
W. J. King	Manager, Colonial Stores	"
J. Boyce	Farmer	Kiambu
W. A. Gain	Builder	Nairobi
J. S. Elliott	"	"
E. S. Grogan	Landholder	"
F. Knowles	Settler	Kamiti
F. W. Krieger	"	Kiambu
T. A. Wood	General Agent	Nairobi
H. H. Heatley	Settler	Kamiti
R. G. Allen	Solicitor	Nairobi
N. A. Macgregor	Agent of Dr. Diring	"
A. Linton	Director of Agriculture	"
C. N. M. Harrison	Solicitor	"
A. G. W. Anderson	Director B.E.A.T. & D. Coy.	Mombasa
J. R. Wood	Settler	Kiambu
J. O. W. Hope	Collector	Dagoretti
G. D. Sanden	Settler	Nairobi
A. B. Jew	Licensed Surveyor	"
W. McC. Wilson	Secretary, Colonists Association	"

Name	Occupation	Residence
P. E. Watcham	Manager, Cotton Syndicate, Tana	Nairobi
John Ross	Representing Mr. Ross	Kiu
J. Ainsworth, C.M.G.	Sub-Commissioner	Nairobi
T. Kendrick	Settler	"
I. A. Grieve	Settler	"
K. Barton-Wright	Land Officer and Chief Surveyor	Mbagathi
A. Ortlepp	Licensed Surveyor	Nairobi
Dr. Radford	Medical Officer	"
C. F. Elliott	Conservator of Forests	"
E. L. Waring	Assistant Chief Surveyor	"
A. Marsden	Chief of Customs	"
Pravji Ranchodas	Rep. Africa Hindu Union	"
Unadhooy B. Patel	"	"
Rovji Viraan	"	"
Verashanker Shuckle	Merchant	"
O. Touks	Medical Practitioner	"
R. M. Byron	Solicitor	Mombasa
C. Dalal	"	"
J. J. James	Plsder, Rep. I. T. Association	"
J. J. James	Merchant, Rep.	"
H. J. James	"	"
H. J. James	Merchant	"
A. J. James	Acting Director, P. W. D.	"
A. J. James	Assistant Liwali	"

No. 2.

THE COMMISSIONER TO THE SECRETARY OF STATE.

(Received September 16, 1905.)

SIR, Commissioner's Office, Mombasa, August 14, 1905.

With reference to the report drawn up by the Committee I appointed to enquire into the land question in the East Africa Protectorate, I have the honour to submit to you, herewith, my comments. I consider that the report on the whole is carefully thought out and excellently put together, embodying, as it does, the views of the many persons who gave evidence before the Commission.

2. There is undoubtedly a strong feeling amongst the settlers that the conditions under which they lease land in the Protectorate are too stringent, and the great complaint is that they have not the right of free transfer. There is much to be said on both sides. Free transfer would bring in capital and increase speculation. The first comers, who have perhaps bought land merely as a speculation, and have done no work on it, would receive a large profit by selling, and it is doubtful if the purchasers would do any more work than their predecessors. They might simply remain in possession of the land and wait for an opportunity to sell again at a profit. In the meantime, though money is circulated by this method, the land itself is not developed. As the law stands at present, a man before obtaining a transfer must show that he has done some legitimate work, and if, after a certain period, no attempt is made to develop the property, the land reverts to Government. A solution to this question may be possibly found in a proposal put forward by Mr. Ainsworth, which is enclosed herewith, namely to levy a tax on all unoccupied or unproductive land whilst allowing free transfer of freehold property.

3. Article 9 of the Crown Lands Ordinance seems a very stringent one, and one that might be modified to the extent of returning to the original purchaser on the re-sale of the land the whole or a portion of what he originally paid.

4. Irrigation laws have not yet been promulgated. They are, however, very necessary, and will prevent much speculation in the future.

5. Article 11. I can see no objection to this article, as permission to renew his lease is never likely to be refused to a man who has done good work on his property. Some leases are for short periods, but a great many are up to ninety-nine years.

8. Article 14. I see no reason to alter this section. That the land leased may not be assigned without the consent of the Commissioner is to enable the Government to keep a check on the class of men that may come into the country. The requisite consent would never be refused to any desirable person.

7. I am of opinion that Sub-section (c) to Article 14 should be retained, otherwise landholders might be unable to obtain access to their estate at all. Cases have already arisen where one man has tried to block another by refusing to allow a road to pass through his property, and it has been necessary for Government to intervene.

8. Sub-section (d). If the proposals of the Land Committee were carried out, it would be impossible for a person to travel in the Kikuyu district, as there is not a single property of four thousand acres in it.

9. Article 15. The drainage of the town of Nairobi is undertaken by the Municipality, and the water supply by the railway. I am afraid that the time has not yet come to entertain propositions as to water-works, &c., in other parts of the Protectorate.

10. Article 16. I do not agree with the Committee's recommendations with regard to this article. It seems to me that the Collector of the district would naturally know more of the merits of such cases than an outside person, and is the right person to deal with them.

11. Articles 27, 28 and 3. A better definition of the term "minerals" would be certainly desirable, at any rate to enable a man to use the earth and stone on his own land for building purposes. As to Government reserving to itself the power of drawing on the country for stone, timber, &c., required for making roads, bridges, or other public works, I consider this most necessary, as material might otherwise have to be brought from long distances at enormous expense.

12. With regard to the price of land, it is true that the present system of classifying and valuing land is not very satisfactory, though, as the rates are extremely low, no hardships are suffered.

13. That no person should possess more than one home is entirely in accordance with my own views. There are few people either at home or here who can satisfactorily develop a farm of six hundred and forty acres without a large capital.

14. I do not see, however, how the area for homesteads in the Kikuyu district can now be reduced except in cases where the land reverts to Government. In such cases it would be an excellent thing to sell the land outright in plots of 320 acres. Practically the whole of the Kikuyu district is leased as homesteads, but there has been no great tendency on the part of the public to apply for them in other parts of the Protectorate. In the event of applications being received, I think the smaller area sold outright, preferable to the larger.

15. As regards the method of payment of homesteads selections, I do not advocate that it be spread over a number of years, as this would mean expense to the Government in the way of clerks, collectors, &c. It would be preferable for a bank to lend the money.

16. Rules 17, 18, and 19. I am rather in favour of the comments on these Rules and "Beneficial occupation," as defined, would possibly meet the case. It would be well to define the rules relating to forest and fencing, and the proposals of the Committee in this respect are worthy of consideration.

17. With regard to the branding of cattle, an Ordinance is being prepared according to the terms of which all cattle must be clearly marked or branded.

18. The monetary qualification which is so strongly objected to seems to be of little use, though it has, perhaps, kept out some paupers. There is no doubt that on several occasions the necessary money has been borrowed for a few hours to enable people to qualify. This restriction might well be abolished. A statement signed by two landowners to the effect that an applicant is respectable and a fit person to take up land would doubtless answer the purpose quite as well.

19. Rule 20. I am inclined to concur with the recommendations of the Committee on this point. If the law were altered I am sure that the country's resources would be more speedily developed, though certain individuals would doubtless abuse the law.

20. Whatever decision is taken with regard to the transfers they ought to be absolutely barred to Indians or natives in the districts suitable to European colonization. There are enormous tracts of land in the Protectorate perfectly suitable for

Indians to develop without encroaching on the comparatively small area suitable for European settlement. There is no objection to the small plots and gardens which have already been leased to Indians and natives in the Highlands, as they are generally far from the European dwellings, and being of small extent, can be easily controlled.

21. As regards the question of native reserves, I have not been able to make up my mind from the evidence at my disposal as to which is the better method—large reserves far removed from centres of European population or small reserves scattered up and down the country. The opinions of settlers differ largely on this point, and whichever scheme is adopted it will require most careful consideration as to the locality, size, &c., of the proposed reserves. The class of native, whether agricultural or pastoral, would also have to be taken into account.

22. The question of survey is one of supreme importance to this Protectorate, and I am dealing with it in a separate despatch enclosing Colonel Smith's report on the Land and Survey Office of this Protectorate. This report should be read in conjunction with the Land Committee's suggestions and proposals.

23. With regard to townships, this matter is already in hand, land having been reserved wherever it seems likely a township may spring up.

I am strongly in favour of more time being allowed for the erection of township lots. At present a number of jerry-built houses are being erected in order to comply with the requirements of the law, whereas if more time were allowed a better class of houses would be erected. I think the time should be allowed of five years, not ten as the Committee recommend, otherwise the lots would be held up for too long a period. In the event, however, of a ground rent being charged on all lots not built on, there would be no objection to the time limit being increased to ten years.

25. It would be very desirable to allow the ratepayers to elect their own members of the Municipal Committee by vote, but a difficulty arises in connection with the coloured vote. As long as Indians and natives pay taxes, they ought to have a vote for their representative, but the white ratepayers wish to monopolize the right of voting, and I fail to see how this could be countenanced by Government.

26. Regarding future administration, the first recommendation of the Committee has already been carried out, and the post of Conservator of Forests has been abolished, or, rather, amalgamated with that of the Director of Agriculture. This arrangement is working very satisfactorily, and there now exists no friction between the two departments. The creation of a post of Commissioner of Native Affairs is a growing necessity, and I entirely concur in the recommendations of the Committee. If this appointment is made, I have an officer in the Protectorate who is fully capable of carrying out the duties.

27. The formation of a Land Board, constituted as suggested, would, I believe, be a boon to the country, as many points that still form the subject of discussion could be dealt with more speedily and with greater satisfaction to the settlers than is at present the case, where documents have to go through so many different departments. The various duties proposed for this Board are worthy of every consideration if this scheme is entertained. The chief argument against the scheme is that it would cost money, but I think we can safely predict that we should receive returns more expeditiously by adopting it. By arranging for a quicker settlement there would be an introduction of fresh capital, and therefore a rising revenue, which in a very short time would repay any extra expense that may be incurred. The non-official members that may from time to time be attached to the Land Board, should, I think, receive a specified amount per diem while sitting on the Board. This, would, in my opinion, be preferable to allowing fees for their maintenance. I do not approve of the appointment of permanent members; they should be taken as the occasion requires from the locality in which the question in dispute arises.

28. In submitting last year's estimates, I urged the appointment of an Assistant Crown Advocate, and I must again call attention to the absolute necessity for this increase in the staff. At present, being alone, the Crown Advocate, who has a variety of duties to perform, is unable to cope with his work, and the great delay, so frequently complained of, in the disposal of land, and the obtaining of title deeds, is in a large measure due to the want of work in his case. It is a moral impossibility for one officer to undertake all these duties, draft ordinances and

title deeds, and advise on legal questions of every nature as the Crown Advocate is expected to do at present. I therefore hope that provision will be made in next year's Estimates for an Assistant.

29. Wherever I have made no comments on the paragraphs of the Land Committee's report, I am generally in agreement with the recommendations.

30. I think great credit is due to the members of the Board who have patiently and conscientiously endeavoured to ascertain and report on the requirements of the country. Should you be of opinion that changes are required in the Ordinance, the services of Judge Barth, who leaves for England very shortly, might be utilized while at home in assisting your law officers to draft an amended ordinance. In this case I have the honour to request that it may be forwarded to me for my remarks before publication.

31. If any of the appointments recommended by the Board meet with your approval, I should be grateful for a telegraphic reply in order to enable me to make the necessary provision in the next year's Estimates.

I have, &c.,
D. STEWART.

Enclosure in No. 2.

Sir, Sub-Commissioner's Office, Nairobi, July 21, 1905.

I HAVE of late given attention to the question of land development in this country, and especially to that in the Kikuyu district. I have now the honour to submit my views for your consideration. At a previous point of the country's development I was personally in favour of restricting dealings in land, my idea being to prevent speculation and so enforce development. I was of opinion at the time that if Government compelled a man to occupy his land under certain rules he would necessarily develop it, or at the end of the period prescribed by the rules, the land, failing development, would revert to the Crown. I am, however, now convinced that the existing restrictions do not assist in the development we all desire.

As so much actual soil undeveloped a country is of no real value. It is only the produce of the soil which is of use, and I am afraid that our present procedure is tending in many instances to keep this country in an undeveloped state. The present procedure is practically as follows: A would-be settler arrives in the country, he obtains a homestead of 180 acres and pre-empt a further area of 480 acres. He is obliged to show the Land Officer that he has £300, but he is not bound in any way to spend a penny of it on the land. In six months—more or less—he finds he can do very little with the land, but he maintains his option over the land for three years, and during all that time the land would, under the present rules, remain undeveloped. This means that one man who is possibly not in a position to develop ten acres "blocks" a square mile. If this man desires to "unload" any of the land he can only, generally speaking, do so by surrendering to the Crown, in preference to which he retains his option for the three years.

Extensive speculation in land in this country and the possible creation of a great land "bubble" may be, and undoubtedly is, a state of affairs to be avoided, but ordinary dealings in homestead land amongst the public would not, I think, result in very extensive speculation. At any rate, it seems bad policy to keep a poor man bound to 180 acres or even to a square mile of land, and to prevent him from selling out either what he does not want or the whole to a man of money who would be able to develop it.

I am now inclined to the opinion that all homesteaders should be able to obtain a freehold title to the land they occupy, and should be at liberty to sell out if they so desire. Under such an arrangement I feel that many people would take up fifty or one hundred acres, and would do something with it. This would really make the country go ahead, and we might have under such conditions half a dozen prosperous settlers on a square mile of land in place of one who is, or who will become, a landowner of unworked acres. It will, I feel sure, be to the advantage of the country to sell outright all homestead blocks subject to the following condition: That the Government shall give two years' notice of their intention to put on a tax of half a rupee per acre on all unproductive or uncultivated land. I think that with a land tax of this nature we can easily dispense with all the existing

conditions, and at the same time do what is necessary to stimulate development by bringing in more money and more workers.

From the economic point of view there can be no doubt but that our present system is not a success.

All sales and transfers of land would require to be registered in accordance with the existing regulations.

I have, &c.,
JOHN AINSWORTH,
His Majesty's Sub-Commissioner.

His Majesty's Deputy Commissioner,
Nairobi.

No. 3.

THE COLONISTS' ASSOCIATION TO THE SECRETARY OF STATE.

(Received from the Acting Commissioner, November 13, 1905.)

Colonists' Association of British East Africa,
Nairobi, British East Africa, August 23, 1905.

It is of the fact that the Administration of the British East Africa Protectorate was taken over by the Colonial Office from the Foreign Office on April 1st, 1905, that we desire to take the opportunity of our first general meeting (July 19th) since we were able to lay our views before you. We are emboldened to do so by the confidence we feel that the paramount factor in Colonial Office rule is to govern according to the wishes of the governed.

Our association, known as the Colonists' Association of British East Africa, has been founded to advance the development of this country as a white man's colony, and includes a great part of the white unofficial population in the highlands of East Africa, away from the coast.

The first point we would wish to impress upon you is the magnificent possibilities offered by British East Africa for white agricultural settlement. There is an immense quantity of fertile farming land, and unrivalled grazing land, capable, under European management, of an immense yield for export, while supporting a large population.

This country has been opened for settlement by the expenditure of several millions of Imperial money on the Uganda Railway, and is an accidental asset unlooked for when the railway was constructed. Were the country well settled and developed, there can be no question that instead of costing the home country many thousands sterling per annum, it would be thoroughly self-supporting, and develop a valuable trade with the United Kingdom and the Colonies.

Yet, notwithstanding the natural advantages of the country, and the openings it affords for the employment of capital and labour, there can be no question that British East Africa is not making that progress it should do, and that while the stream of settlers has slackened, many good colonists, who had settled, are leaving in despair of making the land pay.

We are confident that you, Sir, are anxious to do all in your power, both to increase immigration to this country and to secure its prosperity and its development. In this confidence we will proceed to lay before you some of the causes which, in our view, are keeping the country back.

First and foremost among the causes which are driving away those who have settled, as well as keeping others out, is the absence of a market for the produce of the land. Potatoes, beans, or other crops raised on the land cannot find sufficient purchasers locally, but require to be exported. The natural market of the country is South Africa, but to reach it, the railway rates for agricultural produce on the Uganda Railway, and the steamer freights are prohibitive, while East Africa, not being in the South African Customs Union, renders competition in the South African markets difficult, if not impossible. Were these artificial barriers removed, the produce of East Africa would always find a ready market in the South.

To take these barriers in detail:
As the objects for which the Uganda Railway was originally constructed have now been largely achieved, the railway should, we submit, be carried on at a loss, if making it pay checks the development of the country it passes through.

The second artificial barrier against East African products at present is caused by steamer freights to and from other countries. This is a matter in which a judicious expenditure by His Majesty's Government would in a few years lead to large commercial results. What is required is either a Government steamer or a subsidized line of steamers to carry produce at cheap rates between Mombasa and British and other ports.

The third barrier is the fact of the East Africa Protectorate not being included in the South African Customs Union. We would respectfully request that His Majesty's Government would use its best efforts to achieve this object.

What has been said of crops grown on the land applies with equal force to stock.

These are matters which we feel can be directly dealt with by His Majesty's Commissioner here, and we have therefore addressed him separately on these points.

The points we have hitherto touched upon are those which are absolutely vital to the prosperity of present colonists, and until they are remedied, an almost insurmountable barrier is thrown in the way of further settlement.

There are, however, other matters connected with the laws and administration of the country, which not only tend to render the white population dissatisfied, but to prevent other whites from settling.

The first matter we would bring to your notice is the question of the laws. The East Africa Protectorate is governed as if it were a province of India, and a large number of Indian ordinances are applied to it. Apart from the fact that in some cases the whole and in some, part, of these Ordinances are inapplicable to East Africa, there is the greatest objection in principle to placing white men under laws intended for a coloured population despotically governed. However excellent the Indian Penal Code may be for those for whom it was designed, there are many offences created by it entirely unsuited to a white population, and to which they strenuously object.

We object to the Indian Criminal Procedure Code as being a dangerous and unaccustomed innovation on the English methods of criminal procedure, and more particularly on account of the very large powers which it entrusts to magistrates frequently young, inexperienced, and without legal training, and to the inadequate provision it makes for trial by jury of many important offences. But perhaps the greatest injustice inflicted upon colonists is the withdrawal from them of the protection afforded to European British subjects, Europeans and Americans in India, by Chapter 33 of the Criminal Procedure Code.

The Indian Penal Code is thus applied with more rigour to East African colonists than to European British subjects in India, inasmuch as the former may be sentenced by a magistrate for certain offences cognizable by him to six months' imprisonment or a fine not exceeding one thousand rupees, or both, while the latter for any offence whatever may claim to be tried by a jury of which not less than half shall consist of Europeans or Americans.

To the Indian Civil Procedure Code, and to the other Ordinances relating to civil matters, such as the Indian Contract Act, the Indian Evidence Act, and Indian laws generally in regard to the relations of civil life, the greatest objection is also felt. In many material particulars, the laws of India differ from the laws of England, and the differences are not, in the opinion of colonists, improvements. To give a few examples:—

While enlightened legislation has abolished imprisonment in England except in the case of recalcitrant debtors, who, having the means, refuse to pay, under the Indian law, this archaic right of the creditor flourishes in all its naked hideousness. Again, the nature of the provisions of the Indian Civil Procedure Code with regard to insolvency are most inadequate, imperfect, and unsuited to Europeans. One example of the loss which Europeans suffer from being placed under Indian law may be adduced. By the statute of Frauds, no man can be held answerable for the debt, default, or miscarriage of another, unless he can be shown to have consented thereto by some document in writing. The deprivation of Europeans of this protection, places them at the mercy of any unscrupulous scoundrel who can be found to swear they agreed to pay someone else's debt. The necessity of producing a document signed by the persons to be charged, has been found in England to prevent much fraud. Many other instances might be adduced if space permitted, to show the absolute unsuitability of Indian law for Europeans.

Second-
barrier—
steamer
freights.

Third
barrier—
outside of
South
African
Customs
Union.

Preceding
points.

Other
matters.

Indian
ordinances.

Indian
Criminal
Procedure
Code.

Indian
Penal
Code.

Indian
Civil Pro-
cedure and
other
Indian
Acts.

Intro-
ductory.

Colonists'
Associa-
tion.

Possi-
bilities of
British
East
Africa.

Lack of
progress.

Absence of
markets.

First
barrier—
railway
freights.

Elimination of trial by jury.

But perhaps the crowning demerit of the Indian Civil Procedure Code is the elimination of trial by jury. The colonists regard trial by jury, as well in civil as in criminal cases, as their inalienable right, and no system of law or of legal procedure can be satisfactory, unless it provides for disputed questions of fact, in all cases, however small, being tried, if the parties so desire it, by a jury.

From what we have said, you will see, Sir, that the British European colonists of East Africa desire the entire abolition of Indian law.

We should even wish to place our case higher than that and claim as a right to have the English Common Law. The highlands of East Africa, beyond the ten-mile strip leased from the Sultan of Zanzibar, is new territory settled by British subjects, many of them from England. By the law of England, every Englishman carries the common law of England into every new country settled by him over which the King has proclaimed sovereignty—the right we respectfully claim at your hands.

Taxation without representation.

Next to the colonists' objections to the laws of the Protectorate, though of equal importance, is their objection to the present method of administration. That method may be described shortly as taxation without representation. Such a principle is, of course, alien to the British constitution, and is tolerated only in uncolonised territories until the number of white colonists justifies the gift of self-government. But between one-man government and self-government the Secretary of His Majesty's Colonial Office has provided many intermediate stages. We would respectfully claim, Sir, that the advent of European colonists in East Africa justifies the bestowal upon them of some share in the Administration of their own affairs. If the Imperial Exchequer contributes a quarter of a million sterling annually, the burden of taxation borne by each colonist is far greater per head than that borne on account of East Africa by each Imperial taxpayer.

Duties and fees.

Colonists pay an *ad valorem* duty of 10 per cent. on all goods imported into the country with few exceptions, besides heavy duties on the export of certain goods. They also pay heavy licence duties, are assessed for rates (which they have no voice in spending) in municipal areas. They are also heavily taxed through the fee system for the administration of justice and the winding up of estates, and for stamps on legal transactions.

Crown Colony Government.

Colonists would therefore earnestly urge upon you, Sir, the desirability of turning the Protectorate, or (if difficulties intervene) that portion of it lying beyond the ten-mile coast strip, into a Crown Colony without further delay. They would be satisfied if in the first instance Crown Colony Government of the narrowest type were instituted, by which the control of the finances, and the legislative functions were vested in a Legislative Council nominated by the Crown. They would raise no objection even if the majority of the members of Council were official, and the minority unofficial, provided that the choice of that minority was made with the consent and concurrence of the majority of the white colonists. Were this done, Sir, we entertain no doubt that the grievances now set forth would be speedily removed, and the finances of the Colony would assume a much more healthy condition.

Military and police.

In connection with the expenditure on administration, there is one matter to which we wish to draw your special attention, and that is the expenditure for military and police. The figures not being before us, we can only say we know that expense to be a very great one. We believe that for an equal if not a less expenditure the Protectorate could be very much better served both in the matter of military and police. At present the military and police are carried out, the former by black troops and the latter by blacks and Indians.

Volunteer reserve.

The military protection afforded by the black troops, the Government has recently sought to supplement by raising a so-called Volunteer Reserve, consisting of white colonists, and official employés. The invitation of the Government to join this reserve has been very sparsely responded to by colonists. It may be safely prognosticated that under present conditions very few colonists indeed will join the reserve.

White instead of black troops.

Upon this state of facts, the first suggestion we would throw out is, that in dealing with aboriginal black races such as those to be met with in East Africa, it is much the wiser policy, having regard to results, as well as much the less costly, to use white instead of black troops. A small number of high-class, well-paid white troops will yield far better results, and have a much more moral effect, than a large number of blacks.

In place of employing the King's African Rifles, and black and Indian police, we would suggest to you, Sir, the formation of a select body of well-paid white mounted police, formed on the model of the Canadian North West Mounted Police or the Cape Mounted Rifles. We feel confident that a comparatively small force of white mounted police, supplemented by a few picked blacks, for use among the coloured populations of townships, will be more efficacious and perhaps less costly than the present force of black troops and police. Indeed, the continued use of black police among white colonists, as at present, is fraught with danger, and certain eventually to lead to serious trouble.

Mounted police.

In connection with the military question, and in view of the fact that the Government have thought it necessary to call on colonists to join in the military defence of the Protectorate, we venture to lay before you some suggestions by the adoption of which we believe military service would be gladly rendered by settlers. Our suggestion is that if white mounted police are formed to carry out the military and police duties of the Protectorate, a burgher law should be passed in such parts as are full of white colonists, like Ukamba province. Under this burgher law let every white male between sixteen and sixty be liable for military service in his own district when called upon, and let the burghers elect their own field cornets and commandants,—accompanying this by turning the field cornets and commandants into magistrates (unpaid if need be), and entrusted with the maintenance of law and order in those districts.

Burgher law.

In places where this burgher law was applied, let the civil affairs of the province, district, or field cornetcy be administered by a quasi county council elected by the burghers. Such a scheme, we are confident, would bear with it the elements of success, for men would willingly give their services were they granted a part in the management of their local affairs. Moreover, it would be a considerable gain to the Exchequer, as in such parts of the Colony as the burgher system was in force no Government officials would be required, and the administration would be carried on at a greatly reduced cost. It should be added that when a burgher militia (who should be required to appear mounted) were called out on active service, they should be placed under the provisions of the Army Act, and be paid and rationed as regular troops on such a scale as might be fixed. In order to enable burghers to obtain horses, the same conditions should be applied as in South Africa.

Details of burgher law.

We further wish to call your attention to the mining laws of this Protectorate. At present no encouragement is given to prospect for precious stones and minerals. Hitherto, in the early stages of the development of any country under His Majesty's Government, every facility and encouragement has been given to those who risk their lives and their money in endeavouring to open up the resources of that country, but in this Protectorate the reverse is the case. We maintain that a miner's right should be issued at a nominal price, and in remote districts even a reward offered for the discovery of precious stones and minerals. We respectfully request, therefore, that mining laws and regulations, similar to those in existence in other colonies of His Majesty's possessions, should be introduced into this Protectorate in place of those now in force. In this connection, we would suggest the establishment of a mining department, and the appointment of a competent and experienced official to take charge of the same. At present the decision of the payableness or unpayableness of any discovery, and the administration of the law is left to Sub-Commissioners or Collectors, who have had little or no previous experience of mining, and we believe this state of affairs fraught not only with danger, but will cause eventually financial loss, and lead to chaos and confusion.

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There are certain points concerning land laws, natives, native reserves, and the labour question which have been already dealt with by a Land Commission, on which two of our members were sitting. As its report has been sent to you, Sir, we would reserve any remarks until it has been made public.

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There is one subject to which we would especially draw your attention. The Protectorate provides hospital accommodation, medical attendance, and nursing for its own officials, at Mombasa and Nairobi, at the charge of three rupees per day. If a non-official European man or woman enters the hospital the Government charges him, or her, the sum of twelve rupees per day for the same accommodation. Needless to say such charges are regarded by settlers as absolutely prohibitive, and only in the direct extremity are the Government hospitals made use of. We submit,

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Hospital accommodation.

Sir, that the time has now arrived when hospital accommodation should be provided to all non-official Europeans at a moderate rate, and for destitute Europeans free.

Game
licence.

Another point to which we would draw your attention is the exceptional privileges accorded to officials in the matter of Game licences. A full big game licence is styled a sportsman's licence and costs fifty pounds; a "public officer" is given precisely the same licence for ten pounds. Why public servants should be entitled to special privileges in the matter of a luxury, like big game shooting, is hard for anyone to understand. But one thing is certain, that such an invidious and improper privilege, given to public servants, must always cause the bitterest hostility in the minds of those from whose pockets the salaries of public servants are drawn.

Closed
districts.

There is another point on which we feel constrained to address you, viz., that of the "closed districts." We feel, Sir, that it is not in the interest of the Government, nor in that of the settlers, that any districts or provinces should be closed owing to the inability of the Government to give protection to white traders and others. Not only is such action a sign of weakness and fraught with the danger of loss of prestige, but is also a direct injury to the trade and revenue of the country. In the "closed districts" at the present time the savage is permitted to follow his own customs, and to disregard all civilized methods of law and order, being a danger to the good government and peace of the Protectorate, and a considerable danger to those settlers who are living on the borders of the "closed districts" referred to. By the non-establishment and maintenance of the King's authority, the tribal authority of the chiefs remains unimpaired, and the fighting strength of tribes is turned frequently against their neighbours, and, whenever the opportunity offers, against settlers. Trouble of this kind is continually happening with tribes such as the Nandi, the Lumbwa, and the Sotik. Tribal wars, cattle raids, and outrages compel the Government frequently to step in, and a costly expedition has to be undertaken in order to chastise the natives. We maintain, therefore, that from every point of view it is incumbent that the Government should assert its authority, and that for this purpose only white troops should be employed, as we have already suggested. The employment of black troops in these expeditions has no lasting effect upon the tribes against whom they are employed, and only tends to bring the Government of the Protectorate into contempt. We, therefore, respectfully protest against a continuance of a policy which, we maintain, is pusillanimous, and not in the interest of the effective occupation and good government of the Protectorate.

Native
risings.

The problem of how to deal with the natives still living in a savage state in various parts of East Africa is a matter upon which the very existence of settlers depends. They are a few hundreds, while the blacks around them number hundreds of thousands, and are in an absolutely savage state. Hitherto a policy of bluff, without any real or adequate force in reserve, has been sufficient to deal with these natives. But to anyone who has had experience of natives of Africa, and, indeed, to anyone who can read intelligently the teachings of the history of our dealing with native races, it must be evident that the present condition of things cannot be expected to last. At present the black has hardly realized what the intrusion of the white man into his country means. As the country becomes more settled, as fences are erected and the savage finds himself shut out from the enjoyment of land, which before he could roam over and enjoy, so will his resentment grow. From being a smouldering fire, that resentment will after a time break into flame, and when it does may even cause hereditary tribal enemies to unite in rebellion against the common foe of both—the white man. Moreover, another cause is tending also in a large degree to bring about black rebellion, and that is increased familiarity with white men. Until the British occupation of East Africa hardly any of the natives of the highlands had seen a white man. By degrees the fear of the natives for white men will wear off, and they will become insolent. There is no doubt that that time will arrive more speedily in East Africa than it otherwise would have done on account of the action of the Government in not maintaining white prestige.

The employment of blacks by the Government as soldiers and police to deal with white settlers is absolutely fatal to the maintenance of white prestige among natives, and must seriously hasten the day of black rebellion. We stand practically on the edge of a human volcano, which may at any time burst forth in uncontrollable eruption and destroy us. The day of that eruption no one can foresee, it may be to-day, it may be to-morrow, or it may be some years hence, but that it will come is

an absolute certainty. And when it does come, what protection have settlers in Ukamba, Naivasha, Kenya, or Kisumu provinces? So far as the Government is concerned they have absolutely none. One battalion of black troops at Nairobi, and one near the coast are absolutely useless for staving off anything like a negro rebellion on a large scale, such as at any moment might take place. Not only would they be numerically inferior, but their presence would inspire no fear, and they would be incompetent to carry on warfare at great odds against savage races. Indeed, it is not certain that being themselves to a very large extent drawn from these very races, their loyalty under trying circumstances could be depended upon. And what possible protection could one battalion of infantry stationed on Nairobi Hill afford to the outlying settlers scattered over an area of about 100 miles round Nairobi, or even to the town itself? The 1,800 black police, mainly Swahilis, with a few Indians, is altogether a negligible quantity, the Swahili being useless for fighting, as has been demonstrated on several occasions. A few hundred hostile negroes, armed with spears and shields, would be sufficient to massacre the outlying settlers, and to take Nairobi itself, while if the negroes came in thousands, as they would probably do, the consequences must be the extermination of the whites. Under the present system of Government the settlers would be unable to defend themselves, as, owing to vexatious Government restrictions few, if any, have any ammunition. Dangers, such as the white settlers in East Africa are exposed to, require instant action, and we need scarcely point out to you, that great indeed is the responsibility of any Minister of the Crown who disregards our warnings. Should the evil day come, as it may at any moment, and the white community be found in its present defenceless condition, the responsibility of those who have the controlling of these matters would be great indeed. We cannot insist too strongly, Sir, on the necessity of instant action to provide adequate means of protection from native attack. In our judgment, the first requisite for such protection is the formation of forts either of stone or wood, and each with a well, built at such convenient distances among the settlers, and in the town of Nairobi, as would serve for the population to take refuge in with their families in case of attack. This protection, and the adoption of our suggestions as to a white mounted police, Imperial white troops, and a universal mounted burgher militia, would suffice to prevent loss of life, though perhaps not damage to property. Moreover, we should regard the institution of a good white mounted police and a burgher militia, as measures in themselves tending to prevent native risings, and as forming a real reserve of strength, when the system now in force is no longer of avail. Indeed, Sir, the more the native question is looked at, the more will the necessity be seen of ceasing to regard this country as a part of India, and instead of freely and frankly treating it as a white man's colony, and governing it in the manner that a white community should be governed, in a land teeming with native races in a savage state, against whom they may at any moment be called upon to fight for their lives. The sooner the sorry farce of Indian laws, and Indian methods of Government is abolished, and the white community are given their share in the Government of the country, and of defending that country against the hordes of natives by whom they are surrounded, the sooner will Ministers of the Crown relieve themselves of the grave responsibility that now attaches to them for the safety of the white community here, and the sooner will East Africa be on the high road to prosperity as a self-supporting colony.

The last Order-in-Council relating to East Africa passed by the Foreign Office has reference to the currency. A few words will put you in possession of the facts. Representations of a pressing character were made both by this Association and the Mombasa Chamber of Commerce to the Secretary of State for Foreign Affairs for the substitution of British for Indian currency in the Protectorate. The change was strongly advocated in the local press and was vigorously supported by the Liverpool Chamber of Commerce. It was also supported in England by most of the financial organs and by journals in different parts of the United Kingdom. The business community and settlers of British East Africa naturally expected that their urgent representations would cause the Foreign Office to grant their request. The surprise of the whole white community was great when, instead of substituting British coinage for Indian, the Foreign Office issued an Order-in-Council perpetuating the rupee currency and instituting a new coinage up to the thousandth part of a rupee! In other words, the wishes of the whole community both in the highlands and on the coast are absolutely disregarded, and a new coinage is instituted which no one had asked for, and which the great majority in the country con-

demns!!! To you, Sir, we confidently appeal for the reversal of this Order-in-Council. For the arguments in favour of British currency, we would refer you to the memorials put forward by the Mombasa Chamber of Commerce and this Association to the Foreign Secretary.

FRANK WATKINS,
Honorary Vice-President of the Colonists'
Association, British East Africa.
W. MACCLELLAN WILSON,
Honorary Secretary, Colonists' Association,
British East Africa.

To the Right Honourable
Alfred Lyttelton, M.P.,
His Majesty's Secretary of State
for the Colonies,
London.

No. 4.

THE SECRETARY OF STATE TO THE COMMISSIONER.

SIR,

I HAVE had under my consideration the Report* of the Committee appointed by the late Sir D. Stewart to enquire into questions relating to land in the East Africa Protectorate, and also his despatch of the 14th of August,† commenting on it.

2. I recognize the care and ability shown in the compilation of this report and in many points I am in agreement with the conclusions of the Committee. Thus, I fully concur in their recommendation that a survey of the Protectorate should be taken in hand without delay; and, as you are aware, a large provision has been made in the Estimates of next year for this service, and some of the surveyors selected for the work will leave this country for East Africa in the course of the present month.

3. There are, however, other questions upon which I am unable, as at present advised, to concur in the proposals of the Committee; and, having regard to the immense importance to the future prosperity of the Protectorate of adopting a right policy in questions relating to land, I have decided to take no further action in regard to those proposals pending the report of the officer whom it is proposed to appoint under the title of Commissioner for Land, and whose selection I hope to be able to announce to you at no distant date.

4. While regretting the delay in dealing with these questions, I trust that the material addition to the staff of the Survey Department and the appointment of an Assistant Crown Advocate will enable the existing system of land settlement to be worked at once with better results.

5. In these circumstances I do not find it necessary to express an opinion at present on most of the proposals of the Committee, but there is one question of principle on which I regret to find myself, apparently, at variance with the views of the signatories of the Report.

6. The Committee on page 2 of their Report complain of the fact that "assignments or transfer of interest is only allowed with the permission of the Commissioner," and on page 3 they write:—"All restrictions on transfer and forfeitures without compensation should be abolished as far as possible, title and tenure should be made as secure and the terms for settlers as easy as possible, having due regard to observance by them of the general conditions and obligations for development." Again they regret that capitalists have refrained from employing their capital in the country on account of "the restrictions placed by the Government on freedom of transfer, and the insecurity of the titles offered to them."

* No. 1.

† No. 2.

7. On these passages and on the general tenour of this part of the Report, I would observe that, while I am as anxious as the Committee can be to encourage the settlement and development of the Protectorate by persons either of large or small capital, I consider the evils of unrestricted speculation in land much more serious than the Committee appear to regard them as being.

8. It is not merely the question of the discreditable incidents which characterize the periods of inflated speculation known as "land booms," or the losses to individuals who may happen to purchase land at artificially enhanced prices. If this were all, the dangers referred to might be incurred, as the Committee appear to suggest, in view of the advantage of attracting settlers and capital to the country, even by speculative attractions partaking of the nature of a lottery. But the evils of allowing land in a new country to be transferred freely, without any regard to the intention of the transferee to utilize within a reasonable time the resources of the land, are not confined to the period of depression and stagnation which inevitably follows a time of inflated speculation, but have a wider scope.

9. I am not aware whether any members of the Committee have had occasion to acquaint themselves with the history of the land question in the Australasian Colonies; but it appears to me that that history contains some useful warnings for other countries in a similar position.

10. The policy of His Majesty's Government in the first half of the last century was directed towards restricting the alienation of land in Australasia by imposing conditions of tenure, such as cultivation of the land or maintenance of a certain number of labourers, by putting a comparatively high price (£1 an acre) on the sale of lands in fee simple, and by granting leases only for short periods.

11. This policy was, however, strongly opposed by an influential section of the colonists, especially by those who occupied large areas under temporary licences, which they wished to convert into freehold or long leasehold tenure. These persons fought for what was known in New South Wales as the "three F's":—Fixed tenure, fixed rents, and free sales.

12. Their views eventually triumphed in all parts of Australia, so that, from about 1850 onwards, enormous areas of land were alienated from the Crown without any adequate return, either in the way of purchase-money or in the improvement of the lands granted.

13. The result was that in New South Wales, in 1891, 42 million acres had been alienated in freehold, 22 millions of which were in the hands of only 677 persons, while only 2 per cent. of the 42 millions and one-tenth per cent. of the 22 millions were cultivated. And similar figures are recorded in the other Colonies.

14. New immigrants, therefore, instead of settling on the land, the best part of which was alienated to people who made little or no use of it, were driven to the towns, and the progress of the country has been seriously impeded.

15. Several of the Governments have been driven to repurchase at high rates, with a view to closer settlement, lands which were originally alienated for insignificant sums; while New Zealand has endeavoured to check the further progress of the evil by enacting that no person holding more than 2,000 acres shall be allowed to obtain any further grant of Crown lands (other than a small grazing farm or a pastoral lease).

16. With these examples before me, I fear that, in the interests of the future prosperity of the Protectorate, I shall be unable to assent to any legislation which facilitates the holding of land in large areas for speculative purposes, either by permitting large grants of land without adequate securities for its development, or by permitting the holders of smaller areas to part with their holdings without imposing on the transferee a similar liability to make use of the land.

17. It may become advisable to make considerable grants of land to encourage persons who may be willing, for such a consideration, to embark large sums of money on the construction of railways, but I trust that such cases will be rare, and that it may be possible to impose even there an obligation to sell the land to settlers within a reasonable period.

18. I have already authorised you to publish the report of the Committee, and I approve of your publishing this despatch also in the Gazette at an early date.

I have, &c.,
ELGIN.

THE SECRETARY OF STATE TO THE COMMISSIONER.

SIR,

Downing Street, June 8, 1906.

I HAVE the honour to inform you that I have had under my consideration the Address of the Colonists' Association, dated the 23rd of August last.*

2. It is pointed out in the Address that the great obstacle to the development of the East Africa Protectorate is the absence of a market for produce, and in order to remove this obstacle it is suggested,

- (a) That produce should be carried on the Uganda Railway at low rates even if they involve a loss;
- (b) That His Majesty's Government should subsidize a line of steamers or provide a Government steamer for shipping such produce at low freights;
- (c) That the East Africa Protectorate should be admitted to the South African Customs Union.

In regard to the first point I am not prepared to go so far as to agree that it is desirable to carry goods by the Railway at an actual loss; for this would encourage a temporary growth of trade fostered by unnatural conditions which could not be made permanent without injustice to the British taxpayer, who bears the whole charge of the debt involved by the construction of the Railway. But I am fully alive to the importance of reducing rates on produce wherever feasible, and, since the Address was drafted, I have been glad to be able to authorise as a temporary measure, the reduction of the rates on many kinds of agricultural produce to the very low level of one halfpenny per ton per mile.

4. The question of granting a subsidy for an improved steamer service between Mombasa and the United Kingdom was recently considered by an Inter-Departmental Committee, but no sufficient reasons were found for allowing an exception, in this case, to the general policy of His Majesty's Government with regard to the grant of subsidies, and I am afraid that upon this point it will not be practicable to meet the wishes of the Association.

5. With regard to the third point, there appears to be little prospect, as far as can be judged from enquiries which my predecessor caused to be made, that the South African States would agree to the admission of the East Africa Protectorate to the Customs Union, nor am I satisfied that admission would, in fact, benefit the Protectorate. In any case it would appear to be necessary as a preliminary measure to obtain the consent of all the Signatory Powers of the General Act of Berlin to the abrogation of the existing arrangement under which the goods of all nations are admitted on the same terms, and in the circumstances I think that the Colonists' Association will probably agree that it is not advisable to take any further steps in the matter.

6. The next matter to which the Association refer in their Address is that of the Indian Codes, which have been applied to the Protectorate. I sympathise with the sentiment which leads them to express a preference for English law, but there are practical reasons which seem to me to render its adoption undesirable, and I think that the Association are inclined to over-rate the extent of the differences between the two systems of law.

7. The vast majority of the inhabitants of the Protectorate are natives, for whom the Indian codes may well be regarded as more suitable than English law.

8. Moreover, the codification of the Indian law renders it possible to entrust its administration to persons having no special legal training; while, if English law were introduced, it would be necessary to appoint a number of legally trained magistrates, at greatly increased salaries, to take over the judicial duties of the Collectors.

9. At the same time I recognise that the Indian codes are not in all respects suitable to the conditions of the Protectorate, and I propose, as opportunity serves, to substitute for them local ordinances based on the codes, from which such specifically Indian provisions as have been found to be undesirable can be omitted.

10. With regard to the more specific objections of the Colonists' Association, I would observe that previous to 1884 certain magistrates in India, if European British subjects, had the power of sentencing Europeans to six months' imprisonment without the right of appeal to a jury. The right of appeal was only given when jurisdiction over European British subjects was given to native magistrates. As there is no intention of appointing native magistrates in the East Africa Protectorate, this special reason for giving the right of appeal does not exist, and I do not at present see that any other sufficient ground has been shown for a change. Provision, I may add, has been made in the Criminal Procedure Ordinance recently enacted for trial by jury in cases not triable summarily under Section 260 of the Code or otherwise.

11. The Indian law allowing imprisonment for debt is, as stated in the Address, archaic in form, but I doubt whether in practice the result is very different from that of the English law, which allows imprisonment for contempt of an order of the Court to pay a debt, for which offence 10,544 persons were incarcerated in the United Kingdom in 1903. But, when the time comes for adapting the Civil Procedure Code, I shall be glad to consider the desirability of assimilating the provisions of the local law in this respect, and also in the matter of guarantees, to that of England.

12. I should explain that the claim of the Association to have the English Common Law established as of right is not well founded, inasmuch as the East Africa Protectorate is not, as they suppose, a Colony of settlement, but a foreign country, in which by treaty His Majesty has power to legislate, and has legislated by Order in Council under the Foreign Jurisdiction Act.

13. The Association proceed in the next place to state their objections to the present system of Government, which they describe as one of taxation without representation, and they claim that the advent of European Colonists into East Africa justifies the bestowal upon them of some share in the administration of their own affairs. It does not appear, however, that more than a small portion of the revenue raised by taxation in the Protectorate is contributed by the European Colonists, and for other reasons I do not consider that the time is ripe for the introduction of electoral institutions. But I agree that it is desirable that the Officer Administering the Government should be assisted by a Council in making laws, and I propose to advise His Majesty to issue Letters Patent providing for the establishment of a Legislative Council in which, although the Government would have a majority, there would also be unofficial members appointed by His Majesty, who would be chosen to represent as far as possible the different interests of the community.

14. I have not failed to give careful consideration to the views, expressed in the Address, on the subject of the military and police forces of the Protectorate. It appears to me, however, that a permanent white force sufficiently large to replace the present native troops and police would not only be much more expensive, but would, at least in the tropical parts of the country, be less effective than the existing forces. The Government would welcome the assistance of the Colonists in maintaining order, and I trust that they will embrace the opportunity of rendering such assistance by joining the Volunteer Reserve, as the alternative scheme suggested in the Address is not one which could be sanctioned.

15. With reference to the paragraph in which the Association observe that no encouragement is given to prospect for precious stones and minerals, you are aware that, since the Address was written, I have, in a despatch of the 5th January,* authorised the issue of a form of prospecting licence which will, I hope, sufficiently encourage discoverers; but I think that the establishment of a mining department must stand over until payable minerals have been found.

16. With regard to hospital fees, my predecessor, in his despatch of the 18th August,* authorised the reduction of the minimum charge for non-official patients from Rs. 12 per diem to Rs. 5, and this does not seem to be an unreasonable charge, although in some special cases it may occasionally be found necessary to reduce or waive it.

The arrangement under which a public officer can obtain a licence to shoot game at a reduced rate is not peculiar to East Africa, and as at present advised I do not propose that it should be altered.

18. The closing of certain districts of the Protectorate to Europeans, to which the Association take exception, appears to me a precaution which it is necessary to maintain in the interests both of natives and of Europeans, until the extension of administration to those regions enables the Government to extend its protection and control to both parties.

19. I regret the tone of the remarks which the Association make with regard to the treatment of the natives. I am convinced that just treatment of the natives is the surest safeguard of the settlers, and that, if this is accorded, the settlers will have no cause to fear them, but will be glad to avail themselves of their assistance in developing the country.

20. The last question to which the Petitioners refer is that of the currency of the Protectorate, and I note that they advocate the substitution of British coinage for the rupee. This matter was very carefully considered by the then Secretary of State for Foreign Affairs some two years ago, and the conclusion arrived at was that, in view of the close relations of the Protectorate with India, the balance of advantage lay in the retention of the rupee. The British sovereign, however, has now or will shortly be, declared legal tender, and an issue of rupee notes of certain denominations will be made.

As I am unable to request that you will cause an answer to be addressed to the sense of what I have written, or that you will, if you think fit, give me the result of this despatch.

I have, &c.,
ELGIN.

No 6.

THE COMMISSIONER to THE SECRETARY OF STATE.

(Received June 18, 1906.)

(Extract.)

Commissioner's Office, Nairobi, May 21, 1906.

At the request of the Secretary of the Colonists' Association, I have the honour to submit a copy of a letter I have received from the Association containing a resolution passed at a public meeting of the settlers, held at the Town Hall, Nairobi, on the 9th instant, and an amendment which was subsequently passed thereto at the same meeting.

2. This meeting, which was the largest hitherto held in Nairobi, was the outcome of a meeting held by the Indian community in Mombasa, which had for its object the urging on Government that equal rights be accorded to Indians and Europeans in this Protectorate.

3. The gist of the matter is whether Indians should be allowed to take up land within the area opened for white settlement, which may be said to lie between Kiu Station and Fort Ternan. I am unable to find any proclamation from Sir C. Eliot on the subject, but in his minute to the Land Officer, No. 297, he held that it was better not to grant any large holdings to Indians between Machakos Road and Fort Ternan, and in Mr. Jackson's Circular of the 28th August, 1902, the country lying between Kiu and Fort Ternan was expressly excepted to Indians desirous of settling as cultivators. With regard to this area the Land Committee wrote in their report (page 14) as follows:—

"The area lying between Kiu and Fort Ternan has already been proclaimed as one suitable for European settlement, and without wishing to bind themselves too closely to that area or to restrict its limits, the Committee think that a European reserve should be maintained more or less on the lines laid down, and that within that area Asiatics should not be allowed to hold land (with the exception of such plots that have already been granted), and that outside the towns within the limits of that area they should only be granted leases of market-garden land on short terms."

Although no definite ruling has been given in the matter, it has been the policy of both my predecessors not to grant land to Indians, except within municipal limits, within the area mentioned, and the Colonists' Association are quite aware that I have shown no intention of departing from this policy.

4. The matter is one upon which I am quite aware it would be very difficult to legislate, but with Your Lordship's approval I propose to follow, as I have hitherto done, the principle acted on by Sir C. Eliot and Sir D. Stewart, that land outside municipal limits, roughly, lying between Kiu and Fort Ternan, be only given to white settlers.

5. After the resolution was passed at the meeting above referred to, an amendment was proposed by a certain Mr. Low in language, as reported in the "Times of East Africa," which caused me to communicate a strong protest to the President of the Association, a copy of which, together with copy of his reply, I enclose.

Enclosure 1 in No. 6.

SIR,
Nairobi, British East Africa, May 14, 1906.
I HAVE the honour to request that you would be pleased to forward to His Majesty's Secretary of State for the Colonies the following resolution passed at a public meeting held in the Town Hall, Nairobi, on the 9th instant:—

"That this meeting of white settlers in the East Africa Protectorate expresses in the most emphatic way its opposition to any alteration being made in the policy of the former Commissioners of the Protectorate, Sir Charles Eliot, and the late Sir Donald Stewart, of retaining the highlands of East Africa, defined in the Proclamation of Sir Charles Eliot as lying between Kiu Station and Fort Ternan Station on the Uganda Railway, for European settlement only.

"And this meeting pledges itself to offer the most determined opposition to the attempts of British Indians to be allowed to take up land in such highlands, and insists upon the Imperial Government reserving for European settlement the only part of the Protectorate suited to Europeans, and to which they have the exclusive right by reason of the deficit in Protectorate expenditure defrayed from contributions by the British taxpayer, and by reason of a great number of white settlers having come into the country on the faith of its being reserved for Europeans.

"And, further, that this meeting of white settlers emphatically condemns the policy of the Government of this Protectorate, which it considers has been directly responsible for the attitude which the Indians have taken up."

I may state that, while the imperative necessity of reserving these highlands for Europeans was agreed to by all, it was felt by a large majority that the attitude of the Indians in endeavouring to force the Administration to break faith with white settlers was due to the policy of some of the present officials in directly favouring Indian subjects.

I remain, &c.,
W. MACLELLAN WILSON,
Acting Secretary.

The Commissioner,
East Africa Protectorate,
Nairobi.

19
Enclosure 2 in No. 6.

SIR,
Commissioner's Office, Nairobi, May 12, 1906.
The attention of His Majesty's Commissioner has been drawn to certain passages of the account given in the issue of the "Times of East Africa" of the 12th instant, of the recent meeting of the Colonists' Association at Nairobi.

2. A certain Mr. Low is reported to have said, in connection with an amendment he made "emphatically condemning the policy of the Government of this Protectorate"—which amendment was subsequently carried by a majority—that, "He considered that the Indians held a most extraordinary position in this country. (Applause.) They were over-rated, they had special privileges such as not being amenable to municipal regulations; in fact, they did very much as they liked, and that it seemed to be in favour with the Government. He thought the support given the Indians was not done from motives of benevolence, but 'back-sheesh' was at the bottom of it." (A statement which elicited loud applause from a certain section of the meeting.)

I am to enquire what is meant by this charge, evidently directed against the Commissioner of the Protectorate. Vague and unsupported as it is it appears to have been made with support from a section of your Association.

I am further to enquire whether you consider that the tone displayed at the meeting justifies His Majesty's Commissioner in looking for the future for any support from your Association in the task he has before him of developing the country in the interests of the white settlers and the community in general.

I am, &c.,
A. C. HOLLIS,
Secretary.

The President,
Colonists' Association,
Nairobi.

Enclosure 3 in No. 6.

SIR,
Nairobi, May 17, 1906.
I HAVE to acknowledge your letter of the 12th instant, the receipt of which has been delayed owing to same having been received at the office of the Colonists' Association.

In the first place I wish to point out that the meeting was not of the Colonists' Association, but a public meeting held under its auspices.

I am aware that probably the majority of those present were members of the Association, but, nevertheless, many who voted for the amendment, to which, in my opinion, you rightly take exception, were not members.

With regard to paragraph 3 of your letter, it is impossible for me to state what is meant by the charge you refer to. That is, surely, a question which should be addressed to the proposer of the amendment and his supporters.

Regarding paragraph 4, I do not consider, and have stated so publicly, that the resolution as adopted can commend itself to any fair-minded man; but, as I have pointed out, the meeting was a public one—a mass meeting, in fact—and until the Colonists' Association identifies itself with the resolution I do not think it should be saddled with it.

A general meeting of the Association is to be held early in July, when this matter, among other business, will be dealt with.

In conclusion I may state, I think, that the Colonists' Association, although voicing the grievances and requirements of the settlers in this Protectorate, is willing and can be of great service to the Government.

I remain, &c.,
FRANK WATKINS.

Colonel Hayes Sadler, C.B.,
Nairobi.

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No. 7.

THE SECRETARY OF STATE TO THE COMMISSIONER.

SIR,
Downing Street, July 17, 1906.
I HAVE the honour to acknowledge the receipt of your despatch of the 21st of May last,* submitting a copy of a letter from the Colonists' Association on the subject of land grants to Asiatics in the East Africa Protectorate.

2. I have to request that you will cause the Colonists' Association to be informed that it would not be in accordance with the policy of His Majesty's Government to exclude any class of His subjects from holding land in any part of a British Protectorate, but that, in view of the comparatively limited area in the Protectorate suitable for European colonization, a reasonable discretion will be exercised in dealing with applications for land on the part of natives of India and other non-Europeans.

3. With regard to paragraph 4 of your despatch* above-mentioned, I have to inform you that I approve of your adhering to the principle acted on by your predecessors, viz.: that land outside municipal limits, roughly lying between Kiu and Fort Ternan, should be granted only to European settlers.

I have, &c.,
ELGIN.

No. 8.

THE COMMISSIONER TO THE SECRETARY OF STATE.

(Received August 22, 1906.)

MY LORD,
Commissioner's Office, Nairobi, July 30, 1906.
I HAVE the honour to submit copy of a letter which I have received from the Secretary of the Colonists' Association expressing the gratitude of the Association for the concessions granted to them in reply to their petition of August 23rd last.†

I have, &c.,
J. HAYES SADLER.

Enclosure in No. 8.

SIR,
Association Rooms, Nairobi, July 19, 1906.
I HAVE the honour to request that you would kindly communicate to His Majesty's Principal Secretary of State for the Colonies the gratitude of this Association for the concessions which he has made in answer to the Address sent by this Association on 23rd of August of last year.

I have, &c.,
W. MACLELLAN WILSON,
Honorary Secretary.

His Majesty's Commissioner,
Nairobi.

No. 9.

THE COMMISSIONER TO THE SECRETARY OF STATE.

(Received January 9, 1907.)

MY LORD,
Commissioner's Office, Mombasa, December 19, 1906.
I HAVE the honour to submit a report dated the 26th ultimo, from the Commissioner of Lands embodying his proposals for the revision of Land Laws.

datw (copy of enclosure No. 8) I am to the Secretary of State for the Colonies
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19
Enclosure 2 in No. 6. Commissioner's Office, Nairobi, May 12, 1906.

SIR,
THE attention of His Majesty's Commissioner has been drawn to certain passages of the account given in the issue of the "Times of East Africa" of the 12th instant, of the recent meeting of the Colonists' Association at Nairobi.

2. A certain Mr. Low is reported to have said, in connection with an amendment he made "emphatically condemning the policy of the Government of this Protectorate"—which amendment was subsequently carried by a majority—that, "He considered that the Indians held a most extraordinary position in this country. (Applause.) They were over-rated, they had special privileges such as not being amenable to municipal regulations; in fact, they did very much as they liked, and that it seemed to be in favour with the Government. He thought the support given the Indians was not done from motives of benevolence, but 'back-shesh' was at the bottom of it. (A statement which elicited loud applause from a certain section of the meeting.)"

3. I am to enquire what I meant by this charge, evidently directed against the officials of the Association. Vague and unsupported as it is it appears to have met with support from a section of your Association.

4. I am further to enquire whether you consider that the tone displayed at this meeting justifies His Majesty's Commissioner in looking for the future for any support from your Association in the task he has before him of developing the country in the interests of the white settlers and the community in general.

I am, &c.,
A. C. HOLLIS,
Secretary.

The President,
Colonists' Association,
Nairobi.

Enclosure 3 in No. 6. Nairobi, May 17, 1906.

SIR,
I HAVE to acknowledge your letter of the 12th instant, the receipt of which has been delayed owing to same having been received at the office of the Colonists' Association.

In the first place I wish to point out that the meeting was not of the Colonists' Association, but a public meeting held under its auspices.

I am aware that probably the majority of those present were members of the Association, but, nevertheless, many who voted for the amendment, to which, in my opinion, you rightly take exception, were not members.

With regard to paragraph 3 of your letter, it is impossible for me to state what is meant by the charge you refer to. That is, surely, a question which should be addressed to the proposer of the amendment and his supporters.

Regarding paragraph 4, I do not consider, and have stated so publicly, that the resolution as adopted can commend itself to any fair-minded man; but, as I have pointed out, the meeting was a public one—a mass meeting, in fact—and until the Colonists' Association identifies itself with the resolution I do not think it should be saddled with it.

A general meeting of the Association is to be held early in July, when this matter, among other business, will be dealt with.

In conclusion I may state, I think, that the Colonists' Association, although voicing the grievances and requirements of the settlers in this Protectorate, is willing and can be of great service to the Government.

I remain, &c.,
FRANK WATKINS.

Colonel Hayes Sadler, C.B.,
Nairobi.

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No. 7.

THE SECRETARY OF STATE TO THE COMMISSIONER.

SIR,
I HAVE the honour to acknowledge the receipt of your despatch of the 21st of May last,* submitting a copy of a letter from the Colonists' Association on the subject of land grants to Asiatics in the East Africa Protectorate.

2. I have to request that you will cause the Colonists' Association to be informed that it would not be in accordance with the policy of His Majesty's Government to exclude any class of His subjects from holding land in any part of a British Protectorate, but that, in view of the comparatively limited area in the Protectorate suitable for European colonization, a reasonable discretion will be exercised in dealing with applications for land on the part of natives of India and other non-Europeans.

3. With regard to paragraph 4 of your despatch* above-mentioned, I have to inform you that I approve of your adhering to the principle acted on by your predecessors, viz.: that land outside municipal limits, roughly lying between Kiu and Fort Ternan, should be granted only to European settlers.

I have, &c.,
ELGIN.

No. 8.

THE COMMISSIONER TO THE SECRETARY OF STATE

(Received August 22, 1906.)

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I have, &c.,
J. HAYES SADLER.

Enclosure in No. 8.

SIR,
I HAVE the honour to request that you would kindly communicate to His Majesty's Principal Secretary of State for the Colonies the gratitude of this Association for the concessions which he has made in answer to the Address sent by this Association on 23rd of August of last year.

I have, &c.,
W. MACLELLAN WILSON,
Honorary Secretary.

His Majesty's Commissioner,
Nairobi.

No. 9.

THE COMMISSIONER TO THE SECRETARY OF STATE

(Received January 9, 1907.)

My LORD,
I HAVE the honour to submit a report dated the 26th ultimo, from the Commissioner of Lands embodying his proposals for the revision of Land Laws.

His Majesty's Commissioner, Nairobi. No. 6. No. 23.

2. It is thought desirable to submit these proposals in their present form, for Your Lordship's consideration, before drafting a new Ordinance, more especially as I shall shortly be in England, and have the opportunity of discussing any questions which may arise.

3. I have gone through this report with the Commissioner of Lands and the Crown Advocate, and except with regard to certain points to which I shall allude later on in this despatch, I concur fully with the views expressed by Colonel Montgomery. On the question of transfers of leasehold, a matter upon which there has been a good deal of local feeling, it will be observed from paragraph 4 of Colonel Montgomery's report, that he is of opinion that the time has not yet come for allowing this. As a matter of fact, as has been frequently pointed out, transfer is rarely refused, but it is desirable to retain in our hands the power of keeping out undesirable persons. Moreover, controlling the transfers also enables us to prevent too much land getting into the hands of one person. A great deal has been urged in favour of free transfers of leaseholds on the ground that the reservation left with

Commissioner affects the value of the land and the borrowing powers of the who may require cash to develop the property, in so much that he has not legal title to dispose of his land. On the other hand, there is the fact that the Bank of India advances money on the security of Crown leases, but only if development has taken place, on the understanding with the Administration that provided due care is taken in these transactions, the right reserved to the owner would not be exercised to their prejudice.

4. I agree with Colonel Montgomery that Section 9 of the present Ordinance should be repealed.

5. I also agree with the opinion expressed in paragraph 8 of the report that an owner of a building should ordinarily have the right to remove the building at the end of his lease, so far as short leases in townships, say, for 10 years, are concerned. In cases of the usual 99 years' lease, it would seem desirable to let the present regulation stand.

6. The regulations contained in paragraphs 14 and 15 that the grazing leases should be, in the first instance, given for 21 years, with option of renewal to 99 years, and that homestead areas be limited to 320 acres, occupation of the whole being given at once, have a great deal to commend them. The principle of granting occupation over a portion of a homestead area and preempting the rest is cumbersome and has the effect of tying up the land. The conditions proposed in paragraph 30 may possibly require further consideration, as they appear to be somewhat complicated. Reversion of the plot, should the requisite building not be erected within the period of three years, would seem to be the simplest solution.

7. I hesitate to recommend the granting of freehold property in townships without more information than I possess as to the practice in other Colonies.

8. Paragraph 32 should be read in connection with the latter portion of the supplementary minute by the Commissioner of Lands of the 11th December, herewith attached.

9. I concur with the opinion that a Land Board should be formed on the basis proposed in the Minute; but it appears to me that unless the Commissioner of Lands actually presides over the Board a good deal of its activity is likely to be lost, as the consideration of cases where steps would have to be taken to recover land would be but a small part of the work which a body so composed might be expected to do.

10. With a Land Board established on these lines we might safely allow it to enforce the conditions of the grants, with an appeal to the High Court.

11. Later on it may possibly be found convenient to have a separate Land Board for each province, but the time is hardly ripe for that.

12. With regard to paragraph 33, I should say that the opinion expressed that no land rangers are at present required, is contingent on the Survey estimates, so far as they relate to the Cadastral Branch, being passed, as they have lately been revised. Should the number of surveyors in this branch be further reduced the necessity for appointing land rangers will arise.

13. My proposals regarding the establishment of a Land Court to deal with

rights in the ten-mile coast strip was submitted to Your Lordship in my despatch, of October 19th.*

14. In conclusion, I am of opinion that the powers at present exercised by His Majesty's Commissioner of selling and leasing Crown Lands and of granting transfers should be transferred to the Commissioner of Lands, who will refer such cases as are necessary for the orders of the Commissioner. The necessity for the signature of the Commissioner, who is frequently absent on tour, on all land deeds has given rise to considerable inconvenience and to complaints on the part of the public. It will be much simpler and save time, if such deeds are signed by the Commissioner of Lands. I am advised that, should Your Lordship sanction this proposal, provision to that effect can be made in an Ordinance amending the existing Crown Lands Ordinance, and that no amendment of the Order-in-Council will be necessary.

I have, &c.,
J. HAYES SADLER.

Enclosure 1 in No. 9.

Land Commissioner's Office, Nairobi,
November 26, 1906.

YOUR EXCELLENCY,

The Secretary of State for the Colonies in commenting in his despatch of 23rd March last, on the report of the Land Committee of 1905, said that, while agreeing generally in many of the conclusions, he was not able at once to pass orders on them. He added that he was appointing a Commissioner for Lands, and would instruct that officer to make a full report after due consideration of all the questions raised. I have the honour to submit the report.

2. I have been now seven months in the country, and during that time have seen many parts of it. But I write with a full recognition of the great difficulty of many of the problems. The country has been so newly occupied, and its conditions as to soil and climate are so varied and so complex, that it would be dangerous to generalise. We are still very much in the experimental stage. The great central highland tract has a good climate, and to all appearance considerable possibilities for development. Some of the land produces rich crops, and the grazing areas are extensive and very promising. Probably the great industry of the highlands will be stock raising, provided that we can cope successfully with the various diseases to which cattle and sheep are liable. Cotton, rubber, and fibres will also do well on the lower lands on the coast and near Lake Victoria. I am not prepared to say that fortunes will be made; but I see no reason to doubt that the hard-working and intelligent farmer will be able to make a comfortable living.

3. It will be convenient to state in the beginning that most of the grants have been made under Crown Lands Ordinance No. 21, dated 27th September, 1902; these have been in the main of two kinds:—

(1) The homestead. Permission is given to occupy first 160 acres; when this has been developed freehold is granted, and occupation is allowed on another 480 acres. When this also has been developed freehold is given on the whole. The payments may be spread over 3 or 16 years; the rates are from two rupees (two shillings and eight pence) to four rupees (five shillings and four pence) an acre.

(2) The grazing lease for 99 years. The usual area of this grant is 5,000 acres, but some farms are of 10,000 acres, and even more. Freehold can be acquired on 1,000 acres on payment of from one rupee (one shilling and four pence) to two rupees (two shillings and eight pence) an acre. The rent on the leased grazing area is only one anna (one penny), or half an anna (half-penny) an acre.

Inside the railway zone (within one mile of the line) freehold can be obtained on 160-acre lots from two rupees (two shillings and eight pence) to twelve rupees (sixteen shillings) an acre. Various other grants have been made of the following descriptions:—

(a) Leases of large areas for growth of rubber and fibre, or for the working of mangrove bark.

* Not printed.

2. It is thought desirable to submit these proposals in their present form, for Your Lordship's consideration, before drafting a new Ordinance, more especially as I shall shortly be in England, and have the opportunity of discussing any questions which may arise.

3. I have gone through this report with the Commissioner of Lands and the Crown Advocate, and except with regard to certain points to which I shall allude later on in this despatch, I concur fully with the views expressed by Colonel Montgomery. On the question of transfers of leasehold, a matter upon which there has been a good deal of local feeling, it will be observed from paragraph 4 of Colonel Montgomery's report, that he is of opinion that the time has not yet come for allowing this. As a matter of fact, as has been frequently pointed out, transfer is rarely refused, but it is desirable to retain in our hands the power of keeping out undesirable persons. Moreover, controlling the transfers also enables us to prevent too much land getting into the hands of one person. A great deal has been urged in favour of free transfers of leaseholds on the ground that the reservation left with the Commissioner affects the value of the land and the borrowing powers of the holder, who may require money to develop the property, in so much that he has not a clear legal title to his land. On the other hand, there is the fact that the National Bank has money on the security of Crown leases, but only in cases where development has taken place, on the understanding with the Administration that, provided no steps are taken in these transactions, the right reserved to the Commissioner would not be exercised to their prejudice.

4. I agree with Colonel Montgomery that Section 9 of the present Ordinance should be repealed.

5. I also agree with the opinion expressed in paragraph 8 of the report that an owner of a building should ordinarily have the right to remove the building at the end of his lease, so far as short leases in townships, say, for 10 years, are concerned. In cases of the usual 99 years' lease, it would seem desirable to let the present regulation stand.

6. The regulations contained in paragraphs 14 and 15 that the grazing leases should be, in the first instance, given for 21 years, with option of renewal to 99 years, and that homestead areas be limited to 320 acres, occupation of the whole being given at once, have a great deal to commend them. The principle of granting occupation over a portion of a homestead area and preempting the rest is cumbersome, and has the effect of tying up the land. The conditions proposed in paragraph 30 may possibly require further consideration, as they appear to be somewhat complicated. Reversion of the plot, should the requisite building not be erected within the period of three years, would seem to be the simplest solution.

7. I hesitate to recommend the granting of freehold property in townships without more information than I possess as to the practice in other Colonies.

8. Paragraph 32 should be read in connection with the latter portion of the supplementary minute by the Commissioner of Lands of the 11th December, herewith attached.

9. I concur with the opinion that a Land Board should be formed on the basis proposed in the Minute; but it appears to me that unless the Commissioner of Lands actually presides over the Board a good deal of its activity is likely to be lost, as the consideration of cases where steps would have to be taken to recover land would be but a small part of the work which a body so composed might be expected to do.

10. With a Land Board established on these lines we might safely allow it to enforce the conditions of the grants, with an appeal to the High Court.

11. Later on it may possibly be found convenient to have a separate Land Board for each province, but the time is hardly ripe for that.

12. With regard to paragraph 33, I should say that the opinion expressed that no land rangers are at present required, is contingent on the Survey estimates, so far as they relate to the Cadastral Branch, being passed, as they have lately been revised. Should the number of surveyors in this branch be further reduced the necessity for appointing land rangers will arise.

13. My proposals regarding the establishment of a Land Court to deal with

rights in the ten-mile coast strip was submitted to Your Lordship in my despatch, of October 19th.*

14. In conclusion, I am of opinion that the powers at present exercised by His Majesty's Commissioner of selling and leasing Crown Lands and of granting transfers should be transferred to the Commissioner of Lands, who will refer such cases as are necessary for the orders of the Commissioner. The necessity for the signature of the Commissioner, who is frequently absent on tour, on all land deeds has given rise to considerable inconvenience and to complaints on the part of the public. It will be much simpler and save time, if such deeds are signed by the Commissioner of Lands. I am advised that, should Your Lordship sanction this proposal, provision to that effect can be made in an Ordinance amending the existing Crown Lands Ordinance, and that no amendment of the Order-in-Council will be necessary.

I have, &c.,
J. HAYES SADLER.

Enclosure 1 in No. 9.

Land Commissioner's Office, Nairobi,

November 26, 1906.

YOUR EXCELLENCY,

The Secretary of State for the Colonies in commenting in his despatch of 23rd March last, on the report of the Land Committee of 1905, said that, while agreeing generally in many of the conclusions, he was not able at once to pass orders on them. He added that he was appointing a Commissioner for Lands, and would instruct that officer to make a full report after due consideration of all the questions raised. I have the honour to submit the report.

2. I have been now seven months in the country, and during that time have seen many parts of it. But I write with a full recognition of the great difficulty of many of the problems. The country has been so newly occupied, and its conditions as to soil and climate are so varied and so complex, that it would be dangerous to generalise. We are still very much in the experimental stage. The great central highland tract has a good climate, and to all appearance considerable possibilities for development. Some of the land produces rich crops, and the grazing areas are extensive and very promising. Probably the great industry of the highlands will be stock raising, provided that we can cope successfully with the various diseases to which cattle and sheep are liable. Cotton, rubber, and fibres will also do well on the lower lands on the coast and near Lake Victoria. I am not prepared to say that fortunes will be made; but I see no reason to doubt that the hard working and intelligent farmer will be able to make a comfortable living.

3. It will be convenient to state in the beginning that most of the grants have been made under Crown Lands Ordinance No. 21, dated 27th September, 1902; these have been in the main of two kinds:—

(1.) The homestead. Permission is given to occupy first 160 acres; when this has been developed freehold is granted, and occupation is allowed on another 480 acres. When this also has been developed freehold is given on the whole. The payments may be spread over 3 or 16 years; the rates are from two rupees (two shillings and eight pence) to four rupees (five shillings and four pence) an acre.

(2.) The grazing lease for 99 years. The usual area of this grant is 5,000 acres, but some farms are of 10,000 acres, and even more. Freehold can be acquired on 1,000 acres on payment of from one rupee (one shilling and four pence) to two rupees (two shillings and eight pence) an acre. The rent on the leased grazing area is only one anna (one penny), or half an anna (half-penny) an acre.

Inside the railway zone (within one mile of the line) freehold can be obtained on 160-acre lots from two rupees (two shillings and eight pence) to twelve rupees (sixteen shillings) an acre. Various other grants have been made of the following descriptions:—

(a.) Leases of large areas for growth of rubber and fibre, or for the working of mangrove bark.

- (b.) Leases for cotton cultivation.
 (c.) Forest leases.
 (d.) Building leases in towns.

Special conditions are made in all these cases, which are modified from time to time as we obtain more experience.

4. The Land Committee begins by advocating a more liberal policy; mention is particularly made of strict covenants in leases, and restrictions on transfers.

It cannot be said that the covenants in grazing leases are anything but lenient. Under the existing rules it is possible for a man to get a 99-years lease on a large area, the only obligation being "to use and develop the natural resources of the land leased with all reasonable speed, having regard to all the circumstances of the case."

The remark was perhaps intended to apply to building leases. These will be dealt with later.

Nothing has been written on freedom of transfer. The Committee was of opinion that, as far as possible, title and tenure should be made as secure, and the terms as easy as possible, *having due regard to the observance by them of the conditions and obligations for development.* It will be seen from the words that it was not the intention of the Committee to allow free transfer without imposing on the transferee all the obligations of the transferor.

The late Sir Donald Stewart considered that the consent of the Commissioner was desirable to enable the Government to keep a check on the class of men that might come into the country, and added that the requisite consent would never be refused to any desirable person.

The Secretary of State, in commenting on the question, declared that he would be unable to assent to any legislation which facilitates the holding of land in large areas for speculative purposes, either by permitting large grants without adequate securities for its development, or by permitting the holders of smaller areas to part with their holdings without imposing on the transferee a similar liability to make use of the land.

Thus the Secretary of State agreed with the most important principle advocated by the Land Committee.

In my opinion the time has not come to allow transfer of leaseholds without sanction. The country is still undeveloped, and much land still remains to be settled. We can doubtless insist on conditions being fulfilled, and we shall try to do so. But it is important to retain the power to refuse a transfer when it is sought as a mere speculation. Doubtless some speculation is necessary for the development of the country; but gambling in land is not. It is well, as Sir Donald Stewart said, to be able to keep out an undesirable person. Moreover, in retaining this power we are not singular. It is enforced in self-governing Colonies. As a fact consent to transfer has been liberally given, and the time for obtaining it has now been reduced in most cases to a few days.

5. I am in entire accord with the Committee in the recommendation that there should be a well thought out policy for laying out roads, native reserves, reserving land for military purposes, townships, outspans, recreation grounds, public buildings, &c.; that they should be properly graded, and suitable for the needs of the country; that bridges should be made; and water rights should be clearly defined and irrigation laws framed.

Some native reserves have already been notified, and arrangements are now being made for marking off all land in the occupation of natives in the parts of the Protectorate where land settlement is likely to take place. Land is reserved for townships wherever there is a likelihood of a collection of houses and shops, and each case is dealt with according to probable local needs. Roads are gradually being made and extended, and it is proposed to have a road section of the Cadastral Survey Department, so that properly graded roads may be marked out with fixed boundaries before land settlement. The water question is important and is under consideration.

Conditions of grants, and freedom of transfer.

Well thought out policy.

6. No exception can be taken to the recommendation that if large concessions are made there should be stringent conditions for the development of the area. This principle I trust will always be borne in mind. Large concession.

7. We now come to criticisms of certain provisions of the Crown Land Ordinance:— Forfeiture of freehold

Article 9.—(1) If any land sold under the provisions of this Ordinance appears to the Commissioner to have been unoccupied for a period exceeding 12 months, he may give notice, that if within the next six months the owner does not appear and accord reasonable proof that he intends to use and develop the land to a reasonable extent, the land will be forfeited.

(2) Such notice shall be published in the Gazette, and a copy shall be affixed to the land and, if the address of the owner of the land is known, a copy shall be sent by post to that address.

(3) If the owner does not appear within six months, or if, having appeared, he fails to afford reasonable proof that he intends to use and develop the land to a reasonable extent, the Commissioner shall, by notice in the Gazette, declare the land forfeited, and the land shall, therefore, revert to the Commissioner.

It is a natural feeling that once a freehold is given it should be inviolate. I agree with the Committee that this clause is open to objection, and would cancel it. The area of freehold that can be acquired by any individual is not large; once given I would not retain power to forfeit the right in any case.

8. Article 11.—In the absence of special provision to the contrary contained in the lease, all buildings on Crown land leased, whether erected by the lessee or not, shall, on the determination of the lease, pass to the Commissioner without payment of compensation. Loss of buildings at end of lease.

There is some misconception on this point in the Committee's report. Practically all leases for agricultural and grazing land are for 99 years; it is only building leases in towns that are for short terms. I agree, however, that the owner of a building should ordinarily have the right to remove the material at the end of his lease, or, should the buildings be required by Government, that they should be taken over at a valuation.

9. Article 14 (c).—To allow roads made by the lessee upon the land leased to be used for the public service. Use of private roads.

There is some ground for objecting to this provision. The question really is often that of a right of way to a neighbouring property. I would enact instead that, when necessity is proved, the Commissioner may have power to require a lessee to allow one or more roads on his property to be used in the public service.

10. Article 14 (d).—To permit travellers to encamp with their servants, animals, waggons, and luggage for a period not exceeding 48 hours on any part of the land leased which is uncultivated and which is not within a quarter of a mile of a dwelling house, and to allow them access, with their servants and animals, to any river, stream, or lake upon the land. Outspans.

Article 29 is similar to it, and provided a penalty for breach of the rule. The objection can be met by providing that a landholder may (with the approval of the collector) fix a definite place for an outspan on his property, and more than one place if the property is very extensive, with due regard to access to water; and that when this has been done, travellers will not be permitted to use any other place on the property for camping on.

11. Article 15 (c).—To provide reasonable drainage and water supply, having due regard to the situation and purpose of the building and the health of the neighbourhood. Drainage and water supply.

It is possible that the meaning of this provision has been misunderstood. The intention is that while the public authority of a township shall be responsible for the mains for drainage and water supply, the house owner must do all that is

needed to connect their houses with these mains. This is quite reasonable, and only is in accordance with the general custom (as I understand) in all towns in other countries. I would go further and say that where the owner of a large piece of land in a township divides up his land into building lots, he must be responsible for making all roads and drains, and laying down all water pipes on his property, before the public authority takes over the roads and main drains and pipes.

12. Article 16 (h).—That the lessee, his servants and agents, will not interfere with the settlements or villages of the natives, or with land allotted for native settlements or villages, and, as far as possible, will avoid all quarrels with the natives in or near the land leased.

(c) To refer all disputes between the lessee, his servants, or agents and the natives in villages or settlements in or near the land leased to the collector of the district.

I confess I am unable to agree with the desire of the Committee to modify these clauses. It is true that many settlers are on the best terms with the natives, who occupy land on or near their properties, but all are not. It is essential that the civil authorities should have general control over all questions connected with natives. The country has been opened for a very short time, and the natives know very little of us. In my opinion it would be extremely unwise to alter the existing law on this head.

13. Article 3.—A conveyance, lease, or licence for the temporary occupation of Crown land under this Ordinance shall not confer any rights to minerals in or under the said land, or to the waters of any river or lake.

27.—(1) The Commissioner may at any time hereafter enter upon any land, sold or leased under this Ordinance, and take therefrom stone and other materials for the making or repairing of roads, railways, canals, or other public works.

(2) If the materials are taken from cultivated land, compensation shall be payable by the Commissioner, but not otherwise.

28. The Commissioner may, by writing under his hand, authorize contractors, their servants, and agents to exercise the powers conferred upon him by Sections 23-28, inclusive, of this Ordinance.

It will be necessary to modify Article 3 to make it clear that an owner or lessee can take earth and stone on his property for his own use without payment. The working of a stone or lime quarry, however, for the sale of its products should be subject to an extra rent or royalty. I admit that Articles 27 and 28 appear, at first sight, to be somewhat exacting. But I think they are justified in a new country. The Government must, for the present, be given wider powers to appropriate materials for public works than would be tolerated in a more settled country. The public works are undertaken for the benefit of the residents, and such residents should not grudge the giving of what is really needed for their construction or repairs. On the other hand, it is incumbent on the officers executing the works, or causing them to be executed, to see that wanton damage or waste is not allowed an private property.

14. Next follow criticisms on the rules made under the Crown Lands Ordinance. The Committee remark first on the prices charged to purchasers of Crown lands, and say that no objection has been taken to the prices at present fixed for homesteads, and they do not consider it desirable to make any alteration in them. The existing rates have already been given in paragraph 3. The only land that can at present be bought is the 640 acre homestead, the grazing area of 1,000 acres, and the 160 acre freehold inside the railway zone. It is suggested that all land allotted should be valued by a competent board of experts, and different rates charged with regard to its quality, position, and situation.

The difficulty heretofore has been that land has been taken up before it could be surveyed and classified; and in the beginning of a country I think that uniform rates are the best. But where land can be surveyed, classified, and divided into lots of suitable size, there is much to be said for differential rates.

Relations with natives.

Right of Government to materials for public works.

Prices charged for land.

When the right to occupy any block is sanctioned, the sums paid at the sale represent the differences in value.

As to grazing leases, seeing that the present rates are so low, I am inclined to think that it would be better to give leases first for 21 years, with the option to renew for the remainder of the 99 years at an enhanced rent.

15. It is suggested that the homestead area should in future be limited to 320 acres, the whole being occupied at once, rather than as at present a first instalment of 160 acres with a preemptive area of 480 acres more. I quite agree. For the ordinary homesteader a 320 acre farm is as much as he can well develop. This might in future be the usual size of a farm; but where land is inferior there would be no objection to allotting a larger area up to a maximum of 640 acres.

Size of homestead.

With this may be considered the proposal to allow wives and children of over 16 years to take up separate selections along with the parent settler. I confess I do not see why a wife should get a separate holding. In a late Act in South Australia it is enacted: Either husband or wife may hold a homestead block, but not both at the same time. This seems to be a good rule. Nor would I give minors separate grants. There is no objection to allowing them to grown up sons of full age, capable of developing homesteads of their own. I agree that, while, as a general rule, grants should be made in order of precedence of application, those that revert to the Government should be put up to auction. This rule is being followed, and the opportunity has been taken to cut up some reacquired properties into smaller blocks. 640 acre farms having been divided into 320 and even 160 acre lots.

16. There is a proposal that when drought, failure of crops, &c., occur, more time should be allowed for the payment of the price of a homestead. It is certainly desirable not to be too hard on a struggling settler; but it must be remembered that the price (which is admittedly moderate) can be spread over 16 years.

Payment for home-

This period should not be exceeded, but I would allow a suspension of the payment, if a bad year, on condition that it is made up in a subsequent good one.

17. Objection is taken to rules 17 and 18 which give the conditions on which a freehold can be acquired.

Conditions for acquiring freehold

I admit that the conditions are complicated, and that they may work unfairly in some cases. Seeing that it is now proposed to reduce the homestead area to 320 acres, and to give that at once, these rules must necessarily be recast. It is true that the cultivation of a certain quantity of land is not the only criterion of development; this has been well brought out in the report. I agree with the Committee that "the true test of the work of development by a settler should be the extent of his beneficial occupation expressed in terms of money." This seems to me the best way of ascertaining development. Indeed, I have lately been acting on this principle, not insisting on the exact letter of the rules, but admitting a claim to freehold where it has been shown that the settler has been really trying to work his farm. In a new country, where settlers are pioneers, and where experience must often be gained at the risk of unsuccessful experiments, it is only right to allow a reasonable elasticity. I would be lenient to the man who is resident on his property, and is putting labour and money into his land. On the other hand, the mere land speculator who has done nothing deserves no consideration. A general enquiry has now been begun into the state of development of all land grants.

18. It is alleged that Rule 5, relating to forest areas in land grants works unfairly, and it is proposed that each grantee should be allowed, free of charge, any forest growing on his holding up to a tenth of the area of the whole property, making him take over at a valuation all forest exceeding this amount, and to make no further conditions as to planting. I am inclined to agree.

Forest on private land.

In the first place, we should not alienate any *bona fide* forests, but retain them to be worked by the Forest Department. When any forest does exist on a grant, I would allow the grantee to keep, free of charge, so much as grows on one-tenth of the total area, up to a maximum of 50 acres. All forest over and above this should be paid for. Having done this, I would make no further conditions. It is better not to hamper grants with many conditions; and it may be left to the settler's sense of self-interest not to denude his whole property of wood.

Fencing 19. Rule 8 enacts that unless a settler fences his land, he cannot impound the cattle of other persons which may commit trespass. I agree with the Committee that this rule is hardly fair. It makes the position of the native, who never fences his fields, stronger than that of the white settler. I would abolish this rule.

Branding. 20. It is recommended that a law should be passed insisting on all cattle being clearly branded and marked. If this includes natives' cattle (which are at present far the most numerous), I am against it. It would be difficult to enforce such an order, and it is best to interfere as little as possible with the customs of the natives. But we should certainly have a law establishing a registration office for cattle brands. Settlers would thus be able to register their own brands, and their cattle, if stolen, would be more easily traced.

Monetary qualification. 21. Objection is taken to the monetary qualification required before land is granted. The objection apparently refers to homesteads rather than to the larger farms. In any case, I think we ought to insist on some monetary qualifications. In this country it would be impossible to work even a small farm without some capital. The rule we now observe requires a monetary qualification according to the size of the grant applied for. If a settler asks for a 5,000-acre block, he should not complain if we refuse it, as he has not enough to enable him to work a homestead. We are quite prepared to give 160-acre farms to the desirable colonist on small means.

We are endeavouring to prevent an evasion of the law such as described in the report by asking for some proof that the applicant is really worth the money he professes he is. A certificate of a deposit of a certain amount is not accepted as such without a letter from the banker showing that his client has had dealings with the bank, and is really worth so much.

Consent to transfer. 22. I have already given reason for thinking we ought to retain the right to require consent to a transfer. Therefore I think Rule 20 is right and proper. Once freehold is granted, let the owner do with it what he pleases. Before that I would require consent to transfer, and, as a fact, a transfer will always be permitted if it is needed to develop the property. I think the Committee has painted the present position of the settlers (page 14) in too dark colours.

Indiana. 23. I am in general agreement with the remarks relating to the areas on which Indians should be allowed to settle, and the policy therein indicated is being followed. Indians are not given agricultural land in the highlands, except small garden plots near towns. There is the beginning of an Indian settlement at Kibos near Lake Victoria, and I see no objection to letting Indians have agricultural land near the lake or on the coast up to 100 acres for each grant; in fact, anywhere except in the highlands proper. White men have lately been applying for grants on the coast. Probably the best way to develop these coast properties will be for the settler to import Indians of the right class, giving them small farms on condition of their providing labour.

Native reserves. 24. The Committee has gone fully into the question of native reserves, which is, as it truly says, one of the greatest importance to the country. Some reserves have already been formed, but a good deal more remains to be done in this direction. In the meanwhile, the present locations of natives are being roughly marked off by Collectors. We shall shortly be in a position to say what land should be reserved. I see no reason why we should not follow two policies according to circumstances; having large reserves in some parts, and smaller ones in others. I entirely agree that once the Government has given its word to the natives in fixing a reserve, that reserve must be absolutely inviolable.

Labour. 25. This question is closely connected with that of labour. My experience so far is that where a settler is fair and just in his dealings, he usually has little or no difficulty. It is where there has been injustice that complaints are most often heard of difficulty in getting labourers. It is doubtless true that the African, having few wants, and being without ambition or desire to "better himself," is very apt to go off when he has made enough for present wants. This has to be reckoned with. In course of time, when numbers increase and a desire arises for small luxuries, the natives will be more willing to work steadily. For the present there are bound to be some difficulties, but even so the just man will usually get what labour he requires.

26. I entirely agree with the remarks of the Committee (p. 16) on the urgent need for a strong survey staff. It has always seemed to me a pity that settlers were invited to the country before any attempt had been made to survey it. We now have the beginnings of a Survey Department, with its trigonometrical and cadastral branches; but it is not nearly strong enough for the area to be dealt with. The cadastral branch more especially needs strengthening. Without a considerable access of strength we cannot hope to clear off arrears, much less to produce maps with promptitude so as to satisfy the natural requirements of settlers.

Up to the present, with the exception of a few grazing farms in the Rift Valley near Lake Naivasha, land settlement has everywhere preceded survey. Applicants have been allowed to take up land pending measurement, and there has been an avoidable delay in granting deeds because there was no one to survey the land. We hope that with an increased staff matters will improve. As a beginning we are holding up a considerable area in what is known as the Sotik country, until we are able to divide it into suitable farms. I should like to do the same in the Nandi country and the Uasin Guishu Plateau.

27. Mombasa Island is being surveyed, and we are desirous, if the staff can be obtained, to take in hand the survey of the whole coast strip; at any rate from the German border to Lamu. A proposal has been made to form a Land Court to establish the titles in the coast strip, as a beginning of the registration of titles which we hope to introduce throughout the Protectorate.

28. In their recommendation that the Land and Survey Departments should be entirely separate, the Committee perhaps hardly realised how intimately the two departments are connected. The trigonometrical branch of the Survey is distinct, and can be worked independently of the Land Department once it has been decided in what direction triangulation is required; but the so-called cadastral branch cannot. Indeed, practically the whole work of the cadastral surveyors is connected with land settlement, and the Land Officer and the head of the cadastral surveyors must work hand in hand. In all professional details the Director of Survey must direct operations, but in land settlement (or we may call it land revenue work) the cadastral staff must take their instructions from the Land Officer.

29. The Committee has made proposals of expediting land work and increasing the permanent staff. Before dealing with these, I pass on to the remarks on various miscellaneous subjects, keeping the question of new organisation till the last.

It is contended (p. 20) that it is a hardship to require the payment of survey fees with each application for land; and a suggestion is made that it would be better instead to require a deposit of Rs. 75 (five pounds), which would go towards survey fees. As a fact, applicants are asked for the preliminary deposit to ensure their *bona fides*, and we demand an amount proportionate to the area applied for. This seems to me a fairer plan than a deposit of a uniform amount. If a man asks for 5,000 or 10,000 acres, it is no hardship to him to make him pay a fee sufficient to cover the cost of surveying the whole grant. As a fact, the rates for survey fees are very low; I believe we should be justified in raising them.

30. I agree in the remarks regarding the laying out of townships. A special expert from England is now reporting on Nairobi, and all plans for townships provide separate locations for the different classes of inhabitants. The roads are marked out of a good width; the main roads in Nairobi are 100 feet. As to the size of building sites, much depends on the locality; as a general rule, with a frontage of 50 feet a depth of 100 feet is preferable to one of 75.

Building sites inside towns are being given on 99 years' lease, with conditions to build within a certain time. Residential plots close to towns have been let on shorter terms, with a promise to extend the lease according to the class of house put up. The usual conditions in the latter case are that if a wood and iron house is erected, the lease will be for 25 years; if a house of the same kind on a stone plinth, for 50 years; if a stone house, for 99 years. The defect in this is that it has no regard to the value of the house; for a residence of wood and iron may cost much more than two or three rooms built of stone, and dignified by the name of a house.

Need for strong survey staff.

Mombasa Island, and survey of coast.

Relations of Land and Survey Departments.

Survey fees.

Townships and building leases.

I am inclined to think that the following conditions would be best:—

That a lease be given in the first instance for ten years, with a condition that a building suitable to the locality must be erected within that time; that after three years, if there is no proper house, the plot should be rated as if there were a building, at the ordinary rates for occupied houses; if there were no rates in the township, then an extra rent should be paid to Government for the unimproved value. At the end of ten years, if an approved building has been constructed, the occupier should have the option either of an extension of the lease at the same rate up to 99 years, or, if he prefers, he should be able to acquire the freehold by paying a fair price according to the land values then obtaining, such price being in no case less than 25 years' purchase of the rent.

There is a natural desire to possess freehold property. This desire might be satisfied if a fair price is paid. Those unable to pay the price could have the lease extended.

Municipal Committee of Nairobi
The future constitution of the Municipal Committee of Nairobi is now under consideration. As long as the Government contributes so great a part of the expenses, it must have a large control over the working of the funds, and a strong element must be retained in the Committee. As to the non-official members, when they are elected, the Indian community, which is an important element in much of the trade in its hands, must be given some representation.

Land Board
32. The Committee proposed the formation of a permanent Land Board, to consist of:—

- A Commissioner for Lands, Chairman.
- A Commissioner for Agriculture and Forests.
- A Commissioner for Native Affairs.

It was also suggested that land rangers should be appointed to report to the Land Board in each district.

I think that, though a permanent board may be required in course of time, it is hardly necessary yet. The present position is that the Commissioner for Land exercises a general control over the Land, Survey, Agriculture, Forests, and Veterinary Departments. It is manifestly right that he should be over the Land and Survey Departments; and I think he can, for the present at any rate, supervise the other three, each department having its own head, chosen for his special qualifications in that department. This supervision ensures inter-departmental co-operation, which is very important. We can thus save the salary of a Commissioner for Agriculture and Forests.

The case is different as regards the post of a Commissioner for Native Affairs. There is an urgent need for someone who will collect and collate all information regarding natives and the labour market; but it is likewise important that the authority of the local administrative officers should not be interfered with. It would never do for the native tribes to ignore the officers with whom they have daily dealings, and to look only towards some higher officer at headquarters. It is the essence of good administration among child races that the officer on the spot should have power, such power being, of course, exercised under due supervision. There is just a fear that a Commissioner for Native Affairs might, without intending it, affect the position of the local authority; and I suggest that there should be instead a Secretary for Native Affairs attached to the Administration. His duty would be to travel freely about the Protectorate, and to get all information possible on the spot, in free consultations with Sub-Commissioners and Collectors. He would report fully to the Commissioner, and all orders would issue in the name of the head of the Administration.

The duties proposed for the Land Board can for the present be exercised by the Commissioner for Land, with the assistance of the heads of the departments under him, and of the local administrative officers. In special cases he could obtain the temporary help of non-officials to advise him as assessors or arbitrators.

At the present time the Government can only enforce the conditions of a grant by an application to the High Court. The proposal of the Committee is a good one, that such cases should be dealt with by an executive order, an appeal lying to the High Court. It should be quite possible to devise a procedure which would give every opportunity to a landholder to state his case; and these questions would thus be dealt with more speedily than by the present rather cumbrous method.

33. The appointment of land rangers is recommended by the Committee. We certainly require some such officers. If the proposal of appointing district surveyors in the Cadastral Branch is approved, we shall have available in each main division of the Protectorate an officer who will for the present be able to do all that the land ranger is intended to do. The District Surveyor, if a fully qualified land surveyor, will be of great assistance not only as a surveyor, but also in advising on all questions connected with land. If, therefore, district surveyors are sanctioned, there will be no need for separate land rangers. Land rangers.

34. It is important, as stated in the report, that the Land and Survey Departments should be properly equipped and housed. For the present we are occupying offices of a temporary nature. It is understood that permanent offices will be made when the general Government offices are built in Nairobi. Accommodation for Land and Survey Departments.

A branch Land and Survey Office is now under construction at Mombasa.

35. It is stated, as a general proposition, that outside the limits of the Sultan's dominions title to land is almost unknown among natives. It is apparently true that, as between natives and the Government, all land is acknowledged to be the property of the ruler; but among the people buying and selling of land undoubtedly exists in some cases. For instance, the Wafeta at Taveta and Sagalla are known to be owners of plots by purchase. Nevertheless, the general proposition holds good, and is convenient in that it enables us to move natives into definite reserves. It is probable that in course of time definite rights will spring up outside the reserves, and there is no reason why they should not. Native rights in land.

In the Sultan's dominions on the coast the local law is as stated. Of late there has been a tendency for Indians or other non-Africans to squat on land in order to acquire permanent rights. This is a strong reason for the early survey of the coast strip, and the establishment of a Land Court.

The natives of each tract are entitled to as much land as is necessary for their subsistence; but non-natives should not be allowed to acquire rights except by grants from the Government.

I need hardly say that it would be of incalculable benefit to the Administration could the coast lands be incorporated in His Majesty's dominions.

36. I have now been through all the questions raised by the Land Committee, and this report is submitted for Your Excellency's consideration, and that of the Secretary of State. Conclusion.

I have, &c.,

J. MONTGOMERY.

His Excellency
His Majesty's Commissioner,
Mombasa.

Enclosure 2 in No. 9.

MINUTE.

I have looked through such acts of other Colonies as I have in my office, and note the result as regards the powers of a Commissioner for Land, or Minister for Land as he is sometimes called; also of Land Boards where they exist.

New Zealand. Act 37 of 1892.

Here there is a "Minister of Lands." The "Commissioner of Crown Lands" is appointed for each land district, and there is also a "Land Board" in each district.

The Minister of Lands appears to have no special powers, but is probably the representative of the Government in all such questions.

Each district has a Land Board of which the Commissioner of Crown Lands of that district is the Chairman, the other members (from two to four) are appointed by the Governor, and are paid expenses.

This Land Board enquires into all land cases (calling witnesses, &c.), and is the sole judge of the fulfilment of conditions, &c.; it may forfeit land. An appeal lies from its orders to the Supreme Court.

Queensland. Act 25 of 1897.

Here there is also a "Land Commissioner" for each district, whose duties appear to be principally executive.

Judicial cases regarding land and its conditions are decided by a Land Court consisting of three salaried judges, who hold office during good behaviour.

Provision is made for appeals from the orders of the Land Court.

A member is mentioned in the Act, who is presumably the Minister of Land.

South Australia. Act 830 of 1903.

The "Commissioner for Land" for the whole Colony.

There is a "Land Board" appointed by the Governor consisting of four civil servants. This Board meets when required by the Commissioner, and deals with certain questions and reports others to the Commissioner.

The Commissioner has full power to cancel a lease if conditions have not been fulfilled, and to declare the land forfeited to Government. A notice to this effect is published in the "Government Gazette."

(NOTE.—I insert a note here showing the practice regarding transfers in South Australia. No transfer is permitted without the sanction of the Commissioner for Land, who asks the advice in each case of the Land Board; and no transfer is allowed until after notice of the application for two weeks in the "Government Gazette.")

Mr. Macdonald has given me two Land Ordinances which show the procedure in the Transvaal. They are:—

Transvaal. Ordinance 45 of 1902.

There is a "Commissioner of Lands," and a "Land Board" which advises the Commissioner.

It would appear that the Commissioner has power to order forfeiture, but another Ordinance (57 of 1903) seems to imply that the Lieutenant-Governor gives the final order.

Nothing is said about an appeal to a Court, but I understand from Mr. Macdonald that an appeal does lie to the Supreme Court.

The Land Board is appointed by the Lieutenant-Governor, and is purely advisory.

On the whole I am inclined to the opinion that the procedure in this Protectorate should be as follows:—

A permanent Land Board should be appointed to consist of:—

The Land Officer;

The Director of Agriculture;

The Director of Survey (or the Deputy Director, Cadastral Survey);

and two or three non officials appointed by the Commissioner of the Protectorate from among the best and most intelligent of the settlers.

This Board should consider all cases referred to it by the Commissioner for Land, who should not himself be a Member of the Board.

No proceedings should be taken for the forfeiture of land without obtaining the opinion of the Land Board.

Given such an opinion, the Commissioner for Land should have power to pass an order of forfeiture, or such other order as seems to him to be fit and proper.

There should be a right of appeal from this order to the High Court. It should also be provided that the Commissioner for Land may state a case for a ruling by the High Court. I believe that if the Commissioner for Land were given this power, there need be no strong objection to it, for he would never take action without first obtaining the opinion of the Land Board, which would have among its members gentlemen passing the confidence of the settlers.

As before stated, the Commissioner for Land should not himself be a member of the Land Board. He would then be able to approach each question impartially after it had been full considered by the Board.

The Land Board should be given power to call and examine witnesses.

I send herewith copies of the Acts and Ordinances mentioned in this note, and should be glad if they can be returned to me after the case has been dealt with by His Excellency.

J. MONTGOMERY,
Commissioner for Lands.

Nairobi,
December 11, 1906.

No. 10.

THE ACTING COMMISSIONER TO THE SECRETARY OF STATE.

(Received 1.44 p.m., February 7, 1907.)

TELEGRAM.

No. 21. May stone, clay, lime, and sand be excluded from minerals reserved to Crown under Land Ordinance, Section 3? Commissioner of Lands and Government Advocate strongly recommend. Matter most urgent.—JACKSON.

No. 11.

THE SECRETARY OF STATE TO THE ACTING COMMISSIONER

(Sent 1.15 p.m., February 11, 1907.)

TELEGRAM.

11th February. Referring to your telegram of 7th February,* products named may be excluded, subject to proviso as to royalty in 13th paragraph of Montgomery's memorandum of 26th November.†—ELGIN.

No. 12.

THE ACTING COMMISSIONER TO THE SECRETARY OF STATE.

(Received 11.54 a.m., February 20, 1907.)

TELEGRAM.

No. 25. Your Lordship's telegram of 11th February.‡ In consideration of great importance of giving encouragement to lime and brick industry Montgomery now considers that such products should be excluded from definition of minerals without reserve. Revenue from royalties would be small and would create much dissatisfaction. Railway manager concurs fully. May I act accordingly!—

* No. 10.

† Enclosure I in No. 9.

‡ No. 11.

No. 12
THE SECRETARY OF STATE TO THE ACTING COMMISSIONER

(Sent 5.45 p.m. 22nd Feb. 1907)

9th February. Referring to your telegram No. 25* proposal approved, subject to reservation of existing right of Government to take stones and other materials under Article No. 27, Crown Lands Regulations.

No. 14
THE SECRETARY OF STATE TO THE ACTING COMMISSIONER

Downing Street, April 23, 1907
I HAVE the honour to acknowledge the receipt of Colonel Sadler's despatch of the 15th of December, in which was enclosed a report from the Commissioner of Land Affairs in reply to his proposals for the revision of the Crown Lands Ordinance of the Protectorate.

The question which calls for a decision is whether free transfer of land should be allowed. Under the present law I gather that freehold land may be disposed of by the will of the freeholder, but that the consent of the Commissioner is required for the assignment of a leasehold.

3. The general objections to free transfers of either kind of property are the same, viz. as already explained in my despatch of the 23rd of March, 1906, that they tend, in a country situated as East Africa is, to encourage people to acquire and hold land as a speculative counter in the hope of selling it in a short time at an enhanced price, and also to enable persons of larger capital to acquire such land by purchase, and so amass large estates, of which they make but little use, with the evil results which, as I have pointed out, have followed in the Australian Colonies.

4. It is true that, at least in the case of leaseholds, such a result ought to be prevented by the covenant to develop the land in a businesslike way which is implied in the lease by virtue of Section 16 (a) of the Crown Lands Ordinance. But this covenant, which has not, I think, been found very easy to enforce even in the case of small holdings would be still less likely to be observed when the small holding had been swallowed up in a vast estate, where an appearance of development may be plausibly assumed by driving a few cattle or sheep into the land which is in question.

5. Accordingly I remain of opinion that free transfers of leasehold property should not be allowed, and I would again refer to the experience of the Australian States as confirming the wisdom of this decision. Thus, the form of a perpetual lease of Crown Lands in South Australia (5th Schedule, Act No. 330, 1905) states that the lessee must not "Transfer, sublet, encumber, or mortgage, without the written consent of the Commissioner of Crown Lands that had in each case," and the penalty for breach of this covenant is forfeiture of the land demised. So also in New Zealand by Section 83 of Act No. 37 of 1892, the consent of the Land Board is required for any transfer of land by a Crown lessee.

6. With regard to the question of the transfer of freehold land, I understand that it has been the practice to require the consent of the Commissioner for such transfers also. I do not, however, find any provision in the Crown Lands Ordinance to this effect, and I would not suggest that it should be introduced. Section 9 of the Ordinance, which provides in the last resort for the forfeiture of freehold land of which the owner declines to make use, does not apply to land which is transferred before forfeiture from transferring the land to another person, and I think that it would be necessary to introduce other provisions to this effect. The existence of unutilised land in the hands of individuals, and the consequent friction and discontent, e.g., such provisions as are contained in the New Zealand Ordinance which forbids the acquisition of Crown land by individuals for pastoral and grazing

* No. 12.

leased by any person who already holds 2,000 acres or more of freehold land. As at present more than 1,000 acres of freehold will be granted to any one person, and care should be taken to prevent as far as possible applications by the same person in different names.

The difficulty which the tenant of leasehold finds in raising money on his holding in consequence of the restriction on the power of transfer has, I think, been sufficiently met for the present by the arrangement with the National Bank of India. Similar arrangements can, no doubt, be made with other institutions as occasion arises.

With regard to Article 11 of the Crown Lands Ordinance, I do not think, in view of the very low rent at which agricultural and pastoral leases are granted, that there is any hardship in the rule that on the expiration of the lease the buildings upon it should revert with the land to the Government—at least where the original lease was for thirty years or more. Where the lease is for a shorter term I should allow the materials of the buildings to be removed by the lessee unless the Government desires to retain them, when they should be taken over at a valuation. I may here observe that I think that the terms of leases of land for pastoral purposes should not in general exceed twenty-one years, with an option of renewal for a further term of twenty-one years at the then prevailing rent for such leases.

As to Section 14, I do not think it fair that a road made by a landowner at his own expense should be liable to be used for the public service without any compensation for the additional wear of the road. All that seems necessary in order to secure a right of way over the land is that the Government should have power to take land for a road through any property without thereby incurring any obligation to metal or maintain the road, and this I understand is already provided for under the Land Acquisition Ordinance.

10. With regard to the question of outspans, I agree that the objections of the Land Committee to the provisions of the Ordinance in the matter can be met as suggested by Colonel Montgomery, by permitting landowners to indicate one or more suitable sites on their land for this purpose, and requiring travellers to confine themselves to such sites.

11. I agree with Colonel Montgomery's interpretation of the obligations of a houseowner under Section 15 (e) of the Crown Lands Ordinance. If there is a public water supply and sewerage system, the owner must connect the houses with such systems. If there is not, he must provide proper wells and cesspools. The rule so interpreted, is very proper to be maintained and observed. Had it been enforced in the past, I gather from Mr. Williams's report that much expenditure which is now necessary for the sanitation of Nairobi would not have been required.

12. I do not consider that it is desirable to amend Section 16 (b) of the Ordinance, which prohibits interference by settlers with natives, and requires disputes to be referred to the Collector. These provisions seem to me to be contained in the best interests of the settlers and the natives alike.

13. The question of the right of the Government to take materials from private land for public works has already been decided in the correspondence noted in the margin.

14. With regard to paragraph 14 of Colonel Montgomery's Minute, I am aware that complete classification of land is not possible until the survey has been completed, but I can see no reason why land should be sold at the same price irrespective of its situation and quality; nor does it appear that there is anything in the existing Ordinance to necessitate such a course.

15. With regard to Colonel Montgomery's proposals that the size of a homestead, instead of being limited to 400 acres, should be increased to 490 acres, should be limited to 490 acres, that separate additional grants should not be given to wives, and that the discretion should be given to the Government to allow a year of bad crops, I think that the proposals of the Land Committee, embodied by Colonel Montgomery in paragraphs 15 and 16, which require that a homestead selector shall

No. 10 to 12.

bring one-tenth of the land into cultivation in each of the first three years of his tenure, are unduly stringent, and that they should be recast so as to substitute the requirement that a certain standard amount of beneficial occupation, e.g., by clearing, draining, and fencing, the land, shall be accomplished in each year.

17. I also concur in Colonel Montgomery's proposal to abolish the obligation on the homestead selector to maintain forest on his land. Forests which it is desirable to maintain either on account of the value of their produce or of their effect on climate should, of course, not be made the subject of grants of this nature.

18. I do not quite understand Colonel Montgomery's statement that to insist on fencing as a condition of the right to impound stray cattle makes the position of the native stronger than that of the settler. In many Colonial Acts, e.g., South Australia, No. 501, of 1890, Section 57 (3), and No. 830, of 1903, 3rd Schedule (6), fencing is rendered compulsory by an express covenant in the lease; and I think that the milder compulsion which the present law embodies is not unfair, especially as the control of contagious diseases of animals must largely depend on the provision of proper fences.

19. I agree that it is not possible to insist on all cattle, including those of native origin, being branded, but that provision should be made for the voluntary registration of such cattle.

20. I consider that the provision of the law as to the monetary qualification of selectors should be maintained. The East Africa Protectorate is not, at present at least, a sphere for farmers without capital, and the fact that the law which requires possession of a certain amount of money by applicants for grants may be sometimes evaded, is not, I think, a sufficient reason for abrogating it.

21. The question of the reservation of areas for Indians and for white settlers respectively has already been dealt with in connection with the letter from the Colonists' Association of the 4th May last.*

22. I approve generally the policy as to native reserves indicated in the 24th paragraph of Colonel Montgomery's Minute, but specific proposals on this subject should be submitted to me before they are carried into effect.

23. The question of providing a stronger survey staff has already been dealt with, and I trust that all reasonable cause of complaint as to delay in the completion of surveys will soon be removed.

24. I agree that there is nothing unreasonable in demanding the preliminary deposit of survey fees, proportioned to the size of the grant desired, as a guarantee of the *bona fides* of the application.

25. I am not in favour of the grant of freehold or of perpetual leases in township areas as such grants deprive the Government of all control over the land, and of all the advantage of any future enhancement of the value of the land. Subject to this restriction I approve the proposals for dealing with such land contained in the 30th paragraph of Colonel Montgomery's Minute; the maximum term of a lease being thus 99 years, at the end of which time the land and the buildings upon it will revert to the Government.

26. I agree in the proposals contained in Colonel Montgomery's Minute of the 11th December as to the constitution of the Land Board, viz., that it should consist of the Land Officer, the Director of Agriculture, and the Director of Survey with two or three unofficial members selected by the Commissioner of the Protectorate; that they should consider all cases submitted to them by the Commissioner for Lands; and that no proceedings should be taken for the forfeiture of land without obtaining the opinion of the Board, but that after having obtained their opinion, the Commissioner for Lands should have power to pass an order for forfeiture or such other order as may seem good to him, not necessarily, though no doubt usually, in accordance with the advice of the Land Board.

27. I think that appeals to the High Court from the order of the Commissioner for Lands should be limited to certain classes of cases; indeed, it seems to me doubtful whether they should be allowed in any other cases except where the forfeiture of land is involved.

28. The question of the establishment of a Land Court to deal with rights in the coast district is being considered in connection with the estimates.

29. I agree in Colonel Sadler's proposal that the powers at present exercised by His Majesty's Commissioner of selling and leasing Crown Lands, and of granting

* Enclosure 1 in No. 6.

transfers should be transferred to the Commissioner for Lands, who will refer such cases as are necessary for the orders of the Commissioner.

30. I have to request that you will cause an Ordinance to be prepared amending the Crown Lands Ordinance in accordance with the above instructions. The Ordinance should be discussed and passed in the Legislative Council, and then reserved for the signification of His Majesty's pleasure.

I have, &c.,
ELGIN.

No. 15.

THE SECRETARY OF STATE TO THE GOVERNOR.

SIR,

Downing Street, July 4, 1907.
SOME two years having now elapsed since the control of the administration of the East Africa Protectorate was taken over by the Colonial Office, it seems suitable to review the various measures which have been taken to organize and develop the country and the results which have been achieved, which may be expected to follow.

1. One of the most necessary preliminary steps in the development of a new country is to define the boundaries which separate it from neighbouring countries, and to ascertain by survey the quantity and nature of the land lying within those boundaries. Considerable progress has been made in these directions in the period under review.

2. The boundary between the Protectorate and German East Africa has been finally demarcated, and much useful information concerning those regions has been collected by Captain (local Lieutenant-Colonel) G. E. Smith, R.E., and his assistants in the survey. The boundary with Abyssinia has been the subject of prolonged negotiations with King Menelik, which will, I trust, result in the signature of a satisfactory agreement at no distant date.

3. The difficulties inseparable from the influx of a number of white settlers, desirous of acquiring land, into an unsurveyed and almost unsettled country, have been met by the appointment of an officer of great experience as Commissioner of Lands, and by very great additions to the Survey Department; the expenditure on the latter having been increased from £9,106 in 1905-6 to some £17,000 in the current year, while Captain G. E. Smith, R.E., who is not only a highly skilled officer but is also well acquainted with the country, has been selected to superintend the work.

4. While the interests of the white settlers have been thus studied by improving the machinery for the administration of the land laws, their suggestions for the amendment of the substance of that law (particularly as embodied in the Report of the Committee on the subject) have received very careful consideration at the hands of successive Commissioners and Secretaries of State. In my despatch of the 23rd April* I have indicated the lines on which an amending ordinance may be drafted and submitted to the Legislative Council; which, I trust, will meet the reasonable wishes of *bona fide* settlers, while at the same time safeguarding the most important asset of the Protectorate from being dissipated in the interests of speculators.

5. The work of the Agricultural Department has been carried on, and assistance has been given to settlers both by the experiments in the growing of crops and the breeding of stock which have been made and by the supply of plants and seeds and the services of stud animals for their use; and recently Mr. A. C. Macdonald, Assistant Director of Agriculture in the Transvaal, was appointed to report on the agricultural prospects of the country and on the organization of the department. Mr. Macdonald's report has now been received, and I do not doubt that as a result of his labours the efficiency and usefulness of the department will be increased.

6. The Government of the Cape Colony were also good enough at my request to permit Mr. D. E. Hutchins, one of their Conservators of Forests, to visit the Protectorate, and report on the value of the local forests and the best means of utilizing them. His reports showed at once the great value of the forests and the urgent need of protecting them from irregular exploitation; and I have accordingly appointed Mr. Hutchins Chief Conservator of Forests in the Protectorate. When he has taken up his appointment the Government will, for the first time, be in possession of skilled advice in regard to this important asset of the Protectorate, and will be in a position to deal

bring one-tenth of the land into cultivation in each of the first three years of his tenure, are unduly stringent, and that they should be recast so as to substitute the requirement that a certain standard amount of beneficial occupation, e.g., by clearing, draining, and fencing, the land, shall be accomplished in each year.

17. I also concur in Colonel Montgomery's proposal to abolish the obligation on the homestead selector to maintain forest on his land. Forests which it is desirable to maintain either on account of the value of their produce or of their effect on climate should, of course, not be made the subject of grants of this nature.

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24. I agree that there is nothing unreasonable in demanding the preliminary deposit of survey fees, proportioned to the size of the grant desired, as a guarantee of the *bona fides* of the application.

25. I am not in favour of the grant of freehold or of perpetual leases in township areas as such grants deprive the Government of all control over the land, and of all the advantage of any future enhancement of the value of the land. Subject to this restriction I approve the proposals for dealing with such land contained in the 30th paragraph of Colonel Montgomery's Minute; the maximum term of a lease being thus 99 years, at the end of which time the land and the buildings upon it will revert to the Government.

26. I agree in the proposals contained in Colonel Montgomery's Minute of the 11th December as to the constitution of the Land Board, viz., that it should consist of the Land Officer, the Director of Agriculture, and the Director of Survey with two or three unofficial members selected by the Commissioner of the Protectorate; that they should consider all cases submitted to them by the Commissioner for Lands; and that no proceedings should be taken for the forfeiture of land without obtaining the opinion of the Board, but that after having obtained their opinion, the Commissioner for Lands should have power to pass an order for forfeiture of such other order as may seem good to him, not necessarily, though no doubt usually, in accordance with the advice of the Land Board.

27. I think that appeals to the High Court from the order of the Commissioner for Lands should be limited to certain classes of cases; indeed, it seems to me doubtful whether they should be allowed in any other cases except where the forfeitures of land is involved.

28. The question of the establishment of a Land Court to deal with rights in the coast district is being considered in connection with the estimates.

29. I agree in Colonel Sadler's proposal that the powers at present exercised by His Majesty's Commissioner of selling and leasing Crown Lands, and of granting

* Enclosure 1 in No. 6.

transfers should be transferred to the Commissioner for Lands, who will refer such cases as are necessary for the orders of the Commissioner.

30. I have to request that you will cause an Ordinance to be prepared amending the Crown Lands Ordinance in accordance with the above instructions. The Ordinance should be discussed and passed in the Legislative Council, and then reserved for the signification of His Majesty's pleasure.

I have, &c.,
ELGIN.

No. 15.

THE SECRETARY OF STATE TO THE GOVERNOR.

SIR, Downing Street, July 4, 1907.

SOME two years having now elapsed since the control of the administration of the East Africa Protectorate was taken over by the Colonial Office, it seems suitable to review the various measures which have been taken to organize and develop the country and the results which have been achieved or which may be expected to follow.

2. One of the most necessary preliminary steps in the development of a new country is to define the boundaries which separate it from neighbouring countries, and to ascertain by survey the quantity and nature of the land lying within those boundaries. Considerable progress has been made in these directions in the period under review.

3. The boundary between the Protectorate and German East Africa has been finally demarcated, and much useful information concerning those regions has been collected by Captain (local Lieutenant-Colonel) G. E. Smith, R.E., and his assistants in the survey. The boundary with Abyssinia has been the subject of prolonged negotiations with King Menelik, which will, I trust, result in the signature of a satisfactory agreement at no distant date.

4. The difficulties inseparable from the influx of a number of white settlers, desirous of acquiring land, into an unsurveyed and almost unsettled country, have been met by the appointment of an officer of great experience as Commissioner of Lands, and by very great additions to the Survey Department; the expenditure on the latter having been increased from £9,106 in 1905-6 to some £17,000 in the current year, while Captain G. E. Smith, R.E., who is not only a highly skilled officer but is also well acquainted with the country, has been selected to superintend the work.

5. While the interests of the white settlers have been thus studied by improving the machinery for the administration of the land laws, their suggestions for the amendment of the substance of that law (particularly as embodied in the Report of the Committee on the subject) have received very careful consideration at the hands of successive Commissioners and Secretaries of State. In my despatch of the 23rd April* I have indicated the lines on which an amending ordinance may be drafted and submitted to the Legislative Council; which, I trust, will meet the reasonable wishes of *bona fide* settlers, while at the same time safeguarding the most important asset of the Protectorate from being dissipated in the interests of speculators.

6. The work of the Agricultural Department has been carried on, and assistance has been given to settlers both by the experiments in the growing of crops and the breeding of stock which have been made and by the supply of plants and seeds and the services of stud animals for their use; and recently Mr. A. C. Macdonald, Assistant Director of Agriculture in the Transvaal, was appointed to report on the agricultural prospects of the country and on the organization of the department. Mr. Macdonald's report has now been received, and I do not doubt that as a result of his labours the efficiency and usefulness of the department will be increased.

7. The Government of the Cape Colony were also good enough at my request to permit Mr. D. E. Hutchins, one of their Conservators of Forests, to visit the Protectorate, and report on the value of the local forests and the best means of utilizing them. His reports showed at once the great value of the forests and the urgent need of protecting them from irregular exploitation; and I have accordingly appointed him Chief Conservator of Forests in the Protectorate. When he has taken up his appointment the Government will, for the first time, be in possession of skilled advice in regard to this important asset of the Protectorate, and will be in a position to deal

with the various projects for developing them, without the danger of either hindering legitimate enterprise or of surrendering public property to individual speculators for an inadequate consideration.

8. The efforts which were being made to obtain water for the railway by boring in the Taru desert, led to the appointment of a geologist, M. H. B. Muff, one of the geologists on the staff of the Geological Survey of the United Kingdom, to report on the prospects of obtaining water in this manner, and incidentally to obtain such further information respecting the geological conditions of the country as time and circumstances permitted. I understand that his conclusions in regard to obtaining water in this district are negative; but they are none the less valuable as preventing further useless expenditure in this direction. Another expert was recently appointed to advise the local administration on mining questions and is now in the Protectorate.

9. The insanitary condition of Nairobi was made the subject of strong representations by you, and at your suggestion I selected an experienced sanitary engineer, Mr. G. B. Williams, Assoc. M. Inst. C.E., to report on the question. Financial exigencies do not permit of the whole of his recommendations being adopted at once, but the substantial instalment, which is estimated to cost £20,000, and includes the construction of a main intercepting sewer, will be taken in hand during the current year.

The development of traffic on the railway has been one of the most encouraging features of the progress of the Protectorate during the period under review. Receipts, which were £2,639 in 1904-5, rose to £56,878 in 1905-6, and to £74,263 for 1906-7; and this, although the rates on most grains and seeds have been lowered to the very small figure of 4d. per ton-mile, in order to encourage the agricultural development of the Protectorate. In connection with the railway I may mention that the steamship "Clement Hill" has now been completed and will shortly be running on the lake, and a cargo steamer, the "Nyanza," has been constructed in this country, and is on its way to the Protectorate. Increased wharf accommodation is being provided at Kilindini and Port Florence at an estimated cost of £35,000 and £10,000 respectively.

11. Turning to native affairs; the settlement of the Masai on their reserves has been satisfactorily completed, and a large tract in the Rift Valley has thus been opened to European settlement. Disturbances in the Sotik, Nandi, and Embo countries have necessitated the despatch of armed forces to those regions; and, in the result, after comparatively little loss of life the tribes concerned have submitted to our rule, and civilised Government is now being introduced in their countries. I am glad to note that the majority of the natives welcome the change, as is demonstrated by their willing payment of hut tax, the receipts from which are estimated at £74,263 for 1907-8 as against £43,604 in 1905-6. A small sum has been provided on the current Estimates for encouraging the technical education of the natives by grants to the Mission Schools. The regulation and protection of native labourers is a matter of great importance for which, at your suggestion, provision will be made this year by the appointment of a Secretary for Native Affairs with three assistants.

12. The development of the Protectorate has rendered it advisable to introduce a more elaborate system of Government, and an Order in Council has been passed in which provision is made for the establishment of a Legislative Council comprising unofficial as well as official members; and I trust that the free discussion of affairs in the Council will lead to a better understanding between the settlers and the officials.

13. The question of improving and simplifying the legal procedure of the Protectorate has engaged the attention of my legal advisers. The draft of a Courts Ordinance has been prepared and will shortly be submitted to the Legislative Council, and a local Criminal Procedure Code will, I trust, be ready at an early date. In the meantime, the wishes of the European settlers have been met by the enactment of Ordinance No. 5 of 1906, which provides for the trial of Europeans and Americans by a jury in certain cases; while the complaints of delay in the despatch of judicial business have been satisfied by the appointment of an additional judge.

14. The re-organization of the police has been taken in hand. A number of new officers have been appointed, and arrangements have been made for all newly-appointed officers at the time of their selection, and for existing officers when on

leave, to undergo a course of training in their duties in the United Kingdom. The duties of officers and men have been defined by the new Police Ordinance, and, in order to meet the wishes of the European inhabitants, I have sanctioned the formation of a small white police force for the Nairobi district. The substitution, however, of white for native police in other parts of the Protectorate cannot be contemplated in view not only of the great expenditure involved, but also of the probability that white police would prove less efficient than natives for service in the tropical regions of the Protectorate.

15. The revenue of the Protectorate has increased in a gratifying manner, the estimated receipts of £557,000 for 1907-8 comparing with actual receipts of £270,000 in 1905-6. The expenditure, however, has increased in an even greater proportion, viz., from £418,000 to £803,000. The growth of expenditure is no doubt the inevitable result of the growth of the area of the Protectorate actually administered, and of the cost of providing the numerous services now expected from the Government by the European community. I can only express the hope that the industry and enterprise of the white settlers will, in a short time, so increase the taxable capacity of the Protectorate as to relieve the taxpayers of the United Kingdom of the heavy charge now imposed upon them for carrying on the administration, amounting in the current year to £150,000—irrespective of the large sum required for interest and sinking fund on the loan for the construction of the Uganda Railway, which is also defrayed entirely from the Imperial Exchequer.

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I have, &c.
ELGIN

EAST AFRICA PROTECTORATE.

PAPERS RELATING TO BRITISH EAST
AFRICA.

(The Lord Hindlip.)

*Ordered, by the House of Lords, to be Printed,
August 7th, 1907.*

[*Price 6d.*]

64
EAST AFRICA PROTECTORATE.

CORRESPONDENCE

RELATING TO THE

TENURE OF LAND

IN THE

EAST AFRICA PROTECTORATE.

Presented to both Houses of Parliament by Command of His Majesty.
June, 1908.



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TABLE OF CONTENTS.

Serial No.	From or to whom.	Date.	Subject.	Page.
		1907.		
1	The Governor	July 16 (Rec. Aug. 10.)	Forwards copy of a notification issued announcing that leases of grazing land will only be granted in the first place for 21 years; reports that this notice has been received with marked disapproval and encloses letters of protest; suggests the adoption of the proposal of the Commissioner of Lands, whose minute is enclosed, that leases should be renewed at the end of 21 years at an enhanced rental.	3
2	To the Governor	August 20	Forwards copy of a question and reply in the House of Commons, and explains reasons for suggesting a reduction in the term of lease; agrees to consider the question of 21 years' leases renewable for a further 78 years at an enhanced rent, but awaits report by the Director of Agriculture on the terms of pastoral leases.	8
3	The Governor	November 22 (Rec. Dec. 14.)	Forwards minutes by the Land Commissioner and Mr. Churchill stating their views as to the lines on which land legislation should proceed.	9
4	Ditto	November 25 (Rec. Dec. 17.)	Transmits copy of a letter from the Director of Agriculture on the question of pastoral leases and the proposed reduction of the term from 99 to 21 years, together with a minute thereon by the Commissioner of Lands; presumes that the Secretary of State would not advocate such a complete change in the land laws as would be involved in a perpetual quit rent.	12
5	Ditto	December 3 (Rec. Dec. 27.)	Transmits copies of a note by the Commissioner of Lands and of a scheme drawn up by the Land Board for rapid allotment of farms by a system of beaconing in accordance with the suggestions of Mr. Churehill; recommends the procedure proposed.	15
6	Ditto	December 6 (Rec. Dec. 27.)	Submits copy of a letter from the Commissioner of Lands enclosing the proposals of the Land Board so far as they apply to land in the uplands; submits remarks and requests views of the Secretary of State on the main questions discussed.	17
		1908.		
7	Ditto	December 17, 1907. (Rec. Jan. 17, 1908.)	Transmits memorandum by the Commissioner of Lands on the subject of the grant of lands to Indians; states that the Commissioner is being instructed that grants are to be issued outside the white settlement area on the conditions proposed by him.	25
8	Ditto	December 19, 1907 (Rec. Jan. 17, 1908.)	Transmits copy of further proceedings of the Land Board, together with a letter from the Commissioner of Lands.	27
9	To the Governor	March 19	Conveys the views of the Secretary of State on all the questions raised with regard to the tenure of land in the Protectorate.	29

EAST AFRICA PROTECTORATE.

CORRESPONDENCE

RELATING TO THE

TENURE OF LAND

IN THE

EAST AFRICA PROTECTORATE.

No. 1.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received August 10, 1907.)

MY LORD,

I HAVE the honour to solicit a reference to the concluding portion of paragraph 8 of your Lordship's despatch of the 23rd April,* dealing with the proposed amendments to the Crown Lands Ordinance of East Africa.

2. In view of the expression of opinion given by your Lordship in the matter of the restriction of the period of leases for pastoral purposes and looking to the time which it must necessarily take to prepare an amended Ordinance and debate and pass the same in the Legislative Council for submission to your Lordship, it was considered advisable to issue the notification a copy of which is enclosed regarding the terms on which pastoral leases would in future be granted. These orders have been received with marked disapproval by all classes of the white community, and, as pointed out by Colonel Montgomery, with considerable alarm by the great majority of the settlers.

3. In this connection I enclose a copy of the communication I have received from the Colonists' Association, and of a despatch from the Commissioner of Lands giving cover to two letters from Mr. Newland, of the firm of Newland, Tarlton and Company, the most progressive firm in Nairobi, and one which has the confidence of all classes. These letters are temperately written and, I think, deserve consideration. Enclosed also is a copy of a letter addressed by Captain Grogan to the "Star," the writing of which is not so easily defensible.

4. I have perused the provisions of several of the Australasian enactments dealing with the question of pastoral leases, notably those of Queensland, South Australia, New South Wales, and Tasmania, and, although these undoubtedly restrict such leases in the manner we have now adopted here—Tasmania indeed goes further and appears to allow only a term of 14 years with no special right of release to the tenant—I concur with the opinion expressed by the Commissioner of Lands that, under the peculiar conditions of this new country and particularly in view of the difficulty of stocking land and the many risks to which stock is at present subjected, it would be hard to apply rigidly at the present time the terms for grazing lands enforced in the older Colonies of Australasia.

5. If your Lordship will favourably consider these views I would propose that in legislating for the proposed new Crown Lands Ordinance the Crown Advocate

* No. 14 in [H.L. 156], August, 1907.

4
be authorized to draft provisions for pastoral lands based on the proposals originally made by the Commissioner of Lands in the accompaniment to my despatch of the 19th December,* which are repeated in paragraph 2 of his present despatch of the 12th instant.

I have, &c.,
J. HAYES SADLER.

Enclosure 1 in No. 1.

NOTICE.

In accordance with instructions received from the Secretary of State for the Colonies it is hereby notified that in future:—

- (1) the area of homestead farms will be ordinarily restricted to 320 acres, the whole area being allotted at once; and
- (2) the term of leases of grazing land will be for 21 years, subject to renewal for a further period of 21 years at the then prevailing rate of rent if due development has taken place.

J. MONTGOMERY,
Commissioner of Lands.

Enclosure 2 in No. 1.

Messrs. T. T. TARTLTON AND COMPANY to the COMMISSIONER OF LANDS, East Africa Protectorate, Nairobi.

SIR, Nairobi, June 21, 1907.
WITH reference to the notice appearing in the last issue of the "Official Gazette," under which the period for which grazing areas are leased is reduced from 99 years to 21 years, we beg to hand you herewith a letter which we have addressed to His Excellency the Governor for perusal and information.

We shall be grateful if you will cause the same to be forwarded to His Excellency in due course, with such comments as you may deem advisable.

We are, &c.,
For Newland, Tarlton and Company,
D. J. TARTLTON.

YOUR EXCELLENCY, Nairobi, June 20, 1907.

WITH reference to the notice appearing in the current number of the "Official Gazette," whereby the term of leases of grazing areas is reduced from 99 to 21 years, we have the honour to bring to your notice that the introduction of this measure has given rise to a widespread feeling of uneasiness throughout the whole community in this country.

We have ascertained the feelings of a considerable section of the Nairobi populace, and also heard expressions of opinion by the settlers at Molo, Njoro, Nakuru, Naivasha, and elsewhere. In addition to this we have discussed the matter with numerous gentlemen connected with the Government service.

Without exception, everyone with whom we have come into touch has expressed himself unfavourably toward the alteration which His Majesty's Government has seen fit to bring about, and coupled with this expression of dissatisfaction has been a desire to support Your Excellency in a policy which will, it is hoped, be directed against any measure which is detrimental to the interests of the country in general and the farming section in particular.

The objections to the shorter term of leases are numerous and varied, but the citation of two of these will, we trust, satisfy Your Excellency that just cause for complaint exists. These two objections are:—

- (1) The courage and enterprise of the pioneer, who, in the hope of acquiring cheap land, which, by thrift he can make valuable, receive a severe blow by the shortening of the length of tenure. In the case of a middle-aged man, who desires to leave his children provided for, the measure seems particularly severe; by the time his now infant children

5
come of age the land which their father has striven to make valuable reverts to the Crown.

- (2) Before this country can hope to compete on an equal footing in the stock markets of the world pure bred stock must gradually be produced, by breeding from imported animals with the native stock, to start with, and eventually breeding up again to the pure breeds. This is of necessity a very slow process, and 21 years is none too long a period in which to bring about the desired change.

Whether by petition to Your Excellency, deputation, or public meeting, we desire to identify ourselves with any and all constitutional agitation against a regulation which we feel to be ill-advised. The matter is pressing and urgent, and should we think be taken up by every European resident in East Africa, not under the auspices of any society, faction, or sect, but by every right-thinking man who has the good of the country at heart.

As the head of the Administration, to whom we look, not only for guidance, but protection, we earnestly beg that Your Excellency will give this matter early and careful consideration, and favour us with your advice as to the proper and constitutional manner in which to assist you in bringing about an alteration in the law.

We are, &c.,
For Newland, Tarlton and Company,
D. J. TARTLTON.

To His Excellency the Governor,
East Africa Protectorate,
Nairobi.

DEAR COLONEL MONTGOMERY, Mombasa Club, East Africa, June 20, 1907.

As you suggested in conversation the other day that I might express my views on the land question, I am writing them down shortly before setting out for Australia. As I told you I have acted as Trade Commissioner in Africa for the South Australian Government and am likely to be asked many questions on my arrival in Australia as to the prospects of trade and stock farming in the Protectorate. As regards the latter, it was my intention to suggest to men of means amongst the squatters' sons that the favourable terms on which land could be obtained here for grazing might make it worth their while to take up areas and bring over sheep from Australia with a few cattle and horses. I had no intention of advising small men to take the risk. Now that I see your instructions from home are to give only 21 years' leases, with the right of renewal to 42 years, I feel that I can only recommend men to come who are prepared to buy out holders of 99 years' leases. I regard the 21 years' lease as totally inadequate, for it must be remembered that the stock owner's lot here must be for many years to come an unhappy one. He has all the problems of unknown diseases to grapple with, he has to breed up his flocks and herds, and in the most favourable circumstances his pluck and patience must be taxed to the utmost before he can hope for any return. At the time when he may be expected to have overcome his difficulties his lease will have expired, and this blow which the new regulation strikes at permanent homes is of the gravest import to those of us who have decided to live our lives in the Protectorate. It is barely necessary to mention the difficulties to be faced in the way of natives and wild animals, as you are aware of the bearing these have on the situation. The position seems to me to be this: we want men and capital; the new regulation means that we shall not get them. In 1904 I took a prominent part in getting the tenure of grazing land increased to 99 years—now, in 1907, I view with dismay the reversion to the old order of things, and feel, as do many others, that old world ideas are being forced on a new country whose difficulties can only be appreciated by those who have experienced them. I have spent the best part of four years in developing the stock industry and am now beginning to ask myself whether my hopes of seeing it placed in a sound position are not vain. I would ask you, if you value the progress of the country, to do all in your power to get the 99 years' lease restored at all events until such time as the Protectorate is proved as a stock country.

Yours, &c.,
V. N. NEWLAND.

(No. 169/99.)

Office of the Commissioner for Land,

Nairobi, July 12, 1907.

YOUR EXCELLENCY,

In paragraph 8, of despatch dated 23rd April, the Secretary of State, in commenting on my report on the revision of the Crown Lands Ordinance, said:—"I may here observe that I think the terms of leases of land for pastoral purposes should not, in general, exceed 21 years, with an option of renewal for a further term of 21 years at the then prevailing rent for such leases."

I had remarked in my report (paragraph 14), on the rates at present charged for land, and said that I thought that, as the existing rates for grazing land were so low, it might be advisable to give leases first for 21 years, with the option to renew for the remainder of the 99 years at an enhanced rent. My object was to allow persons taking up grazing farms in a new country a low rent to begin with (at present a halfpenny or a penny an acre according to position), and to raise the rate after 21 years, but still to allow the grantee to retain his land for the full term of 99 years. I did not specify the enhanced rent; but my intention was to advocate that the enhancement should be stated when the land was granted, so that the grantee would know exactly what he would have to pay.

In such an instance, it might have been stipulated that the rent would be increased as much again, or possibly doubled. The essence of the idea was that the grantee, when he took up a grazing farm would know when he obtained his land that, if he carried out due development, he would keep it for 99 years, paying a low rent to begin with and a somewhat enhanced one after 21 years.

The instructions of the Colonial Office impose more stringent conditions, and I earnestly hope that the Secretary of State will reconsider his order.

The public has been informed that grazing leases will usually be given in future in accordance with the instructions quoted above, and many protests have been made.

I forward herewith two which have been received by me. One is from the firm of Newland, Tarlton and Company, addressed to Your Excellency. The other a private letter from Mr. Newland, the head of the firm, written before setting out for Australia. Both are worth perusal. Your Excellency is aware that a similar protest has been made by the Colonists' Association, and I have no hesitation in saying that the new order is viewed with considerable alarm by the great majority of settlers.

Two facts should be borne in mind. First, practically all grazing land near the railway has already been granted on 99 years' lease. We can hardly expect that applications will be made for the more remote lands on more stringent conditions. The second is a very important one. The pastoral farmer has exceptional difficulties to contend with. Not only are diseases of stock very rife; it is exceedingly difficult for any but the richest men to stock their farms with an appreciable number of cattle. The natives, who are by far the largest cattle owners, can hardly ever be induced to sell their animals. The Masai will never sell anything but what has broken down. The other tribes also keep every head they can get.

Thus the settler has to import stock at a heavy cost, with the knowledge that it may succumb to some disease, to which it is much more liable than the indigenous cattle. Other reasons could be adduced for lenient treatment, but I trust I have said enough to show that it would be a mistake to introduce the system suggested by the Colonial Office.

The country is still in its infancy with many natural difficulties for the settler. So long as we insist on the development of each grant, it is good policy to give the land on easy terms for 99 years. Only thus can we hope to attract the best class of settlers.

The introduction of the shorter pastoral lease will, I fear, set back the settlement of the country.

I have, &c.,

J. MONTGOMERY,

Commissioner of Lands.

His Excellency the Governor,
East Africa Protectorate,
Nairobi.

Enclosure 4 in No. 1.

A "MINE OF IMBECILITY."

TO THE EDITOR OF THE "STAR."

Sir—"In future the terms of leases of grazing land will be for 21 years, subject to renewal for a further period of 21 years at the then prevailing rate of rent if due development has taken place."

Then the "Gazette" of June 15th, 1907.

When I read the preliminary notice in the "Star" I thought it was one of the "Star's" "spoof" notices—a hyperbolic dig at our Commissioner for Lands.

The entire clause reeks of the amateur, the impudent amateur who has not even borrowed a primer on the subject with which he deals, the amateur who believes that grazing land is a finite quantity capable of chemical analysis, who confuses improved with unimproved values, or who more likely has never even heard the terms, who thinks that "if due development has taken place" is the English language and a correct legal term, who wots not of Australia, Canada, New Zealand, and the Argentine, who believes the world is straining at the leash hungering for the pest-ridden lands of Central Africa.

Presuming that this line of policy has not been adopted just for fun, we cannot explain it other than as a determined attempt to close the country to European immigration or as the cheerful outcome of an ignorance which is hardly credible, even in minds hemmed in between the stucco of Downing Street and the Indian ryot's half-acre plot.

The former explanation is inadmissible since it would amount to a dastardly betrayal of the interests of their employers. We are therefore forced to accept the latter explanation.

The genesis of the application of the 21 years' lease to British East Africa is probably traceable to clauses in some of the Australian Land Ordinances, whereby backlands which have a potential future agricultural (and thereby close settlement) value are rendered, in the interim, available for graziers.

Such leases serve a most useful purpose in countries where the stock is for ever pressing forward upon new areas of grass, since they provide fields of operation for the speculator in stock.

If I might hazard a guess I should say that the clause mainly originated with a casual glance at the New Zealand Act of 1885. The essential features, however, of this Act, being rather complicated and of a purport not easily intelligible to the mind untrained in land economics, have been completely ignored.

I understand that His Excellency and the Commissioner for Lands are now busy collecting the various Colonial Land Ordinances. Such things are highly indigestible without the salt of knowledge of the local conditions from which each ordinance is born, and the pepper of practical experience.

The prime factor in the construction of the Australian land system was the phenomenon of hordes of men owning countless hosts of stock grazing free over the unoccupied lands beyond Government control. It was by successive attempts to secure the rights and to define the interests of these squatters that the whole land system was elaborated. Ever rising tides of stock flowed over the available grass-lands of the sub-continent and remoter zones of grass acquired an assessable value as increasing facilities of transport raised the *in situ* value of the products of the flocks and herds.

In East Africa on the other hand the prime factor is the slow importation of optimists or enthusiasts who are seeking a home. They are unaccompanied by flocks or herds, and select with the idea of preparing a depot upon which they hope, some day, to accumulate stock by the slow and precarious process of waiting for the vast native reserves to become overstocked, for punitive expeditions or the opening of close districts and the granting to white settlers of the privileges enjoyed by Somalis, Baluchis, Masai, and the special friends of Sub-Commissioners.

In Australia men cannot find grass for their stock; here, they cannot find stock for their grass.

The positions are divergent as the poles. Yet in New Zealand (the very laboratory of progressive land legislation) the home of Henry Georgeism, a closely settled country with a million inhabitants, where farming land sells up to £60 per acre, by the Land Act of 1892, the thirty years lease on a five per cent. rental with recurring valuations was supplanted by a 99 years' lease on a fixed four per cent. rental!

In East Africa, the home of the leopard, the tick, the baboon, and the amateur official, an unsettled country with a thousand inhabitants, where land at Re. 1 per acre is the most expensive land in the world by the "Gazette" of 16th June, 1907, the nebulous 99 years lease at fixed rental has been cut to a 21 years' term, giving the lessee the delusive right at the end of that period to borrow his own money from the Government for a further period of 21 years, should the whim of some gentleman or gentlemen unknown be propitious to the said lessee.

A few days before the arrival of Mr. MacDonald, the first man of experience who has ever joined this Administration, on the eve of the formation of a Legislative Council, practised draughtsmanship, this mine of imbecility is exploded beneath our feet.

By now it is all over the world, and once more East Africa has become a merry jest to those who have not been fooled into investing capital in the country.

Will the Commissioner for Lands inform us whether he really believes that a man will turn aside from the assisted passages and free land grants of self-governing Canada to tax, voteless, voiceless and the butt of every callow jack-in-office (a sort of fifteenth century Russian serf) he may carve a farm out of the wilderness in order that when it becomes productive he may hand it back to the Government as a gift?

(No. 169/69.)

Office of the Commissioner for Land,

Nairobi, July 12, 1907.

YOUR EXCELLENCY,

In paragraph 8, of despatch dated 23rd April, the Secretary of State, in commenting on my report on the revision of the Crown Lands Ordinance, said:—"I may here observe that I think the terms of leases of land for pastoral purposes should not, in general, exceed 21 years, with an option of renewal for a further term of 21 years at the then prevailing rent for such leases."

I had remarked in my report (paragraph 14), on the rates at present charged for land, and said that I thought that, as the existing rates for grazing land were so low, it might be advisable to give leases first for 21 years, with the option to renew for the remainder of the 99 years at an enhanced rent. My object was to allow persons taking up grazing farms in a new country a low rent to begin with (at present a halfpenny or a penny an acre according to position), and to raise the rate after 21 years, but still to allow the grantee to retain his land for the full term of 99 years. I did not specify the enhanced rent; but my intention was to advocate that the enhancement should be stated when the land was granted, so that the grantee would know exactly what he would have to pay.

For instance, it might have been stipulated that the rent would be increased by half as much again as the original rent. The essence of the idea was that the person who took up a farm would know when he obtained his land that, provided he carried on the development, he would keep it for 99 years, paying a low rent to begin with, and a somewhat enhanced one after 21 years.

The directions of the Colonial Office impose more stringent conditions, and I earnestly hope that the Secretary of State will reconsider his order.

The public has been informed that grazing leases will usually be given in future in accordance with the instructions quoted above, and many protests have been made.

I forward herewith two which have been received by me. One is from the firm of Newland, Tarlton and Company, addressed to Your Excellency. The other a private letter from Mr. Newland, the head of the firm, written before setting out for Australia. Both are worth perusal. Your Excellency is aware that a similar protest has been made by the Colonists' Association, and I have no hesitation in saying that the new order is viewed with considerable alarm by the great majority of settlers.

Two facts should be borne in mind. First, practically all grazing land near the railway has already been granted on 99 years' lease. We can hardly expect that applications will be made for the more remote lands on more stringent conditions. The second is a very important one. The pastoral farmer has exceptional difficulties to contend with. Not only are diseases of stock very rife; it is exceedingly difficult for any but the richest men to stock their farms with an appreciable number of cattle. The natives, who are by far the largest cattle owners, can hardly ever be induced to sell their animals. The Masai will never sell anything but what has broken down. The other tribes also keep every head they can get.

Thus the settler has to import stock at a heavy cost, with the knowledge that it may succumb to some disease, to which it is much more liable than the indigenous cattle. Other reasons could be adduced for lenient treatment, but I trust I have said enough to show that it would be a mistake to introduce the system suggested by the Colonial Office.

The country is still in its infancy with many natural difficulties for the settler. So long as we insist on the development of each grant, it is good policy to give the land on easy terms for 99 years. Only thus can we hope to attract the best class of settlers.

The introduction of the shorter pastoral lease will, I fear, set back the settlement of the country

I have, &c.,

J. MONTGOMERY,
Commissioner of Lands.

His Excellency the Governor,
East Africa Protectorate,
Nairobi.

Enclosure 4 in No. 1.

A "MINE OF IMBECILITY."

TO THE EDITOR OF THE "STAR."

Sir—"In future the terms of leases of grazing land will be for 21 years, subject to renewal for a further period of 21 years at the then prevailing rate of rent if due development has taken place."

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The entire clause reeks of the amateur, the impudent amateur who has not even borrowed a primer on the subject with which he deals, the amateur who believes that grazing land is a finite quantity capable of chemical analysis, who confuses improved with unimproved values, or who more likely has never even heard the terms, who thinks that "if due development has taken place" is the English language and a correct legal term, who wots not of Australia, Canada, New Zealand, and the Argentine, who believes the world is straining at the leash hungering for the pest-ridden lands of Central Africa.

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Such leases serve a most useful purpose in countries where the stock is for ever pressing forward upon new areas of grass, since they provide fields of operation for the speculator in stock.

If I might hazard a guess I should say that the clause mainly originated with a casual glance at the New Zealand Act of 1885. The essential features, however, of this Act, being rather complicated and of a purport not easily intelligible to the mind untrained in land economics, have been completely ignored.

I understand that His Excellency and the Commissioner for Lands are now busy collecting the various Colonial Land Ordinances. Such things are highly indigestible without the salt of knowledge of the local conditions from which each ordinance is born, and the peppery practical experience.

The prime factor in the construction of the Australian land system was the phenomenon of herds of men owning countless hosts of stock grazing free over the unoccupied lands beyond Government control. It was by successive attempts to secure the rights and to define the interests of these squatters that the whole land system was elaborated. Ever rising tides of stock flowed over the available grass-lands of the sub-continent and remoter zones of grass acquired an assessable value as increasing facilities of transport raised the in situ value of the products of the flocks and herds.

In East Africa on the other hand the prime factor is the slow importation of optimists or enthusiasts who are seeking a home. They are unaccompanied by flocks or herds, and select with the idea of preparing a depot upon which they hope, some day, to accumulate stock by the slow and precarious process of waiting for the vast native reserves to become overstocked, for punitive expeditions or the opening of close districts and the granting to white settlers of the privileges enjoyed by Somalis, Baluchis, Masai, and the special friends of Sub-Commissioners.

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A few days before the arrival of Mr. MacDonald, the first man of experience who has ever joined this Administration, on the eve of the formation of a Legislative Council, without warning, consultation, or apparently even the usual precaution of submission to a practised draughtsman, this mine of imbecility is exploded beneath our feet.

By now it is all over the world, and once more East Africa has become a merry jest to those who have not been fooled into investing capital in the country.

Will the Commissioner for Lands inform us whether he really believes that a man will turn aside from the assisted passages and free land grants of self-governing Canada to pay an import duty of £60 upon himself for the privilege of coming to East Africa, where taxed, voiceless and the butt of every callow jack-in-office (a sort of fifteenth century Russian serf) he may carve a farm out of the wilderness in order that when it becomes productive he may hand it back to the Government as a gift?

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received December 14, 1907.)

MY LORD,

Governor's Office, Nairobi, November 22, 1907.

I HAVE the honour to submit the enclosed letter from the Commissioner of Lands on the subject of the length of time for which leases should in future be given for grazing and other classes of lands.

2. I have barely time to deal with the matter before the mail closes this morning, but it is important that it should reach your Lordship as early as possible.

3. Enclosed are minutes by the Right Honourable the Under Secretary of State for the Colonies giving his views as to the lines on which land legislation should proceed.

4. When Mr. Winston Churchill noted his opinion that grazing leases should be given for 21 years with option to renew on new conditions, I am not aware whether the proposals made in the concluding part of paragraph 2 of Colonel Montgomery's letter of the 22nd instant, which were then before him, had been fully considered. The feeling against renewal under new conditions is very strong in East Africa, and I would ask your Lordship's favourable consideration to the proposals Colonel Montgomery had put forward. The rates proposed for the rent of lands according to the various classifications I will communicate by telegram, and these will reach your Lordship before this despatch. Personally, it appears to me that if we reduce the area given on long lease from 5,000 and 10,000 acres to 3,000 acres, with a fair rent according to classification, and insist on beneficial occupation, and consider leases for grazing areas over 3,000 acres on their merits as exceptional cases according to the status of the applicant, and the amount of capital he is prepared to invest, a good deal of the present difficulty will be obviated.

5. As regards free transfer, both Colonel Montgomery and myself have for some time past been inclining to the view that some form of free transfer should be given, and your Lordship will observe that Mr. Winston Churchill favours this view; the lines being that the right of free transfer should only be given after the beneficial occupation that will be required by the regulations has been complied with.

6. I shall be glad if your Lordship is able to give me instructions by telegram as to your Lordship's wishes on the two points raised in this despatch, so as to enable me to instruct the Crown Advocate on the preparation of the draft Ordinance, which I am anxious to have ready for the Legislative Council by the first week in January.

I have, &c.,

J. HAYES SADLER.

Enclosure 1 in No. 3.

Office of the Commissioner of Lands, Nairobi,

November 22, 1907.

YOUR EXCELLENCY,

I HOPED to have had the draft Crown Lands Ordinance ready for first reading at the sessions of the beginning of December, but fear this will not now be possible, for the following reasons:—

2. At the discussion that we had with the Right Honourable Winston Churchill nothing was definitely settled about the length of leases. On the other hand, Mr. Churchill had at the time a paper showing that the Land Board recommended the elimination of distinctions as to agricultural, grazing, cotton land, &c., and suggested that all land should be classified according to its real value and rated accordingly. Understanding that this was generally approved, I sent a note to the Crown Advocate, of which a copy is enclosed, indicating the general lines on which the conditions for holding land should be entered in the new law.

I have since received Mr. Churchill's note of the 16th instant, in which he gives his opinion that for the present grazing land should be offered on 21 years' leases, with option to renew under new conditions.

Now, although it is true that I myself suggested the 21 years' lease, renewable at an enhanced rent in 21 years, I did this on the assumption that the leases would be given in the first instance at a very low uniform rents without classification. It is now proposed to classify all land, and if this is done, I am of opinion that the

Has it not yet dawned upon the Commissioner for Lands that East Africa is not a ranching or a "run" country? The East African pastoralist must build up his pasture acre by acre and his flocks and herds head by head. Has the Commissioner for Lands not yet guessed that the real value of East African grazing land is nil, and that when the lease expires the lessor will have given nothing and the lessee will have given all?

It is too silly to admit of serious criticism. Discussing land economics with people not conversant with the meaning of "unimproved value" is like discussing astronomy with people who have not heard of Copernicus.

I would suggest the starting of a subscription to provide the Commissioner for Lands and the Colonial Office Library with copies of the works of Henry George and William Epps, to be used in conjunction. I would also draw their attention to the trend of English land legislation with special reference to the Tenants Improvement Acts and the £20,000,000 loan authorised for the purpose of extricating the Irish tenants from the very system which the Government are here busy building.

Nairobi, July 1st, 1907.

I am, &c.,

E. S. GROGAN.

No. 2.

THE SECRETARY OF STATE TO THE GOVERNOR.

Downing Street, August 20, 1907.

SIR,

I HAVE the pleasure to acknowledge the receipt of your despatch of the 16th ultimo,* and to thank you, for your information, a copy of a question asked in the House of Commons on the subject of the duration of leases for grazing land in the East Africa Protectorate, and of the answer which I caused to be returned to it.

2. The reasons which induced me to suggest that the term of these leases should be reduced to 21 years were, firstly, that, as the duration of leases of cotton land had been reduced to thirty years, there seemed no sufficient ground for allowing so long a term for leases of pastoral land, which presumably entail much less expenditure on the lessee, and, secondly, that the grant of large quantities of land grants as an inducement to persons to build railways or to undertake other useful works in the Protectorate.

3. I shall, however, be prepared to consider favourably the proposal of Colonel Montgomery that the leases shall be for 21 years, renewable for a further 78 years at an enhanced price to be fixed in the original lease, provided (a) that the enhancement is of a tangible character so that the rent for the second term is not less than 3d. per acre; (b) that it is shown to my satisfaction that the tenure of these pastoral holdings does in practice involve any considerable expenditure on the land, and that the lessees do not merely turn their cattle or sheep on the land without incurring any expense for clearing, fencing, &c.

4. On these points and on the general question of the terms of pastoral leases I shall be glad to be furnished with Mr. Macdonald's views before any further change is made.

I have, &c.,

ELGIN.

Enclosure in No. 2.
HOUSE OF COMMONS.

August 13, 1907.

Sir CLEMENT HILL asked the Under-Secretary of State for the Colonies whether the duration of leases of land in the East Africa Protectorate had recently been reduced from 99 to 21 years; and, if so, what was the reason for such reduction?

Mr. CHURCHILL, in reply, said: "The reason for the reduction was that it was not thought desirable to tie up large tracts of land for such a long period as 99 years at a nominal rent for pastoral purposes, which do not involve much expenditure for development by the lessee, but the Secretary of State will further consider the matter in the light of the recommendation which may be made by Mr. Macdonald, the newly appointed Commissioner of Agriculture."

leases should be for at least 99 years. Indeed, Mr. Churchill, in his conversation, led us to believe that he would be prepared to agree to a 99 years' lease, provided the rent was sufficient.

That is the essence of the question.

What we now propose is:—

- (1) Classification of land according to actual value.
- (2) A fair rent charged according to such classification.
- (3) Strict compliance with conditions of occupation and development.

Given these factors, I consider that all land outside townships may be granted for 99 years.

3. Another reason for delay is that the President of the Land Board tells me he cannot call a meeting of the Board before the 28th November.

A good deal more information is needed before proceeding with the Ordinance, and this could hardly be put into form and incorporated in the draft before the sessions of the 9th December.

4. I am sorry that there must be this further delay; but it is not to be regretted if it results in a more carefully considered scheme, prepared after full discussion.

5. I also wish to know if we shall be justified in drafting the conditions on the lines proposed in the Ordinance to the Crown Advocate, and I have the honour to request that these papers be sent immediately to the Secretary of State with a request that orders may be issued in general question by telegraph. I believe that we have now reached a stage in the land question which, while guarding the interests of the State, will be acceptable to the settlers.

At the present time very few are applying for land, mainly on account of the 21 years' lease condition.

6. My note to the Crown Advocate also deals with land inside townships. On this head also I wish to have a further opinion from the Land Board. There is a feeling that we should not insist on buildings being put up on town lots within a fixed time. It is urged that it is better to impose a tax on vacant land rather than to insist on some sort of house being erected. This question will be again carefully considered.

The point on which I wish for early orders is that of the condition on which land may be given outside townships.

I have, &c.,

J. MONTGOMERY,
Commissioner of Lands.

His Excellency the Governor,
East Africa Protectorate,
Nairobi

Enclosure 2 in No. 3.

Sir J. HAYES SADLER,

I THINK that the following minute represents the results reached by the Conference yesterday:—

1. The Land Board should meet as soon as possible for the purpose of drafting a precise and comprehensive definition of the term "beneficial occupation." I am of opinion that the conditions should be made varied and elastic, in order to meet the many different kinds of honest effort applied to the development of holdings, and the Land Board should, therefore, not shrink from framing an elaborate schedule. A probationary period of five years should, however, form the foundation, but the time might be shortened in cases of exceptionally beneficial occupation.

2. All persons who can prove beneficial occupation under the definition aforesaid should be given a valid title to their leaseholds, including the right of free transfer.

3. Colonel Montgomery should forthwith prepare a list of absentees, and the Government should then give six months' notice to these persons of their intention to resume possession of their lands under the original conditions of the grant. Unless within that time cause has been shown for special treatment, the lands in question should be taken possession of by the Government under the law, and their former leasees left to seek their remedy in the Courts. For the purpose of this measure, the word "absentee" does not mean absentee from British East Africa, but absentee

from any particular leasehold*—the employment of agents or proxies being, of course, accepted as sufficient if the other conditions are fulfilled.

4. There seems to be no reason why the issue of title deeds for land already applied for should await the progress of the survey, and instructions should be given for the immediate beaconing off of farms now in suspense, in order that they may be occupied at once in full security by persons desiring to develop them.

5. Survey fees paid to Government in consideration of value promised cannot be treated as revenue. They should be placed in a deposit account; and it should be open to the private person concerned to have his land surveyed by a licensed surveyor to whom the Government, if satisfied, will forthwith pay the fee. The question of an additional fee to cover the expenses to which the Government is put in such case should be considered.

WINSTON S. CHURCHILL

Nairobi,

November 13, 1907.

Enclosure 3 in No. 3.

YOUR EXCELLENCY, Fort Ternan, British East Africa, November 16, 1907.

WHILE I am of opinion that the white settlement of the selected portions of the highlands should proceed steadily, I deprecate the taking of any steps likely to encourage a rush of persons unsuited to the conditions and unacquainted with the difficulties of East Africa. The best means of encouraging a healthy flow of new settlers is to secure the success of those who have already come. With this object in view, every effort should be made to settle up promptly the outstanding claims at the Land Office. It was agreed at our Conference between the Land Board and the Land Office last week that there was no need for allotment and grant of title to await official survey, and that the process should be accelerated both by the employment of licensed surveyors, and by a system of beacons.

2. But I think the time has now arrived when new settlers may fairly be asked to accept more modest concessions than those which have hitherto been offered to the immigrant. Farms allotted should, in my opinion, except in very special cases, vary between not more than two and three thousand acres. Persons should not be allowed to apply for land on behalf of others except in very special cases, where there are good reasons to explain the absence of the principal applicant from the country. Where several members of the same family make joint or simultaneous applications for adjoining areas, the whole area applied for should be reconsidered and reduced to reasonable dimensions as a whole; and a wife or a child cannot be accorded an equal holding with the husband or father unless it can clearly be shown that they are entirely independent parties. Applications for land constitute no claim whatever upon the Government, either for the benefit of the individuals applying or in bar of other persons who may afterwards be deemed more suitable; and this cannot be made known too publicly. When farms are allotted no effort should be made exactly to cut off a given number of acres. A suitable farm should be marked out by a single process of beaconing, and the survey officer in delimiting should take into consideration the fair distribution of water rights, &c., and should follow convenient natural boundaries. When the farm has been delimited, it should then be measured, and the applicant should be invited to rent it upon the bases of the exact number of acres, varying between 2,000 and 3,000, which the ground demarcated may happen to contain. In order to keep ahead of reasonable demands, areas should be beaconed out in this fashion into suitable farms, numbered, appraised, and marked on a map kept for reference in the Land Office.

I am of opinion that leases of grazing land should at present not be offered for terms longer than 21 years, but option to renew under new conditions should always be accorded to the leasee.

3. When the right of free transfer has been accorded to those settlers who have proved "beneficial occupation," the question of graduated land tax, to prevent undue accumulation in the hands of individuals, will necessarily arise. I see no reason why such a tax should not now be considered. I would suggest that holdings under 1,000 acres be exempt; that holdings under 5,000 acres be charged at the lowest

* When a lessee of more than one holding is paying proper attention to one of them, he should be exempted with regard to the other.

rate; that holdings between 5,000 and 20,000 acres be rated double; between 20,000 and 50,000 acres treble; between 50,000 and 100,000 acres quadruple; and over 100,000 acres five times the lowest rate. There is no reason why these figures, which are only suggested to indicate the process that should be employed, should not be varied, and the existing method in England of graduating the death duties might be studied with advantage. It is, of course, assumed that in the present condition of the country such taxation would be imposed upon a very small scale, but as the wealth of the country develops, and holdings become more valuable, it could be properly increased until, taken in conjunction with the rent due to the State as ground landlord, it furnished a very substantial contribution to the revenue.

WINSTON S. CHURCHILL.

November 16, 1907.

No. 4.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received December 17, 1907.)

MY LORD, Governor's Office, Nairobi, November 25, 1907.
 IN continuing my despatch of the 22nd instant,* on the subject of the period of lease to be granted in future, I have the honour to submit copies of a letter from the Secretary of Agriculture giving his views on the question of pastoral leases and the proposed reduction of the term of leases from 99 to 21 years, as called for in Your Lordship's despatch of the 20th August last.

2. Attached is a minute thereon by the Commissioner of Lands. As Colonel Montgomery observes, Mr. Macdonald would go much further than we are prepared to in the matter of perpetual quit rent and power to purchase as freehold.

3. Whilst agreeing with Mr. Macdonald's views that every assistance should be given to the pioneers in a new country, I presume Your Lordship would not advocate so complete a change in our land laws as would be involved in such a measure as a perpetual quit rent, which neither the Commissioner of Lands nor myself is at present prepared to recommend.

4. Nor do we consider that any alteration is at present called for in the existing law as to freehold, the acquisition of which is limited to 1,000 acres.

5. I consider, though, that Mr. Macdonald's views support the opinions I have expressed in my despatch above referred to for a re-consideration of the question of the 21 years' lease, and for free transfer being granted when development has taken place on the conditions noted.

I have, &c.,
 J. HAYES SADLER.

Enclosure 1 in No. 4.

Department of Agriculture, Nairobi,
 British East Africa, October 12, 1907.

SIR, WITH reference to the Secretary of State's despatch, dated 20th August last, in which he asks for an expression of my views on the question of pastoral leases generally and the reduction of the term of 99 years to a 21 years' lease system specially, I have the honour to submit the following:—

The history of all our Colonies shows that in the first period of colonization, and while the wants of the Government were not foreseen, the practice was to grant land on leases ranging usually from 50 to 99 years, but as each Colony became more or less populated, changes from time to time were made in the system of land tenure, all tending in the direction of perpetual quit-rent or freehold title.

These changes were brought about by reason of the fact that to secure profitable farming, besides intelligence, industry, and thrift, adequate capital was a *sine qua non*, and until some better security of tenure than a leasehold title could be offered, a want of confidence existed and money was difficult to obtain for development.

Among the settlers of British East Africa the want of money is sadly evident. Though it is a fact that loans have been made to settlers on leasehold land, such

* No. 3.

† No. 2.

loans have only been granted where satisfaction has been given as to the reliability of the borrower and on his personal security. It is true that title deeds have been taken as cover, but these are practically no security, because it appears that at present it is possible to effect a transfer of land without the production of the deeds.

Owing to the prevalence of disease among stock; to the number of wild animals preying on herds and flocks; to the difficulty of obtaining stock at fair and reasonable prices; to the indifferent quality of native labour; and to the want of data for guidance as to the particular lines of farming to pursue with a fair prospect of success, the life of a settler at present is not a too enviable one.

While it was exceedingly difficult under the 99 years' leasehold system to raise money to supplement the capital with which the settler started farming, under the new order, where the period of leasehold has been reduced it will be practically impossible for him to obtain advances.

Further, and as stated by Messrs. Newland, Tarlton & Co. in their letter of 20th June to His Excellency the Governor, "The courage and enterprise of the pioneer who, in the hope of acquiring land cheap which by thrift he can make valuable, receives a severe blow by the shortening of the length of tenure. In the case of a middle-aged man who desired to leave his children provided for, the measure seems particularly severe; by the time his now infant children come of age the land which their father has striven to make valuable reverts to the Crown."

Capitalists are the only persons who would be in a position to develop the land under the new régime, but even they view with alarm the new order of things, and are shying at the Protectorate.

A revision of the land laws is pressing, but certainly not in the lines of a reduction of the terms of tenure, or even on the lines of an extended term of 99 years' leasehold tenure. Leasehold tenure in any form is injurious to the interests of an agricultural community in a young and developing country.

I have visited many of our Colonies and have gone carefully into the systems upon which Crown land has been, and is being, granted. I have compared the merits of each, and taking very fully into consideration the conditions which exist in the Protectorate, I have no hesitation in stating that an adaptation of the system of land tenure proposed and brought into force by Sir John Craddock in the Cape Colony under Proclamations dated August, 1813, is what is wanted in this Protectorate to place property on a sound and solid foundation, and to allow of a free flow of capital into the country, and which is so desirable and necessary for the development of its resources and the contentment of its people.

The system, based on the lines of the above Proclamation, which I suggest should be adopted, is as follows:—

- a. In future settlement farms to be granted to settlers on "Perpetual Quit-Rent Title" after three years personal occupation or by a white man as substitute, and the expenditure of a stipulated sum on permanent improvements.
- b. The holder of the quit-rent title to have the right to hold the land hereditarily and to do with the same as he may think proper, in like manner as with other immovable property; as also should he deem advisable, to sell or otherwise alienate it with the usual previous knowledge of Government—either partly or wholly.
- c. Government to reserve no other rights but those on mines of precious stones, gold, silver, lead, tin, and copper, as also the right to the water in the rivers and streams flowing through the farms, except in so far as is required for domestic purposes, as also the right of making and repairing railway and public roads and raising material for that purpose on the premises; other mines of iron, coal, slate, or limestone to belong to the proprietor.
- d. On the division of any place granted on perpetual quit-rent each holder on division shall be bound and be responsible for the full amount of the rent in such manner, however, that he who makes the payment may transfer from the other holders, for as far as regards their respective shares; unless at the request of interested parties on making the division, Government may be pleased to direct, that the rent shall be apportioned and registered at the time of transfer.

- e. To insure the necessary regularity, as well as the interest of the State, no alienation of any part of such place shall be considered as legal before the same shall be surveyed, a diagram made thereof, as likewise registered in the Deeds and Land Revenue Offices.
- f. This perpetual quit-rent shall, further, not be liable to any other burthens but those to which all freehold lands are largely subject, or which may hereafter be further prescribed.
- g. The holder of any land on perpetual quit-rent title to have the power to freehold such land at any time on payment of twenty times the quit-rent.

It may be argued that the adoption of such a system of land tenure as above outlined might lead to capitalists acquiring large tracts of land after a few years and locking same up. Against this should be borne in mind the fact that not only is the area which is available for settlement restricted, but that such land will have become enhanced in value after three years' personal occupation, and the stipulated expenditure of capital on improvements has been incurred, to say nothing of any additional sums which may and are most likely to be spent, and the settler will be loath to part with his farm at a figure which will justify the capitalist in locking it up. Assuming, however, that he does so, the Government has the power, if it is considered advisable, to levy a tax on undeveloped land, but I do not anticipate large tracts of country will in the future be acquired by individuals or syndicates.

To return to the proposed system recommended of granting land, I need only refer to the facilities which are offered in Canada and Australia for taking up farms to emphasize the necessity of granting more liberal terms of land tenure in the Protectorate in order to attract a good class of settler, as likewise capital, which can be advanced for development on easy conditions of repayment.

With respect to the settler who has already taken up land I consider he should, except where special agreements have been entered into, be allowed to participate if more favourable terms are given in the revised land laws for future settlement. He has borne the brunt of the day and his position, therefore, should be favourably considered.

I have, &c.,

A. C. MACDONALD,
Director of Agriculture.

The Honourable
The Commissioner of Lands,
Nairobi.

Enclosure 2 in No. 4.

Office of the Commissioner of Lands,

Nairobi, November 26, 1907.

YOUR EXCELLENCY,
It has occurred to me that the Secretary of State will probably wish to see Mr. Macdonald's proposals called for in Colonial Office despatch dated 20th August, 1907, before dealing with the questions raised in my note of the 22nd November.

I had intended sending it with a more detailed report dealing with the Land Bill, but it will be better to forward it at once, that it may be seen that the Director of Agriculture goes further than we do. He recommends (and the recommendation is supported by the Land Board), the granting of a perpetual quit-rent tenure to everyone, with the option to acquire the whole land as freehold.

We do not go so far, but propose a 99 years' lease with power to acquire only a limited area of freehold, that is up to a maximum of 1,000 acres, according to existing rules.

The feeling of the country is strong for as long a lease as possible, and I hope that a 99 years' lease as proposed will be agreed to.

I have, &c.,

J. MONTGOMERY,
Commissioner of Lands.

His Excellency
The Governor.

No. 5.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 27 December, 1907.)

MY LORD,

Governor's Office, Nairobi, 3 December, 1907.

IN continuation of my despatch of November 22nd,* I have the honour to transmit herewith copies of a note by the Commissioner of Lands and of a scheme drawn up by the Land Board for the rapid allotment of farms by a system of beaconing in accordance with the suggestions of the Under-Secretary of State, as embodied in his minute of November 16th which formed one of the enclosures in my despatch above referred to.

2. The proposed procedure is not, of course, ideal, but in view of the special circumstances of the case I would venture to recommend it for your Lordship's favourable consideration.

I have, &c.,

J. HAYES SADLER.

Enclosure in No. 5.

Office of the Commissioner of Lands,

Nairobi, 27 November, 1907.

YOUR EXCELLENCY,

I HAVE the honour to forward a copy of a note by the Director of Surveys describing a system of rapid settlement which has been recommended by the Land Board, and which I agree should be adopted at the present time. As it involves a new departure I report it for Your Excellency's approval, and, if necessary, for that of the Secretary of State.

2. Land can be allotted in one of the following ways:—

- (1) Where maps are non-existent, and surveyors few, a man who wishes to take up land applies for it in a particular locality. It is inspected by some officer who reports whether there are any manifest objections to the grant, such as the existence of native rights. If there are no *prima facie* objections, the applicant is given a permit of temporary occupation and at once enters into possession. But his boundaries are indefinite, and he obtains no deed until a surveyor can come and beacon off the property and prepare a plan.

This system has heretofore obtained in this country, because the rush for land was great and there was no other method of satisfying demands.

- (2) A particular area is kept closed for settlement until it has been properly marked off into farms of suitable size and plans prepared. This system was adopted in the Rift Valley and has been lately followed in Sotik.
- (3) A particular area is closed for settlement until it has been marked off into farms in the same manner, but detailed plans are not then prepared. The operations are confined to permanently beaconing off farms, and preparing a rough index, and settlers are allowed to occupy directly this has been done. The detailed survey is done at some later date, when it is possible, with regard to other work, to send a survey party to the ground.

This is the plan now advocated, and which I recommend for adoption. It will cost more than the second system because there will be two operations instead of one, for in either case the expenditure on detailed survey will be practically the same.

3. Major Smith's note refers to the Board which will mark off the farms. This is an important part of the scheme, for all interests are represented on the Board, and we may hope that the farms will be marked off with due regard to quality and properly rated accordingly. The same Board would also be used in the second method.

We are about to fix rates of rent for each class so that a settler, when he takes up a farm, will know at once the class into which it has been put and the rent he must pay for it.

- e. To insure the necessary regularity, as well as the interest of the State, no alienation of any part of such place shall be considered as legal before the same shall be surveyed, a diagram made thereof, as likewise registered in the Deeds and Land Revenue Offices.
- f. This perpetual quit-rent shall, further, not be liable to any other burthens but those to which all freehold lands are largely subject, or which may hereafter be further prescribed.
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It may be argued that the adoption of such a system of land tenure as above outlined might lead to capitalists acquiring large tracts of land after a few years and locking same up. Against this should be borne in mind the fact that not only is the area which is available for settlement restricted, but that such land will have become enhanced in value after three years' personal occupation, and the stipulated expenditure of capital on improvements has been incurred, to say nothing of any additional expenses which may and are most likely to be spent, and the settler is not likely to purchase his farm at a figure which will justify the capitalist in purchasing it. Assuming, however, that he does so, the Government has always the option, it is considered advisable, to levy a tax on undeveloped property, but I do not anticipate large tracts of country will in the future be acquired by individuals or syndicates.

To return to the proposed system recommended of granting land, I need only refer to the facilities which are offered in Canada and Australia for taking up farms to emphasize the necessity of granting more liberal terms of land tenure in the Protectorate in order to attract a good class of settler, as likewise capital, which can be advanced for development on easy conditions of repayment.

With respect to the settler who has already taken up land I consider he should, except where special agreements have been entered into, be allowed to participate if more favourable terms are given in the revised land laws for future settlement. He has borne the brunt of the day and his position, therefore, should be favourably considered.

I have, &c.,

A. C. MACDONALD,
Director of Agriculture.

The Honourable
The Commissioner of Lands,
Nairobi.

Enclosure 2 in No. 4.

Office of the Commissioner of Lands,

Nairobi, November 25, 1907.

YOUR EXCELLENCY,

It has occurred to me that the Secretary of State will probably wish to see Mr. Macdonald's proposals called for in Colonial Office despatch dated 20th August, 1907, before dealing with the questions raised in my note of the 22nd November.

I had intended sending it with a more detailed report dealing with the Land Bill, but it will be better to forward it at once, that it may be seen that the Director of Agriculture goes further than we do. He recommends (and the recommendation is supported by the Land Board), the granting of a perpetual quit-rent tenure to everyone, with the option to acquire the whole land as freehold.

We do not go so far, but propose a 99 years' lease with power to acquire only a limited area of freehold, that is up to a maximum of 1,000 acres, according to existing rules.

The feeling of the country is strong for as long a lease as possible, and I hope that a 99 years' lease as proposed will be agreed to.

I have, &c.,

J. MONTGOMERY,
Commissioner of Lands.

His Excellency
The Governor.

No. 5.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 27 December, 1907.)

MY LORD,

Governor's Office, Nairobi, 3 December, 1907.

In continuation of my despatch of November 22nd,* I have the honour to transmit herewith copies of a note by the Commissioner of Lands and of a scheme drawn up by the Land Board for the rapid allotment of farms by a system of beaconing in accordance with the suggestions of the Under-Secretary of State, as embodied in his minute of November 16th which formed one of the enclosures in my despatch above referred to.

2. The proposed procedure is not, of course, ideal, but in view of the special circumstances of the case I would venture to recommend it for your Lordship's favourable consideration.

I have, &c.,

J. HAYES SADLER.

Enclosure in No. 5.

Office of the Commissioner of Lands,

Nairobi, 27 November, 1907.

YOUR EXCELLENCY,

I HAVE the honour to forward a copy of a note by the Director of Surveys describing a system of rapid settlement which has been recommended by the Land Board, and which I agree should be adopted at the present time. As it involves a new departure I report it for Your Excellency's approval, and, if necessary, for that of the Secretary of State.

2. Land can be allotted in one of the following ways:—

- (1) Where maps are non-existent, and surveyors few, a man who wishes to take up land applies for it in a particular locality. It is inspected by some officer who reports whether there are any manifest objections to the grant, such as the existence of native rights. If there are no *prima facie* objections, the applicant is given a permit of temporary occupation and at once enters into possession. But his boundaries are indefinite, and he obtains no deed until a surveyor can come and beacon off the property and prepare a plan.

This system has heretofore obtained in this country, because the rush for land was great and there was no other method of satisfying demands.

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This is the plan now advocated, and which I recommend for adoption. It will cost more than the second system because there will be two operations instead of one, for in either case the expenditure on detailed survey will be practically the same.

3. Major Smith's note refers to the Board which will mark off the farms. This is an important part of the scheme, for all interests are represented on the Board, and we may hope that the farms will be marked off with due regard to quality and properly rated accordingly. The same Board would also be used in the second method.

We are about to fix rates of rent for each class so that a settler, when he takes up a farm, will know at once the class into which it has been put and the rent he must pay for it.

Some extra expenditure will necessarily be involved by the operations of such a Board, but as it will result in a better classification of farms it will be money well spent. We have entered £1,500 for such expenditure in the estimates for next year.

4. At the present time survey fees are levied on a regular scale according to the area taken up and are at once credited to revenue. We propose for the present to adhere to this scale, but to distribute it as follows:—Each applicant will, in the first instance, deposit a beaconing fee of £5 to insure the registration has been completed the area of each farm will be roughly calculated, and each settler will, before he enters on his land, pay the balance of survey fees over and above the £5 already deposited. This balance will be kept in hand until the detailed survey is carried out. In due time, if the survey is completed by a Government surveyor, the money will be credited to revenue. If before this time any grantee wishes his farm more quickly surveyed, he can employ a licensed surveyor, to whom the money will be paid. Such surveyor will probably demand more than the money in deposit, but this is a matter for the settler to arrange if he prefers a private survey.

An alteration in the system of accounts is thus necessitated which will require the approval of the Board. It means the keeping of a part of the survey fees in deposit, and of course a certain sum out without showing it as revenue. I hope no objection will be made to this. The Right Honourable the Under-Secretary for the Colonies expressed his approval when it was explained to him at a Conference with the Land Board in Nairobi.

5. Before closing I should say that the second system above described is, in my opinion, preferable where it can be carried out, as it enables us to complete the whole operations for marking off, beaconing, and surveying the properties at one time, and is therefore more economical. The third system is recommended for the present to meet the demand for land.

The first system has, of course, got the settler on his land in the shortest time, once he has found available land which he wants. If there has sometimes been delay in these cases, it is because the applicant has asked for land which could not, for various reasons, be given him.

I have, &c.,

J. MONTGOMERY,

Commissioner for Lands.

REPORT ON RAPID SETTLEMENT.

The Land Board recommend that a Board, the members to represent respectively Director of Surveys, Land Officer, Chief Conservator of Forests, and Director of Agriculture, and to include one non-official farmer, should proceed to rapidly mark out land in farms. That such farms be marked by permanent beacons. The beacons being numbered and having the numbers so marked on them. That the farms be described by their beacons and not by acreage. That the Board in marking out such farms should judge on the spot by the nature of the country, &c., and not by exact acreage what size is suitable. Only sufficient survey should be done immediately to form an index to these farms. That accurate survey should follow when it is possible to undertake it. That the rent should be fixed on each farm pending the final re-assessment on final survey. That after re-assessment no repayment of rent for the previous period to be made.

The following advantages are likely to accrue. A large number of farms can be rapidly marked and ready for allotment in country like the Uasingishu. Settlers can immediately afterwards take occupation.

The farms are likely to be laid out more suitably than they could be by any scheme of farms of definite area. Provided the beacons and marks are sufficiently permanent no inconvenience is likely to arise from occupation preceding accurate survey.

There is no need for triangulation and complete mapping to get the farms allotted.

It would free the survey department from unsystematic work of having to deal with selections in their chronological order, instead of their geographical position, and arrears of applications for land awaiting survey are likely to be speedily cleared off.

A settler wishing to complete his title could still do so, without waiting for departmental survey, by employing a licensed surveyor.

Director of Agriculture has knowledge of a similar system being satisfactory in the Transvaal.

G. E. SMITH,

Major, Royal Engineers,
Director of Surveys.

No. 6.

THE GOVERNOR TO THE SECRETARY OF STATE

(Received 27 December, 1907.)

MY LORD,

Governor's Office, Nairobi, 6 December 1907.

In continuation of my despatches of the 22nd and 25th ultimo,* I have the honour to submit a letter from the Commissioner of Lands giving cover to the views of the Land Board so far as they apply to land in the uplands, views which the Land Board are most anxious should be submitted with the least possible delay for Your Lordship's consideration. The views of the Board on the questions connected with the tenure of land on the coast will be submitted as soon as the Board has assembled here and prepared its report, but as the Commissioner of Lands observes, there is little likelihood of the opinions it will put forward differing in essential particulars from the recommendations it has put forward as regards the highlands. I have been through these recommendations with Colonel Montgomery.

2. Excepting the proposal as to quit rent they are in the main what I have already recommended in the two despatches above quoted, and I concur with Colonel Montgomery in the views he has taken of the various points discussed.

3. The rents payable on land are low, too low, as it is at present, and I see no reason to further reduce the rent of the lowest class land to 4d. an acre. To a man who means business and who finds it worth while to work a farm, it can make no material difference whether he pays 4d. or 4d. an acre.

4. As regards Resolution No. 16 of the Board, the maximum area to be granted to an applicant under special circumstances, without reference to the Secretary of State, will, of course, remain at 10,000 acres, until such time as Your Lordship sees fit to modify the orders in this connection.

5. Regarding Resolution No. 18, land would only be vested in a municipality when the necessary authority to do so has been obtained from Your Lordship. A bill dealing with municipalities and the powers to be entrusted to them will shortly be submitted for Your Lordship's consideration when passed. In the meanwhile, subject to what I have said above, I see no reason why the provision made in this resolution should not stand.

6. I should be glad if I could be favoured with Your Lordship's views on the main questions discussed by telegram as early as possible.

I have, &c.,

J. HAYES SADLER.

Enclosure in No. 6

Office of the Commissioner of Lands,

Mombasa, 6 December, 1907.

YOUR EXCELLENCY,

I HAVE the honour to forward a copy of the complete proposals of the Land Board so far as they apply to land in the highlands. There is to be a meeting of the Land Board at Mombasa on the 13th instant to consider the question from the point of view of the coast lands. The general principles, however, will be the same as those advocated for the highlands, the only difference being that whereas in the highlands personal residence by a white manager is insisted on as an essential part of "beneficial occupation," this will not be a *sine qua non* in the more unhealthy lowlands, but a corresponding increase will be made in the money value of the improvements required.

2. Your Excellency has already forwarded certain general proposals as regards

* Nos. 3 and 4.

land legislation in your despatches of the 23rd and 25th November, respectively. It was requested in them that orders might be sent out by telegram when those despatches were received.

The Land Board has now asked that the whole of its proposals be sent home for the Secretary of State's consideration. The request is only reasonable and should be complied with. I suggest that a telegram be despatched at the same time requesting a withholding of orders on Your Excellency's last despatches until the receipt of another one which will now be sent with the Land Board's recommendations. It is well that the Colonial Office should, before passing orders on this important question, be in possession of the opinion of the experienced and practical men who compose the Board.

I will now deal with each proposal *seriatim*, that Your Excellency may have my views before sending the papers home.

3. Resolution 1.—Recommends the perpetual quit-rent system. While admitting that this form of tenure may have worked well in parts of South Africa, I am of opinion that we should not in a new country go to so great a length as is here proposed. I should not object to a perpetual lease coupled with conditions of a periodical revision of rents; but there is a very strong feeling against any such condition. I think, therefore, it will be best to give 99 years' leases of all agricultural land of whatever quality, charging for all a sufficient rent fixed after the land is classified by a qualified allotment Board; and I have reason to believe that the Board will be content with this form of tenure.

Resolution of the Board may be accepted so far as it relates to the terms of occupation, including the conditions of residence of at least nine months in every year. The non-official members insist strongly on white occupation as a necessary condition of every grant in the highlands, and I support them in this. The words "permanent title" in this resolution would mean a 99 years' lease under my proposal. That is, we should give a man in the first place a licence to occupy a specific area, and we should not give him his deed of lease till he had fulfilled all conditions of beneficial occupation.

4. Resolution 2.—I agree to this. If we turn a man out of his land for non-fulfilment of conditions we should repay him the then value of improvements of a permanent character. The money would come back to us from the next grantee of such land. Schedule A has been carefully drawn up and may be accepted.

Resolution 3.—This is the concession of the right of free transfer which the Right Honourable Winston Churchill stated to be desirable. The resolution means that no one will have the right till after he has fulfilled conditions and received his deed.

Resolution 4.—May be accepted as the rule for the division of any rents.

Resolution 5.—If we do not give perpetual quit rent this resolution need not be considered.

Resolution 6.—The Board proposes that any one may have the right to freehold the whole of his grant. I recommend the 99 years' lease and the right to acquire a limited area of freehold. The question is dealt with further on in connection with Resolution 17.

5. Resolution 7.—I agree. The Government will get, free of costs, what it needs for its public works, provided the materials are obtainable near a public road or railway, and the settler will not be unduly inconvenienced. I agree also that the materials entered in Schedule B may be allowed to the occupier without extra charge. This has been already admitted in previous correspondence. Surface salt has been entered in the list, for the country contains salt licks and salt pans, not of great value; certainly not of such value that the Government need claim a royalty on them.

Resolution 8.—May be agreed to.

Resolution 9.—The same. At a later date we must bring out a Water Ordinance. Before making proposals on this head I await the reports of the Irrigation Commission in the Transvaal.

Resolution 10.—May be agreed to.

Resolution 11. This also is right. If the Government wishes to acquire land from a small property it should compensate the occupier.

Resolution 12.—Contains the sound principle that the Government should not have the power to acquire free of charge more than a certain proportion of the larger properties.

Resolution 13.—I think the proposal here advocated is reasonable. The settlers will have more confidence in the decisions of an Arbitration Board such as is here suggested than if compensation for land taken up is awarded by a Government Officer, even though an appeal lies from his order.

6. Resolution 14.—This resolution fixes the rent for the classes into which it is proposed to divide all properties in the highlands. The rates are too low. The present lowest rent is $\frac{1}{4}$ d. an acre, and there is no sufficient reason for going below that. At the rates proposed the rent on an average sized farm, as below, will be £5 a year.

1st class	800 acres
2nd "	1,200 "
3rd "	2,400 "
4th "	4,800 "

This may well be doubled. It is true that the country is new, and that farming has as yet brought very small, if any, profits. Still, it must be admitted that a farm of over a square mile of good land would be inadequately rented at £5. Even a £10 rental may be thought too low. But in view of the admitted uncertainties of the country we ought to charge low rents. I proposed $\frac{3}{4}$ d. an acre for 1st class land, $\frac{1}{2}$ d. for 2nd class, $\frac{1}{4}$ d. for 3rd class and $\frac{1}{8}$ d. for 4th class. The result will be a raising of rents in the better classes only.

7. Resolution 15.—I agree that we should have a free hand in the classification. All matters affecting the lands must be considered, of which the principal would be, actual quality of the soil, water available, and situation as regards communications and markets. I also agree to the basis proposed to guide the Board in marking off farms. This is again referred to in Resolution 16.

8. Resolution 17.—According to the rent rates proposed by the Board the money which must be spent on farms of the average size would be £200. At first sight this appears low. But the sum does not include the expenditure necessitated by the residence conditions, nor is the value of stock or agricultural implements taken into account.

Now there are cases in this country of farmers laying out nearly all their capital in stock and contenting themselves with a very small expenditure on permanent improvements; such men have done much to stimulate cattle and sheep breeding. Therefore I am inclined to think that we may accept £200 as the minimum sum to be expended on permanent improvements on farms of the average size.

If this is approved and the rents proposed by me are accepted, the monetary qualification will be put at 20 times the annual rent.

I have before given my opinion that the area which can be acquired as freehold in any one grant should not exceed 1,000 acres.

The Board points out that this would act unequally in the different classes of land. To meet this objection, we may fix the area which can be freeholded at a fixed maximum for each class of farm. I propose 400 acres of first-class land, 800 of second class, 1,200 of third class, and 2,400 of fourth class; in other words, half of what may be considered an average farm of each class.

Say there are four farms, one of each class, of the average area, the result, according to my proposals, would be as follows:—

Rent	£ 10
Money to be spent on beneficial occupation	200
Payment due to Government for acquisition of freehold	100

9. Resolution 18.—I have had the opportunity of discussing the question dealt with in this resolution with the Land Board, as well as with a number of house owners.

Heretofore we have graduated the length of the lease for township plots according to the value of the buildings erected, insisting at the same time on a house being put up within a certain time. I am prepared to admit that the result of the latter condition has been a certain amount of jerry building.

It will be better to adopt the new proposal, which is, in effect, as follows:—

All land will be put up to auction at a minimum stand premium, the rent to be charged being fixed for each locality. The buyer will be entitled to a 99 years' lease, the only condition being that until a house is built he must

pay, in addition to the rent, a tax on unoccupied land. The municipal or other authority empowered to deal with township lands will see what class and value of house is needed for each locality, and until a house of that description is built the lessee will have to pay the unoccupied land tax.

The same authority will be empowered to set apart definite areas for separate nationalities if this is deemed necessary.

Subject to these conditions I would grant the right of free transfer. In townships there is every reason for granting this concession.

Resolution 19.—May be agreed to, provided that the concession should not be claimed as a right. In most properties, if conditions have been fulfilled, we should be quite prepared to grant the privileges now advocated. But there may be difficulties in dealing with some of the larger properties; for this reason I would prefer to leave the matter subject to the approval of the Governor.

10. I have now commented on each resolution. Your Excellency will, I feel sure, appreciate the care and thoroughness with which the Land Board has approached the difficult problems it has dealt with. I do not anticipate that the meeting with the coast planters will result in any alteration of the general principles advocated above, and I trust that these papers will be at once forwarded to the Land Board Office with a request that orders may, if possible, be passed on them by not later than the 1st January. Should the meeting with the coast planters suggest any amendments, they can be cabled home, and dealt with at the

I have, &c.,

J. MONTGOMERY,
Commissioner of Lands.

RECOMMENDATIONS OF THE LAND BOARD AS TO THE REVISION OF THE CROWN LANDS
ORDINANCE.

1. It was proposed by Mr. Baillie and seconded by Mr. Flemmer:—
“That farms be granted to settlers on the perpetual quit-rent title after five years' personal occupation or by another white man as substitute, in districts suitable for white colonization, and the expenditure of a stipulated sum on improvements, but it shall be open to the settler to claim permanent title after not less than three years should this stipulated sum have been already expended.”

The above was carried, Major Leggett dissenting on a point raised by him as follows:—

“Major Leggett supports the resolution, but he desires to record his reservation of final recommendation of the quit-rent system in absence of information as to what scales of graduated rental the Government will accept for 99 years' leases at rentals commencing at very low rates and revisable within pre-stated maxima at, say, the 33rd, 66th, and 99th years, and renewable in perpetuity thereafter.”

A resolution was carried, on the proposal of Major Smith, seconded by Mr. Swift:—

“That, if land in districts suitable for white colonization is not occupied by a white man within nine months after temporary occupation title is given, the Government shall have power to resume the land.”

2. It was proposed by Major Smith, seconded by Mr. Wright, and carried:—
“That if it is found during the probationary period from the date from which temporary occupation title has been given to a settler, that the land leased has been unoccupied for any period exceeding nine months, or if it is found at the end of the probationary period that the full stipulated sum of money to be expended on improvements has not been so expended, the Government shall have power to resume such land, but compensation for such improvements as are mentioned in Schedule ‘A’ which have been made shall be given at a valuation made at the period of resumption.”

NOTE.—The Board brings to the notice of the Honourable the Commissioner of Lands that under the foregoing resolutions the appointment of qualified Inspectors

of Farms is a necessity in order that assessment of improvements under Schedule ‘A’ may be workable in practice and also under the rapid allotment scheme.

3. It was proposed by Mr. Flemmer, seconded by Major Leggett, and carried:—

“That the holder of the quit-rent title be allowed to sell or otherwise alienate his land either partly or wholly subject to the following conditions, viz., that no alienation of any farm or any portion of a farm be considered as legal before the same is surveyed, a diagram made thereof, and likewise registered in the Deeds and Land Revenue Office.”

Alienation of land.

4. A proposition made by Major Smith and seconded by Mr. Swift was carried, to the effect:—

“That, on the division of any farm held under the perpetual quit-rent title, the purchaser to be responsible for the payment of his quit-rent *pro rata*, after such division has been registered.”

Payment of quit-rent.

5. It was proposed by Mr. Baillie, seconded by Mr. Wright, and carried:—

“That the holders of land under perpetual quit-rent title shall not be liable to any other burdens but those to which all freehold lands are subject or which may hereafter be prescribed.”

Liability of quit-rent holders.

6. It was carried, on the proposition of Mr. Flemmer, seconded by Mr. Clarke:—

“That the holder of any land under perpetual quit-rent title have the power to freehold such land on payment of twenty times the annual quit-rent.”

Power of freeholding.

SCHEDULE ‘A.’

The word ‘improvements’ as mentioned in Clauses 2 and 3 shall embrace the following:—

Farm buildings of all descriptions.
Fencing.
Furrows.
Planting trees or live hedges.
Walls.
Wells.
Draining land or reclamation of swamps.
Road-making.
Bridges.
Clearing of land for agricultural purposes.
Laying out and cultivating gardens and nurseries.
Water-boring.
Water-races.
Sheep or cattle dips.
Embankments or protective works of any kind.
Planting of long-lived crops.
Water-tanks.
Irrigation works.
Fixed machinery.

Nothing to be deleted, but the schedule may be added to.

NOTE.—There is a strong feeling in the Land Board that although they would like to see freeholds acquired by conversion from quit-rent, that such a right to freehold is not nearly so important as the first stage towards freehold, viz., a perpetual quit-rent system.

7. Proposed by Mr. Baillie, seconded by Mr. Clarke, and carried:—

“That the lessee or owner of the farm have the ownership of such minerals or materials as are mentioned in Schedule ‘B,’ except in so far as these are required for public works, provided such quarry or pit lie within 600 feet of the middle of a public road or railway, and always provided that such pit or quarry and the access thereto be properly fenced by Government.”

Ownership of minerals and materials.

SCHEDULE "B."

Clay.
Country rock.
Gravel.
Lime.
Sand.
Shale.
Shingle.
Slate.
Surface salt.
Surface soil.

Nothing to be deleted from the above, but it may be added to.

8. Proposed by Mr. Flemmer, seconded by Mr. Swift, and carried :—
"That Government reserve the rights to all minerals and precious stones except as above provided in Schedule 'B.'"

9. Proposed by Mr. Baillie, seconded by Mr. Swift, and carried :—
"That, subject to such Irrigation Laws as may be from time to time enforced, the Government reserve the right to the water in rivers and streams flowing through the farms except so far as such water is required for domestic purposes."

10. It was proposed by Mr. Clarke, seconded by Major Smith, and carried :—
"That, subject to the passing of laws dealing with mining, public roads and railways, &c., the Government reserve the right of making and repairing laying of telegraph and electric lines, the erection of poles for the carrying such lines, water pipes and sewers on the premises where not inconsistent with previous resolutions."

11. Proposed by Mr. Flemmer, seconded by Major Smith, and carried :—
"That compensation shall be given for all land acquired by Government for public purposes, including outspans, on all farms not exceeding 200 acres in extent."

12. It was proposed by Mr. Wright, seconded by Mr. Flemmer, and carried :—
"That in the event of land being acquired by Government for such public purposes, including outspans, as are stated in Resolution No. 10 of these recommendations, compensation only for damage done to such improvements as are mentioned in Schedule 'A' shall be paid by the Government where the land acquired is from a farm exceeding 200 acres in extent, provided always that in the event of a larger proportion than 4 per cent. of the total area of such farm being acquired, compensation for the amount of land in excess of a ratio of 4 per cent. to the whole of the farm shall be paid, where not inconsistent with previous resolutions."

13. It was proposed by Mr. Clarke, seconded by Major Smith, and carried :—
"That all questions of compensation to be decided by an Arbitration Board consisting of three members, one to be appointed by the lessee or owner of the land, one by the Government and a third to be mutually agreed upon by the parties concerned; failing mutual agreement to the third Arbitrator the same shall be appointed by the High Court."

14. Proposed by Major Leggett, seconded by Mr. Baillie, and carried :—
"That all land outside township, municipal, and suburban areas shall be considered as falling into one of four classes, and that the rental basis shall be 1s. 4d., 1d., 1d., and 1d. respectively per acre per annum, the first class to pay 1s. 4d. with a minimum rent of 15s. for any holding."

NOTE.—In connection with this resolution, the Board desires to record its opinion that the general policy of the Government should be to fix the rentals of

Minerals (except Schedule "B") and precious stones to belong to Government.

Government resort right water

Government reserve the right of making public roads, &c., &c.

Compensation for land acquired by Government (under 200 acres)

Compensation for land acquired by Government (over 200 acres)

Arbitration Board, and formation of same

Classification of land.

Crown lands at a very low figure, with a view to little more than covering the expenses of land administration, and to cease to regard rentals as a source of general revenue, but rather to rely for the latter on the general taxation, which may be justifiably levied upon the results of successful development of the country as a whole.

15. Proposed by Major Leggett, seconded by Mr. Baillie, and carried :—

"That the classification of lands for allotment shall be fixed by the Honourable the Commissioner of Lands by and with the advice of the Land Board, and that it shall be open to the Commissioner to reduce rents but not to raise them."

NOTE.—In connection with this resolution the Board is strongly of opinion that any attempt to lay down a basis of classification of land in the Ordinance would defeat its own object, that the Honourable the Commissioner of lands, with the advice of the Land Board, should be entrusted with the fullest power.

Note for the guidance of the Board in defining areas of farms :—

In future settlement grants of land should be of such areas as would be considered by the Board to be sufficient to not only maintain a settler and his family but to allow by intensive farming of supporting at least two families.

16. Mr. Flemmer seconded Mr. Clarke's proposal, which was carried :—

"That the size of lands for allotment shall be fixed by the Honourable the Commissioner of lands by and with the advice of the Land Board."

NOTE.—In connection with this resolution the Board is strongly of opinion that the size of lands should be left entirely to the discretion of the Honourable the Commissioner of Lands acting by and with the advice of the Land Board.

17. Proposed by Major Smith, seconded by Mr. Flemmer, and carried :—

"That the amount required to be spent on improvements as mentioned in Schedule 'A' during the probationary period to entitle title deeds shall be calculated at 40 times the annual rent where white colonization is possible."

NOTE.—It must be noted that white occupation is insisted on, and that the value of stock, implements of all sorts, as also living and working expenses, are not reckoned in Schedule "A."

These items were carefully excluded because of the obvious difficulty of deciding on the bona fides of persons claiming possession of movable property, which might be transferred from one farmer to another in order to deceive the Farm Inspector when making his assessment.

On this basis the Board considers the above expenditure to be reasonable.

It will be seen that, if we assume 800 acres as the average farm of 1st class land, the rent will be £5 and the amount required for beneficial improvements under Schedule "A" will be £200. In the 2nd class a farm of 1,200 acres, in the 3rd class a farm of 2,400 acres, and in the 4th class a farm of 4,800 acres would pay the same rent, and the same beneficial improvements under the schedule would be required. The above-mentioned areas in the respective classes may be taken, for argument's sake, as suitable sizes for farms or holdings. The rent having been determined, the sum for improvements follows immediately by a simple calculation. A great advantage of so simple a classification is that it suits methods of rapid allotment by beaconing out a farm, and does not demand immediate survey in order that the conditions of tenure may be known at once.

On final survey the rent would be finally assessed, and similarly the conditions of improvements; but it would not be necessary for survey to follow at once as the provisional rent assigned to each farm would serve sufficiently well for the assessment of improvements, if that happened to precede survey.

It is possible, under present conditions, to freehold 1,000 acres, and the Board understands that it is the intention of His Majesty's Government to continue the privilege whilst apparently a reduction of the extent of individual holdings is contemplated. Taking, again, for the sake of argument, the amount of 1,000 acres as the area capable of being freehold, the Board wishes to point out that such a limit irrespective of the class of land concerned, would operate to the advantage of holders of 1st class land and to the disadvantage of holders of the poorer classes of land. Thus the holder of 800 acres of 1st class land would be able to freehold the

Areas to be allotted.

Expenditure on improvements.

whole of his holding. The holder of 1,200 acres of 2nd class land would be able to freehold 1,000 acres, or 83 per cent. of his holding. The holder of 2,400 acres of 3rd class land would only be able to freehold 1,000 acres, or 42 per cent. of his holding; whilst the holder of 4,800 acres of 4th class land would be restricted to obtaining 1,000 acres, or only 21 per cent. of his holding. *Ex hypothesi*, the farms held are of approximately equal value.

The Board considers a quit-rent system throughout, whether convertible or not into freehold, would be more equitable.

18. Proposed by Major Leggett, seconded by Mr. Flemmer, and carried:—

"That land within the boundaries of proclaimed municipalities shall be dealt with (unless reserved for purposes of the Executive Government) as follows:—

"(a) All such land shall be vested in the municipal authority, including township lands already allotted.

"(b) The municipal authority may grant leases of areas, in sizes at its discretion, on the payment by the lessee of a premium, plus an annual rental, for 99 years.

"(c) The stand premium and ground rentals of leases thus granted shall be fixed by the municipal authority at the time of allotment, subject to the approval of the Honourable the Commissioner of Lands, with the advice of the Land Board, and shall be payable by the lessee to the municipality.

Leases not to contain any covenant regarding building, but the leases shall be granted with the reservation that a special annual tax may be imposed by the municipality upon the unimproved values of unbuilt land, and this tax shall be in addition to the ground rents fixed under the lease.

"(e) Freedom of transfer to be allowed immediately leases are granted subject to such fees for registration and survey (if any) as the Treasury may impose for revenue.

"In townships not proclaimed as municipalities sub-sections (b) to (e) shall be administered by the Land Department, and the funds accruing shall be payable to the revenue of the East Africa Protectorate."

NOTE.—The Board recommends that an area adjoining every township be set aside for commonage purposes, such areas to be decided by the Honourable the Commissioner of Lands, acting on the advice of the Land Board, and that this commonage be vested in the municipality.

The Board has not recommended these conditions as to municipalities and townships on their opinion only.

Messrs Roberts, Wood, Tarlton and Cowie, prominent citizens of Nairobi, together with Captain Sanderson, the Town Clerk, were asked to attend the meeting of the Board, and unanimously expressed opinions which agree with the resolutions of the Board. The Board, feeling strongly that rigid building conditions only lead to jerry-building, recommend that they be abolished.

A properly-regulated assessment, of a competent local authority, of a tax on undeveloped plots will, in the opinion of the Board, prevent undue speculation, afford a useful addition to the revenue and ensure that local wants should be duly met by suitable development.

The Board would add that it considers that free transfer should be granted.

An open market so established would tend to steady land values.

19. Proposed by Mr. Baillie, seconded by Mr. Clarke, and carried:—

"That all persons holding land under the existing Ordinance should be allowed, if they so wish, with the assent of the Land Office, to come under the revised laws. In the event of such assent being withheld, appeal shall be open to the Honourable the Commissioner of Lands, advised by the Land Board."

NOTE.—This is to allow for the many cases in which special grants have been made by the Government to applicants who have obtained large areas or concessions on special terms, which it may be considered should still hold good.

Municipal
areas.

20. Proposed by Mr. Flemmer, seconded by Mr. Swift, and carried:—

"That the foregoing suggestions of the Land Board for the Revision of the Crown Lands Ordinance be forwarded through His Excellency the Governor to the Colonial Office by the next mail, to give the Secretary of State for the Colonies an opportunity of considering them before the Land Ordinance has reached any important stage in the Legislative Council."

2 December 1907.

No. 7.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 17 January, 1908.)

MY LORD,

Governor's Office, Nairobi, December 17, 1907.

I HAVE the honour to submit copy of a memorandum by the Commissioner of Lands, with enclosures, on the subject of the grant of lands to Indians.

2. There is a growing tendency amongst the white settlers in the uplands to keep the Indian, not only out of the uplands, but out of the country altogether. The spirit is akin to that prevailing in Natal and elsewhere, and is due to the fact that the white cannot compete in the east with the Indian shopkeeper for supplies of provisions and articles in daily use, or as a petty trader.

3. By all means let us keep the land in the uplands, known as the white settlement area, for whites only, but outside this I see no reason why we should not give small allotments of land to agricultural Indians—not to Indian traders, who would not themselves cultivate—on the terms proposed by the Commissioner of Lands. I am instructing Colonel Montgomery accordingly. The deputation of Mr. Waller last year to India to arrange for the settlement of a limited number of Indian immigrants was a failure, and we need make no further move in this direction. But if we have to come to indentured labour from India then we should certainly arrange to settle down on the land Indian families who care to remain after their period of indenture is completed in the districts in which they are engaged. There would be the coast line and the tracts north of Makindu, where the fibre and rubber industries are being developed, and also perhaps in Kavirondo, west of Fort Ternan, which should be a good cotton productive country.

4. The development of these tracts cannot take place by white settlement, and should be capable of being furthered by Indians, and so far from the Indian cultivator being harmful to the natives, I consider that if settled amongst them, more especially if with his family, he will set an example of thrift and industry which the native will soon learn to follow when he realises the advantages to be gained. As the Right Honourable Winston Churchill lately remarked in the course of a speech, there is ample land in this Protectorate for all, and likely to be so for very many years to come.

I have, &c.,

J. HAYES SADLER.

Enclosure in No. 7.

YOUR EXCELLENCY,

Office of Commissioner of Lands, Nairobi, 1907.

I LATELY had the honour of submitting notes on the questions respectively of Indian immigration (dated 8th May, 1907), and the Indian settlement at Kibos (dated 21st August, 1907). I also addressed Your Excellency on the subject of land grants to Indians. The note on the latter question I considered advisable to recast, and finally sent it in the accompanying form (dated 21st August, 1907) to the Land Board for consideration.

2. The Board passed the resolution which is appended. It will be seen that in the opinion of the majority it is not advisable to give any land grants at all to Indians; while three members thought that, while discouraging any regular scheme of Indian settlement, there would be no objection to allowing Indian close settlement in limited areas in the lowlands.

3. The question is one of great importance, and needs the declaration of a definite policy by the Government after due consideration of all the facts.

I have already expressed an opinion that we should discourage any regular scheme of immigration of Indians as much in the interests of themselves as of the country generally. But I see no reason why we should debar those Indians who have come here of their own accord from acquiring Crown land in limited quantities and in certain definite tracts.

4. Probably the majority of the members of the Land Board are hardly aware of the following facts:—

- (a) Indians have been in the country (notably in the Sultan's dominions) for many generations, and came long before the Europeans.
- (b) The Uganda Railway (the greatest factor in the development of the country) was made by Indian labour. But for such labour it would never have been constructed at all.
- (c) Most of the trading wealth of the country is in the hands of Indians.
- (d) Finally Indians are British subjects.

5. As a fact we do not yet know if this is going to be a white man's country. In that hope we are restricting the grant of Crown land in the highlands to Europeans; but it remains to be seen whether they will be able to rear children and make the country their own. Certainly the lowlands are by no means a white man's country, though this class can reside there as planters, and can exist with safety under their own management, one of them being periodical visits to more temperate regions.

6. In considering the question of land grants I think we should not refuse land to Indians in certain defined tracts, and in limited quantities.

It is not necessary to give it in the Sultan's dominions. Here Indians have already acquired, and are daily acquiring, considerable areas by private negotiation with the native proprietors. The area of Crown land left is comparatively small, and may well be kept for bestowal on Europeans. But outside the coast strip in the lowlands we should not refuse grants of 50 acres, or even of 100 acres to members of *bona fide* agricultural tribes. The size of these grants may at first sight appear small. As a fact in most parts of India a man who holds and cultivates 50 acres is considered a substantial yeoman farmer.

The main conditions of these grants will be personal residence and development expressed in terms of money value; and deeds of lease for 99 years will be given when some development has taken place.

I have, &c.

J. MONTGOMERY,
Commissioner of Lands.

His Excellency the Governor,
&c. &c. &c.

LAND GRANTS TO INDIANS.

A short time ago I wrote a note on the question of Indian immigration, and attach a copy of it.

I have reason to believe that any regular scheme of Indian colonisation is most improbable. I have also recommended that the Indian settlement at Kibos be in future treated as any other settlement of colonists, the tenants being left to run on their own resources, and no longer to receive advances or other help from the Government.

Some 1,000 acres are already occupied at Kibos by Indians, and I have set aside another 1,000 acres for any additional grants that may be made to Indians in that locality.

Although I am against any Indian immigration scheme, it seems to me that we should not refuse small grants to Indians of good character, and of the agricultural classes who are resident in the country.

The conditions I would propose are the following:—

- (1) Land only to be given in the low-lying parts of the Protectorate, i.e., in the south-east between Kiu and the border of the Sultan's dominions; in the north-west below Fort Ternan Station. All the highlands between Kiu and Fort Ternan to be reserved for white settlement; Indians being allowed to hold only town lots, and small plots within township limits for market gardening.

- (2) The area of each grant to be ordinarily 50 acres, but applicants of *bona fide* agricultural tribes, if possessed of sufficient means, may be given up to a maximum of 100 acres.
- (3) Rent to be two annas an acre, and development to be insisted on. The tenant to reside on the land and cultivate it personally. At least half the area to be put under cultivation, or beneficial occupation to be proved to the value of Rs. 300 on a 50-acre grant.
- (4) When due development as above indicated has taken place a lease to be granted for 99 years.

I have suggested residence and personal cultivation as one of the conditions, because it has been found that the majority of Indians, even though farmers by birth, take to trading in this country. There is no objection to this; but applicants for land should understand that the grant is made subject to conditions of personal development.

I shall be much obliged if the Land Board will favour me with its advice on this question.

21 August, 1907.

J. MONTGOMERY,
Commissioner of Lands.

RESOLUTION OF LAND BOARD ON INDIAN LAND GRANTS.

The question of Indian settlement was then discussed at length. It was stated that a coolie labour supply might be very necessary for the development of the coast districts, and Major Leggett added that while he, at present, was not prepared to assert that the time was ripe for the introduction of coolie labour for the lower forms of manual work required on plantations, indentured skilled labour for the running mills, &c., was an immediate necessity. Major Leggett further added that not only would the sub-leasing of small plots to such indentured labour be an inducement, but probably a necessary condition imposed by the Government of the country supplying such labour. It was further generally admitted (Major Smith and Messrs. Hutchins and Barton Wright dissenting) that, owing to the advances in tropical medicine and other causes, it might be generally accepted that very few parts of this Colony would be found to be unsuited to European settlement. It was agreed to, as a general fact, that the intrusion of the Indian agriculturists meant the expulsion of the European element.

An opinion was expressed that Indian indentured labour might be employed, but the general feeling was that this labour should be repatriated on the completion of the term of indenture, this country being retained for Europeans and natives.

Resolution. (Moved by Mr. Baillie and seconded by Mr. Clarke.) "that Indian immigration be discouraged as much as possible for the purposes of settlement, and that no Government land be allotted to them."

Major Smith and Messrs. Barton Wright and Hutchins dissented in favour of a motion that "the definition of 'highlands' be extended, that Indian close settlement in limited areas should be allowed in the lowlands, but that Indian settlement should not be encouraged by Government."

No. 8

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 17 January, 1908.)

MY LORD,

Governor's Office, Nairobi, 19 December, 1907.

In continuation of my despatch of the 6th instant,* I have the honour to transmit herewith a copy of the further proceedings of the Land Board, together with a covering letter from the Commissioner of Lands.

2. The modification of the conditions and the error alluded to by Colonel Montgomery in the concluding paragraphs of his despatch have already been reported to your Lordship in a telegram of to-day's date.†

I have, &c.

J. HAYES SADLER.

* No. 6.

† Not printed.

Enclosure 1 in No. 8.
MINUTES of a Special Meeting of the Land Board, held in the Land Office, Mombasa, on Friday, December 19th, 1907, to consider the recommendations made by the Planters' Association as to the proposed revision of the Crown Lands Ordinance, 1902, and such other business as might be laid before it.

Present:—

CHAIRMAN,

The Director of Agriculture (Mr. A. C. MacDonald).

BOARD,

The Honourable the Secretary for Native Affairs (Mr. A. C. Hollis).
The Director of Surveys (Major G. E. Smith, R.E.).
The Land Officer (Mr. R. Barton Wright).
The Honourable Mr. A. A. Baillie.
Major E. H. M. Leggett, D.S.O., R.E.
Mr. A. S. Flemmer.

1. It was proposed by Major Leggett, seconded by Mr. Baillie, and carried:—
"That the Honourable the Commissioner of Lands be asked that a copy of the despatch to the Colonial Office covering the suggestions of the Land Board as to the revision of the Crown Lands Ordinance, 1902, might be laid before the Board."

The Board, having heard the recommendations of the deputation of the Planters' Association with regard to the treatment of coast lands, have the following suggestions to make in connection with the revision of the Crown Lands Ordinance:—

(i) That the Board considers that the rates of rent as recommended by the Land Board for land suitable for white colonization should be applied also to land at the coast, and that on this basis the graduation of rents is undesirable.

(ii) That the Board is of opinion that the necessity of white occupation on coast lands should be dispensed with.

(iii) That the Board recommends that as it has recommended that white occupation on coast lands should not be a necessary condition of settlement, the development to be effected on such land to entitle to issue of title deeds should stand at 60 times the rental that it has recommended.

(iv.) With regard to the recommendations of the Planters' Association as to partnerships (i.e., Recommendation No. 8), the Board is of opinion that the danger of an undue locking up of land by partnerships or companies can be prevented by a stiffening of the conditions of development.
Mr. Wright wishes to record that in his opinion such partnership development should only be allowed with the consent of the Honourable the Commissioner of Lands and not, as recommended by the Planters' Association, permissible on a notice in writing to the Commissioner of Lands without such consent.

(v.) That the Board recommends that Recommendation No. XVI. (viz., that the size of lands for allotment shall be fixed by the Honourable the Commissioner of Lands by and with the advice of the Land Board), for the revision of the Crown Lands Ordinance, shall apply to coast lands as well as to the highlands.

3. It was decided that the next meeting of the Board should be held at Nairobi on the 9th of January, 1908.
4. The question of the issue of free passes on the railway to unofficial members of the Board was brought up by Major Leggett.

S. W. J. SCHOLEFIELD.

Re Land Board's "recommendations."

Deputation of the Planters' Association. Rent of land.

Occupation. Improvements.

Partnerships.

Honourable Commissioner of Lands to define areas.

Next meeting. Free passes.

13 December, 1907.

Enclosure 2 in No. 8.

Office of the Commissioner of Lands, Nairobi,

17 December, 1907.

YOUR EXCELLENCY,

In continuation of my letter of the 6th December, I have the honour to forward a copy of the further proceedings of the Land Board after consulting the Coast Planters' Association at Mombasa.

As regards the first resolution I am informing the Board that the request to be furnished with a copy of your despatch to the Colonial Office cannot be complied with.

2. For the rest it will be seen that the Board makes practically only one special proposition for the coast.

It recommends that the rent rates should be as before suggested, but that, white occupation not being a *sine quâ non*, the minimum sum required to be spent on development should be 60 instead of 40 times such rent rates.

Assuming that the best coast lands will come in the 1st and 2nd classes, I agree as to the uniformity of rent rates throughout the country. In the present condition of the country, with the admitted difficulty in obtaining labour, I am not prepared to advocate a higher rent than 3d. an acre for the best land. The coast planters will have to spend a good deal of capital, and wait some time before they obtain a return.

3. But while admitting the advisability of the same rates, I consider that the minimum sum demanded for development is too low for the lowlands. Here we do not insist on white occupation. The Board proposes to make the minimum one and a half times as much as that obtaining in the highlands, where the white occupation is required. I would double the amount. Where white occupation is one of the conditions, the money to be spent on the property will be at least 20 times the rent; in the lowlands it will be forty times the rent.

Thus, on the analogy of the average sized farm given in my last letter, the money development would amount in the highlands to £200, in the lowlands to £400. The amount to be spent on the acquisition of freehold may be the same throughout, i.e., 20 times the rent.

I am sorry to say a mistake occurs in paragraph 8 of my last letter, in which I commented on the sum which would be needed to acquire freehold in an average sized farm. The amount should have been put at £100, not at £200, for only half such farm can be freehold.

4. I venture to suggest that the following telegram may be sent to the Secretary of State:—

My
of 7th December. Add, for lowlands white occupation of farm not necessary, but money development should be forty times the rent.

In Montgomery's report forwarded with above, paragraph 8, for payment due for freehold, read one hundred pounds for two hundred.

His Excellency the Governor,
East Africa Protectorate,
Nairobi.

I have, &c.,
J. MONTGOMERY,
Commissioner of Lands.

No. 9.

THE SECRETARY OF STATE TO THE GOVERNOR.

SIR,

I HAVE the honour to acknowledge the receipt of your despatches* of the dates noted in the margin on the subject of the tenure of land in the East Africa Protectorate.

22nd November.
25th November.
3rd December.
6th December.
17th December.
20th December.

2. I regret, in view of the natural desire of the Government and of the settlers to arrive at an early determination of this important question, that I have been unable to reply to these despatches at an earlier date.

3. I found, however, that there was a considerable divergence between the views expressed by the Land Board, in accordance with which you proposed to legislate, and those which I had expressed on the subject, particularly in my despatch of the 23rd of April last* and the endeavour to reconcile this divergence was necessarily a matter requiring time and thought.

4. The most important point of difference was the question of the duration of the leases and the conditions on which the lessees should be able to transfer their property. On the one hand, the settlers are naturally anxious that the land on which they spend their labour should be a marketable and mortgageable security. On the other hand, it is clear, looking to the experience of other Colonies, that steps must be taken to prevent the accumulation of enormous quantities of land in the hands of individuals through the operation of free transfer, and also that the conditions of tenure must be such that the Government may be able from time to time to obtain its share of the unearned increment in the value of the land—that is the portion of its value which is due to the growth around it of an organised economic and political system.

5. Such a precaution is the more necessary in the East Africa Protectorate in view of the fact that the land in newly settled countries, is partially barred by the operation of inter-tribe claims; while, at the same time, it is clear that the present state of affairs, in which so large a proportion of the expenditure is borne by the natives and the tax-payers of the United Kingdom, is not defensible as a permanent arrangement.

6. In proceeding to criticize the opinions of the Land Board, I have endeavoured to give due weight both to the wishes of the settlers and to the just claims of the Government as representing all classes of the community; and I trust that the legislation which you will introduce to give effect to the views expressed by the Land Board, subject to the modifications which I suggest, will be found to furnish a reasonable working compromise.

7. I would observe, in the first place, that the personal composition of the Board as reported in your telegram of the 3rd of February† with its large unofficial majority is scarcely what I had contemplated, but that, as it is proposed that the Board should have an advisory function merely, I will not interfere with the arrangement, understanding that it is being found to work satisfactorily. I think that the Land Board should be defined in the law as being "a consultative body consisting of such official and unofficial members as the Governor in accordance with the directions of the Secretary of State may from time to time appoint," and that it should be provided that all appointments shall lapse and the Board be reconstituted on a definite date (say the 1st of April) in each year.

8. For the reasons already indicated I cannot accept the proposal of the Board that land should be granted on perpetual leases without reassessment of rent, which involves a surrender by the State of the whole of the unearned increment. On the other hand, I have come to the conclusion that a 21 years' lease is too short, having in view the difficulties of pioneer work in a new country, and after full consideration I have approved of the following proposals as striking a fair balance between the interests of the lessee and of the State.

9. Land for farms should be granted to settlers on leasehold tenancies of 99 years at rentals revisable on a basis of 5 per cent. of the unimproved value of the land, subject (except where the land in question at the time of valuation is included in a township) to maxima of 10s. and 2s. 3d. per acre respectively at the 33rd and 66th year, with complete reversion to the Crown at the end of the term on payment of compensation for improvements. Notice of the rent based on the revaluation should be given before the end of the 32nd and 65th years; and if the lessee should not within six months of such notice accept the new rent, his lease should determine at the end of the current period. Six months before the determination of the lease the land should be offered in one or more blocks at the rent fixed by the Board, and at a premium representing the value of the improvements made by the late tenant. The latter sum should be paid over by the new lessee to the outgoing lessee. If no tenant should be found within six months of the determination of the lease, the Commissioner should pay from Government funds the assessed value of the improvements to the late lessee less any amount due from him under the expired lease, and should then be at liberty to offer the land at a reduced rent. A temporary occupa-

* No. 14 in [H.L. 158].

† Not printed.

tion title should be granted in the first instance, and the settler should be on probation for five years during which he must spend a sum equal to 40 times the amount of his rent on development (i.e., on certain specified improvements), and after which, if he fulfils the conditions, his title should be confirmed on the leasehold tenure described above. If within a period of not less than three years he spends the stipulated sum of money on development, it should be open to him to claim a secure title then. If, on the other hand, the land leased has been unoccupied for any period exceeding nine months, or if at the end of the probationary period the stipulated sum of money has not been expended, the Government should have the power to resume on giving compensation for improvements. The probationary period should be included in the first term of 33 years. The improvements should be those specified in Schedule A of the report of the Land Board.

10. I am assured by banking authorities that such a tenure will be no obstacle to advances for cultivation; but I am advised that, in general, lenders prefer to look in the first place to the forthcoming crops as their security, and next to the improvements. Values, in fact, cannot be created by legislation, but only by industry.

11. Resolutions 3 and 4 of the Land Board may be adopted, *mutatis mutandis*, viz. :—

(Resolution 3): "That the holder of the leasehold title be allowed to sell or otherwise alienate his land either partly or wholly subject to the following conditions, viz., that no alienation of any farm or any portion of a farm be considered as legal before the same is surveyed, a diagram made thereof, and likewise registered in the Deeds and Land Revenue Office." (The question of how to impose an efficient check upon undue accumulation of land remains for consideration, and in a later paragraph I have suggested the adoption of a graduated land tax for this purpose.)

(Resolution 4): "That, on the division of any farm held under leasehold title, the purchaser to be responsible for the payment of his rent, *pro rata*, after such division has been registered."

12. I regret that I am unable to accept Resolutions 5 and 6, viz. :—

(Resolution 5): "That the holders of land under perpetual quit-rent title shall not be liable to any other burdens but those to which all freehold lands are subject, or which may hereafter be prescribed."

(Resolution 6): "That the holder of any land under perpetual quit-rent title have the power to freehold such land on payment of 20 times the annual quit-rent"; since, as already explained, I am opposed to the permanent surrender of the rights of the State over the land. The existing rule permitting the acquisition of a homestead freehold (of 320 acres) may be allowed to stand.

13. I concur in the Resolutions of the Board numbered 7 (Schedule B), 8, 9, 10, 11, 12, and 13, viz. :—

(Resolution 7): "That the lessee or owner of the farm have the ownership of such minerals or materials as are mentioned in Schedule 'B,' except in so far as these are required for public works, provided such quarry or pit lie within 600 feet of the middle of a public road or railway, and always provided that such pit or quarry and the access thereto be properly fenced by Government."

SCHEDULE "B."

Clay.
Country Rock.
Gravel.
Lime.
Sand.
Shale.
Shingle.
Slate.
Surface salt.
Surface soil.

(Resolution 8): "That Government reserve the rights to all minerals and precious stones except as above provided in Schedule 'B.'"

(Resolution 9): "That, subject to such Irrigation Laws as may be from time to time enforced, the Government reserve the right to the water in rivers and streams flowing through the farms except so far as such water is required for domestic purposes."

(Resolution 10): "That, subject to the passing of laws dealing with mining, public roads, and railways, &c., the Government reserve the right of making and repairing railways and public roads, the raising material for that purpose, as also the laying of telegraph and electric lines, the erection of poles for the carrying such lines, water pipes, and sewers on the premises where not inconsistent with previous resolutions."

(Resolution 11): "That compensation shall be given for all land acquired by Government for public purposes, including outspans, on all farms not exceeding 200 acres in extent."

(Resolution 12): "That in the event of land being acquired by Government for such public purposes, including outspans, as are stated in Resolution No. 10 of these recommendations, compensation only for damage done to such improvements as are mentioned in Schedule 'A' shall be paid by the Government where the land acquired is from a farm exceeding 200 acres in extent, provided always that in the event of a larger proportion than 4 per cent. of the total area of such farm being acquired, compensation for that portion of land in excess of a ratio of 4 per cent. to the whole of the farm shall be paid, where not inconsistent with previous resolutions."

(Resolution 13): "That all questions of compensation to be decided by the Compensation Board consisting of three members, one to be appointed by the lessee or owner of the land, one by the Government, and a third to be mutually agreed upon by the parties concerned; failing mutual agreement to the third arbitrator the same shall be appointed by the High Court."

It should be made clear, however, that in paying compensation all that will be taken into account is the actual value of the land or improvements as the case may be.

14. I concur in Resolution 14 subject to the doubling of the rents which you propose, viz.:-

(Resolution 14): "That all land outside township, municipal, and suburban areas shall be considered as falling into one of four classes, and that the rental basis shall be 3d., 2d., 1d., and 1/2d. respectively per acre per annum, the first class to pay 3d. with a minimum rent of 30s. for any holding."

15. Resolution 15 may be adopted with the substitution of the words "after consulting" for "by and with the advice of" before "the Land Board," and the insertion of the words underlined, viz.:-

(Resolution 15): "That the classification of lands for allotment shall be fixed by the Honourable the Commissioner of Lands after consulting the Land Board, and that it shall be open to the Commissioner to reclassify so as to reduce rents, but not to raise them."

16. The normal size of farms in the different classes of land should be stated in the law, and should be the following:-

1st class land	700- 900 acres	Rent at rates proposed.
2nd "	1,000-1,400 "	£8 15 0 to £11 5 0
3rd "	2,200-2,600 "	8 6 8 " 11 13 4
4th "	4,600-5,000 "	9 3 4 " 10 16 8
		9 11 8 " 10 8 4

It should be made clear that these figures indicate only the average size of farms and the maximum areas which would be granted in ordinary circumstances, and that persons desiring a smaller portion of land than the stated minimum in any class would be provided for.

17. With regard to Resolution 18, I consider that the time is not yet ripe for conferring upon municipalities in East Africa the extensive powers proposed. No doubt as time goes on, and municipal institutions develop, steps will be taken by legislation to give the municipal authorities all the powers usually held by municipalities, which would not, however, necessarily include control of Crown lands within the municipal area.

Accordingly the Resolution should be amended by the substitution throughout of "Commissioner of Lands" for "Municipal Authority," viz.:-

"That land within the boundaries of proclaimed municipalities shall be dealt with (unless reserved for purposes of the Executive Government) as follows:-

(a) All such land shall be vested in the Commissioner of Lands including township lands already allotted.

(b) The Commissioner of Lands may grant leases of areas in sizes at his discretion, on the payment by the lessee of a premium plus an annual rental for 99 years.

(c) The stand premium and ground rentals of leases thus granted shall be fixed at the time of allotment by the Commissioner of Lands after consultation with the Land Board.

(d) Leases not to contain any covenant regarding building, but the leases shall be granted with the reservation that a special annual tax may be imposed upon the unimproved values of unbuilt land, and this tax shall be in addition to the ground rents fixed under the lease.

(e) Freedom of transfer to be allowed immediately leases are granted subject to such fees for registration and survey (if any) as the Treasury may impose for revenue."

18. With regard to Resolution 19 I agree that existing holders of land should not be compelled to come under the new Ordinance, but in the event of their wishing to do so the Governor should have the option of refusing permission.

19. With reference to your despatch of 3rd December, I agree generally in the proposals which you make for the more rapid allotment of land. As soon as the survey fees have been paid a convenient parcel of land of approximately the area desired should be beaconed off and a temporary occupation title should then be issued without awaiting the survey, so that the holder may at once enter into occupation in full security. Holders of land should not be dependent upon the Government for their survey, but should be free to employ licensed surveyors, and when the survey has been carried out by a private surveyor the fee deposited with the Government should be paid over less a small percentage for expenses as soon as the work has been inspected and found satisfactory. It will be necessary that survey fees should be paid into a special suspense account instead of, as at present, being credited to revenue, and I am inviting the concurrence of the Lords Commissioners of the Treasury to this change in the method of accounting.

20. With regard to the question of granting land to Indians, it is not consonant with the views of His Majesty's Government to impose legal restriction on any particular section of the community, but as a matter of administrative convenience grants in the upland area should not be made to Indians. I entirely concur in your opinion as to allotments to Indians in other parts of the country, as stated in paragraph 3 of your despatch of 17th December; and I would ask you to submit proposals in detail for regulating such allotments.

21. I think that it is clear that, although the general principles of tenure laid down for the highlands are applicable to lowland areas, different regulations will be necessary, and I should be glad if you would submit detailed proposals. It will not be necessary to delay the enactment of legislation for the uplands in the meantime, but it would appear advisable to arrive at some definition of the "uplands," and I should be glad to know whether they can be defined by altitude merely.

22. With regard to the means to be adopted for checking excessive accumulations of land in the hands of individuals, I suggest the following proposals for your consideration. As the size of holdings is to be proportionate to the quality of the land, total rent should form the basis of taxation. The rent of a maximum normal holding being rather more than £11, £12 might be the limit of exemption. From £12 to £24 annual rental (5,760 to 11,520 acres 4th class land) an annual surtax of 1d. for every 1s. of rent might be imposed, allowing, in order that the incidence of the tax should not be too sudden, a graduated abatement from £12 to £18, so that on rents from £12 to £18 a tax would be payable on £1, from £18 to £24 on £4,

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and so on up to £18, after which tax would be payable on the full rent. On rentals above £24 the scale would be as follows:—

£24 to £36	...	...	...	...	...	14d.
£36 to £48	...	...	...	...	...	14d.
£48 to £60	...	...	...	...	...	14d.

and so on in the same proportion.

23. In order, however, to put a further check upon excessive accumulations of land, the tax on holdings of more than 50,000 acres should be four times that indicated above, and power should be given to the Government to prohibit absolutely holdings of more than 100,000 acres by a provision to the following effect:—

"That when an individual or corporation in his or its name or that of a nominee or through any persons not possessing totally distinct interests holds more than 100,000 acres, it shall be open to the Government at any time to compel him to divest himself of any surplus within a certain period (say 6 months), and he shall be liable in default to a penalty (of, say, £25) for each day during which any surplus may be retained after the said period has elapsed."

24. These provisions could, I think, fairly be applied to existing estates unless the owners elected to be subject to the new law, but a fresh acquisition of land after the coming into force of the new law should bring the holder under the law in respect of the whole of his estate.

25. In order not to impede the use of leasehold titles as securities, care would have to be taken to provide for the relaxation of any restrictions of this kind in favour of banks, loan companies, &c. I would suggest that the provisions of the Dominion Lands Act of Canada, Section 149 (of which a copy is enclosed), under which the holder of a charge is bound to place a *bona fide* settler on the land within two years after he has taken possession of the land in virtue of his charge should be adopted *mutatis mutandis*.

26. If such restrictions are to be effective it would be necessary to take measures to prevent clandestine transfers of land, e.g., by requiring that every transfer should take the form of an assignment.

27. It appears to me to be necessary to adopt some measures to prevent "dummying" and plural applications, and I recommend the adoption of the principle of the New Zealand Law (No. 37 of 1892) in the following form:

"No person shall, by himself or through any other person for him, be entitled to acquire, obtain, or hold, either by original application or by transfer, or otherwise in any manner, any land under any tenure under this Ordinance unless it be exclusively for his own use or benefit."

"And no person who at the time of making his application has made any arrangement or agreement to permit any other person to acquire, by purchase or otherwise, the allotment in respect of which his application is made, or any part thereof, or the applicant's interest therein, shall become a lessee under this Ordinance."

"Any person who wilfully and fraudulently commits or incites, instigates or employs any other person to commit, any breach of these provisions by obtaining such lands not exclusively for his own use or benefit, shall be liable to a penalty of not less than one hundred pounds nor exceeding five hundred pounds, or to a term of imprisonment not exceeding one year with or without hard labour, and every one aiding or abetting in such a breach shall be liable to the same punishment."

28. The proposed Ordinance must reserve power to the Crown to make grants of land outside the provisions of the Ordinance in special cases, e.g., to persons who may be willing to construct railways or other public works for the benefit of the Protectorate.

I have, &c.,
ELGIN.

PERSONAL & CONFIDENTIAL.

AIR MAIL.

28th June, 1954.

My dear Sir Philip,

I returned from the Northern Frontier on Sunday, a week before my time as the guide who was to have taken us to the Ndoto Range of mountains died during the Safari.

I had hoped that during my absence Mr. Moore would have been able to see P. C. Wilson and Henstead and obtain their views on the personnel of the Land Trust Board. These were asked for in your private and Personal telegram of the 1st June. He was, however, unable to collect them until this morning when I had a long discussion with them.

Both are definitely opposed to Morris Carter's idea of having a Judge or Chief Justice as Chairman.

On the other hand, both favour a board consisting of one official and four unofficial members. They consider that the Chief Native Commissioner (the official member) should be Chairman and that the members should be the two members of Legislative Council representing Native Interests and two independent members nominated by.....

by the Governor.

They asked that as a gentleman's agreement one of the nominated members should be a European Elected member as they considered it essential that the European community should bear their share and take an interest in dealing with this important problem which affects not only the natives but the whole Colony.

I endeavoured to persuade them to include a Provincial Commissioner and the Commissioner of Lands on the Board (our original proposal) but they were unable to give way on this and I think gave good reasons for their attitude.

A Provincial Commissioner, they said, was so intimately mixed up with the carrying out of the recommendations of the Committee (such as "setting apart") that he might often be placed in the invidious position of sitting in judgment on his own actions.

As regards the Commissioner of Lands. They thought he should be considered an Executive Officer who would be more useful as a witness than as a member.

In.....

5.

In effect, therefore, both Hemstead and Wilson agree with Morris Carter, excepting that they do not want a Judge as Chairman.

I expect the Colonial Office are having a worrying time over the draft (Mining) Land Trust Bill: I must own it worried us a great deal.

I do hope it will be possible for us to have your orders on the subject within the next week or ten days as I must publish it in the Gazette fourteen days before Council meets. I am anxious that this should not be later than the 24th July.

Yours very sincerely,

Sgd) J. A. BYRNE

Major the Right Honourable
Sir P. Cunliffe Lister. P.C., G.B.E., Etc.
The Colonial Office.
London. S.W.1.

CR
STAMP
GEN

CR
STAMP

Extract from letter from S. J. S. to Sir J. Byrnes
dated 11th June 34.

The Carter report has had a very good reception here: so good, in fact, that the Opposition has not even asked yet for a day to discuss it. It was a good plan bringing out the White Paper, because practically everybody took their line from that.

B

I am glad you are not going to have any trouble over the Beroki plateau. I hope that the bulk of Europeans would realise that their overriding interest was to get a final settlement which wiped out all claims and defined the highlands; and that the only way of getting this was to accept the recommendations as a whole. Fortunately, this seems to have come off.

Extract from P.C. letter from Genl. Bygones to S.F.S.

dated 31st May 34.

B

Logan, the Commissioner of Lands, returns within the next week or so and I have given orders for a separate sub-department to be formed under him (acting with the Chief Native Commissioner) to deal with the Report and to work out as rapidly as possible measures for giving effect to the recommendation. It is going to take time and it is essential that the work should be carried out systematically.

Extract from P.O. letter from Sir J. Byrnie to S. J. S.
dated 21st May 24

The reception given to the Report has, on the whole, been most favourable. The East African Standard's leading article was friendly and helpful: most of the Europeans gain their first impressions on a complicated Report of this nature from this paper. The one recommendation which caused me anxiety (with which I thoroughly agree) was that dealing with the Leroki Plateau. All kinds of rumours reached me about armed obstruction, and even direct action, if the plateau was denied to European settlement. There is a strong "Bolshy" element in the Rumuruti area and a considerable number of wild Dutchmen there.

I now gather that, Kenyalike, all this hot air is likely to end in smoke drenched by many whiskeys and sodas. The ring leaders find that they have not got public opinion behind them.

B

B

C. O.

C. O.
R 7 JUN
D

87
C. O. 36
R 2 JUN
D 2 -
by 134 MHT

- Mr. Freeston. 30/5
- Mr. Hood 30.5
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.

Answered by No 34

Private and Personal.

- X Sir C. Bottomley. 30.5
- Sir J. Shuckburgh.
- X Perm. U.S. of S. 30/5
- Parly. U.S. of S.
- X Secretary of State. P.V.H.

Your letter last May private

and personal. I am attracted by suggested composition of ...
 ... would accept it but I think ...
 ... should know that Carter has written ...
 ... privately to say that he objects to ...
 ... inclusion of any executive Government ...
 ... official. He also suggests that ...
 ... Chief Justice not Chief/Commissioner ...
 ... should be Chairman; Chief Native ...
 ... Commissioner attending meetings ...
 ... in capacity of liaison officer.
 ... I dislike this suggestion on various ...
 ... grounds.

DRAFT.

for comm

GOVERNOR

NAIROBI.

Room 297

I do not see that the opposition

could reasonably criticise the

presence of a minority of officials
 as the existing Board ^{is approved by Lord Pakenfield} contains ~~two~~
 as well as the Governor,

but it would be awkward if the Commission objected publicly. Have you

any means of ^{knowing} ~~ascertaining~~ how

Hemsted

FURTHER ACTION.

Hemsted and Wilson would react
to Board constituted as you
propose. I should have no
objection to their being told
privately that I favour such a
Board.

Secer.

It seems to me to meet
their ~~own~~ anxiety
that Board should not
block what you may
regard as essential; &
the best thing ~~perhaps~~
above all else to be
avoided is the idea
that Board & Govt are
likely to be opposed in
aim or action.

Hemsted and Wilson would react
to Board constituted as you
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objection to their being told
privately that I favour such a
Board.

Secer.

It seems to me to meet
their ~~low~~ capacity
that Board should not
block what good may
result as essential; &
the best thing ~~regarding~~
above all others to be
avoided is the idea
that Board & Govt are
likely to be opposed in
aim or action.

10th May, 1934.

My dear Sir Philip,

15
No 47
~~(10/11)~~

1) I could not deal with your Personal and Private telegram of the 19th April before this as I had to await replies to the letters I sent to Mr. Hemsted and to Captain F. O'B. Wilson.

2) I now enclose copies of these replies.

3) I fear I am not going to be very helpful over the personnel of the Local Board. The result of the final consultation I have had with the senior officials makes matters even worse. The recommendation now put up to me is that the Board should be constituted as follows:-

- Chief Native Commissioner. (Chairman).
- Commissioner of Local Government.
- 1 Provincial Commissioner.
- 2 Unofficial Members representing Native Interests.
- 2 Independent Members.

This would give an unofficial majority and would safeguard the Government's position: in addition, the native.....

(1)

native interests would be adequately looked after. My people are looking to the future and not to the immediate present.

4) I do not think there would be much objection in Kenya to such a Board, but I realise that you would have difficulties at home. All I can suggest is that you go as far as you can towards securing a personnel that will not be tempted to make an embarrassing use of the veto and of the right of inspection.

5) The Attorney General has drafted the ad hoc Bill to deal with Mining Leases but as it starts the new policy of "setting apart" we thought it wise to get the comments of the Chief Native Commissioner and the Provincial Commissioner, Nyansa. It is now being sent home for vetting by the Colonial Office: a few weeks delay will not matter much, whereas a mistake in this Bill might cause us endless trouble when we come to deal with the main Lands Trust Ordinance.

I am.....

See N: 26)

I am off to Mombasa on Sunday and will remain there till the Empire Day festivities on the 24th. The doctors insist on my getting a change of air and a rest.

Yours very sincerely,

MAJOR THE RIGHT HONOURABLE SIR PHILIP CUNLIFFE-LISTER,
P.C., G.B.E., M.C., M.P.,

COLONIAL OFFICE,

DOWNING STREET, S.W.1.

COPIE

91

c/o Nairobi Club,
P. O. Box 54.

Dear Sir Joseph,

With reference to your personal and private letter of the 30th April, I agree with Sir Morris Carter that proviso 2 (C) of paragraph 1526 was not intended to apply to mining leases, for which a complete procedure has been laid down in Sections 1568 - 1577. It was our intention, as stated in paragraph 1561, that all classes of the community should be treated on an equality, as nearly as possible, in respect of mining.

Yours sincerely,

(Sgd.) R. W. HEMSTED.

Kilima Kiu,
Ulu.

1st May, 1934.

Dear Sir Joseph,

In reply to yours of April 30th. I agree with Sir Morris Carter that paragraph 1526 of our report was not intended to refer to mining leases which are treated separately. But it did very definitely refer to the acquisition of land for public purposes, and as far as my recollection goes it was for that reason that we provided for an appeal from the Lands Trust Board's veto if exercised as in Para. 1526 Proviso 2 (c).

It appears to me that if the appeal to the Secretary of State is done away with it might cause difficulties in the application of our recommendations in Paras. 1520 and 1521 which are an essential part of our recommendations. One of our main guiding principles throughout our report was that Government, in the last resort, must be in a position to acquire land for public purposes in the Native Reserves as well as in the European areas.

I sincerely trust that the Secretary of State's telegram does not mean that he contemplates departing from that principle.

Yours sincerely,

(Sgd.) F. O'B. WILSON.

363 193

Recd
Hobbs 25/5/34

Mwituni,

Avenue Sanguet,

Le Touquet,

Paris-Place 643

20th May, 1934.

Dear Freeston,

No 29

Many thanks for sending the White Paper and the copy of the Report which has been well printed and produced.

I see from the White Paper that the constitution of the Lands Trust Board is under consideration; the essential points in connection with that Board were in our opinion that it should be a board of real trustees, independent of the local Government and one in which the natives should be able to have confidence. The more I think of the matter the more am I satisfied that no executive Government official should be in it, I should like to see it presided over by the Chief Justice, whose possible lack of intimate knowledge of the natives would be of minor importance, the other four members in the first instance might well be the two members of the Legislative Council appointed to represent native interests and if he would take it on F.O'B. Wilson, and one other; if it be possible I should like to see future vacancies (apart from the C.J.) filled by the surviving members appointing a fit person, as is usually the case with trustees. In view of the powers to be conferred on the C.H.C. (in some cases there being a virtual appeal to the Board) and to the fact that he is the adviser to the Government on such matters and in the end must vote as directed, I think he should not be a member of the Board but should attend its meetings as a liaison officer to keep it informed of the Government policy in the Reserves. If the policy advocated by the Commission in this respect

is to be carried out it would be, I think, most inadvisable
to strengthen the Governments' representation on the Board
as suggested by the Governor.

Yours, etc,

(sgd) W. Morris Carter.

C. O.

Mr. Freeston. 14/5

Mr. Flood. 14.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

* Sir C. Bottomley. *CB*

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Air mail of 15th

DOWNING STREET,

16 MAY, 1934.

Sir,

I have, etc., to transmit to you copies of a White Paper (Cmd. ⁴⁵⁸.....) summarising the conclusions reached by His Majesty's Government on the various recommendations contained in the Report of the Kenya Land Commission (Cmd. ⁴⁵⁸.....)

DRAFT. *Common*

KENYA

NO. 375

Gov.

White Paper
~~6 copies - with in file~~

2. In arriving at these conclusions His Majesty's Government have not been unmindful of the personal discussions which I had with yourself and your advisers during my recent visit to Kenya. You will observe that, with two exceptions, all the major recommendations of the Commission have been approved in principle.

3. The execution of the

Commission's

FURTHER ACTION.

Commission's proposals calls partly for legislative and partly for administrative action. As regards the former you have already been requested to prepare and publish a Bill to the Native Lands Trust so as to permit of the granting of mining leases according to the procedure recommended by the Commission. I shall expect to receive from you in due course drafts of the Order-in-Council envisaged by the Commission and of the Ordinance destined to replace the present Native Lands Trust Ordinance.

4. The administrative action called for by the report covers a very wide field and can be carried out only as time, circumstances and finance permit.

C. O.

Mr.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Party. U.S. of S.

Secretary of State.

DRAFT.

96
It will be convenient if you will
arrange for me to be furnished
at six-monthly intervals with
Progress Reports setting out the
steps actually taken, whether by
Gazette Notice or otherwise, to
give effect to the Commission's
recommendations. The first of these
Report should reach me by the end
of December, 1934.

I have, etc.

(Sgd.) P. CUNLIFFE-LISTER

FURTHER ACTION.

Copy Draft no 25185/34
ncg

30
47

Colonial Office,
Downing Street, S.W.1.
14 May, 1934.

Dear Mr. Kettleford,

You will remember that when you saw Sir Philip Cunliffe-Lister on the 20th of April, he promised to send you a copy of the statement which he anticipated making in the House of Commons on the subject of gold-mining leases in Kenya.

It has since been decided that the attitude of His Majesty's Government to this question should be explained in a White Paper, rather than by a statement in the House. I enclose a copy of the document in question (Cmd.), and would invite your reference to paragraph 23.

Yours sincerely,

E. B. Boyd

Copy. Draft on 23028/54
Kaya

29⁹⁸
14 May 34

23028/54.

Sir,

With reference to the letter from this Office of the 10th of April on the subject of the issue of gold mining leases in Kaya, I am directed by Secretary Sir Philip Gulliffré-Lister to invite your reference to paragraph 25 of the enclosed White Paper (Cmd. 4580) which indicates the attitude adopted by His Majesty's Government in regard to the course of action which should be followed.

I am,

Sir,

Your obedient servant,



RECEIVED
GENERAL SECRETARY'S OFFICE

C. O.

2503a/m

28 99.

Mr. *Franton* 14/5/2.

Keizer

Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secr^y of State.

4⁶ form

~~2/2~~

Dear Sir Norris

DRAFT.

The Lead Commission

Sir Norris Carter C.D.E.

Report is being published today, and a copy will be posted to you tomorrow.

In the meantime I enclose a copy of a White Paper which ~~is~~ summarizes the conclusions

received by H. D. G. ...

this Report.

117-





26¹⁰⁰

KENYA LAND COMMISSION REPORT

Summary of Conclusions reached by
His Majesty's Government

*Presented by the Secretary of State for the Colonies
to Parliament by Command of His Majesty
May, 1934*

LONDON

PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

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1934

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Cmd. 4580

REPORT OF THE KENYA LAND COMMISSION

1. His Majesty's Government have given careful consideration to the Report* of the Kenya Land Commission. In view of the length of the Report, which is a document of some 600 pages, and the mass of detail with which it deals, the Government feel that it will be for the convenience of Parliament if concurrently with the publication of the Report a White Paper is issued drawing attention to its more important features, and stating the views and intentions of the Government with regard thereto.

2. In the first place the Government wish to express their high appreciation of the work of the Commission and of the thorough and comprehensive way in which they have discharged their task.

3. Parts I and II of the Report, covering over 340 pages, contain an exhaustive review of all the claims, legal, equitable, and historical, of every native tribe, and of their economic conditions and requirements, present and prospective. Every class of claim was carefully examined; and additions of land, amounting in all to 1,474 (net) square miles, are recommended in satisfaction of native claims asserted over land not now included in the Reserves. Further additions, totalling 1,155 square miles, are recommended to meet the present and future economic requirements of various tribes. Further areas, amounting to 939 square miles, are recommended for the use of natives, but are not allocated to any particular tribe.

4. The Commission have been careful to consider the prospective needs, not only of natives living within the Reserves, but of natives now living outside the Reserves who may return.

5. A further addition of 1,500 acres to the North Kavirondo Reserve is recommended to compensate for any surface land excluded from that Reserve for mining leases in the future, though the Commission recommend an alternative system for mining leases, to which reference is made later, and which the Commission think will be both more convenient and more popular.

6. The Commission differentiate between land to be added to the Reserves to meet claims made as of right, and land which is to be added to satisfy the economic requirements of the natives. The former (Class A land) they recommend should be added unconditionally. The latter is to be subject to conditions of economic user, and is further divided into three classes:—

Class B (I)—Land added to meet a permanent need.

Class B (II)—Land added to fulfil a need which appears to be of a more temporary character.

Class C—Land to be set apart for alienation on lease to natives, whether as groups, families or individuals.

* Cmd. 4556.

Table I,
pp. 382-3.

Table II,
p. 384.

Table No. 4,
p. 471.

Part III,
Chap. X III,
p. 301.

p. 7

The recommendation that land added on economic grounds should be subject to special conditions appears to the Government to be a very wise provision, having regard to the vital importance of encouraging better methods of agriculture, particularly in over-stocked areas.

His Majesty's Government accept the recommendations of the Commission in regard to these proposed additions of land and will authorise the Government of Kenya to take the necessary steps to give effect thereto.

7. The Commission further recommend that a number of exchanges of land should be carried out in order to make the boundaries of the Reserves more convenient. These recommendations appear to be sound, and His Majesty's Government approve of them in principle and will authorise the Government of Kenya to give effect to them subject to any minor adjustments which may be found necessary or convenient.

8. The Commission further recommend that a number of Reserves should be amalgamated. Separate Reserves have been gazetted in the past for tribes which are closely related; and there is a gradual tendency to inter-penetration, which is greatly to be encouraged, as it is desirable that there should be a natural and spontaneous movement from the more densely to the less densely populated areas. Not only are tribal divisions tending in some cases to become blurred, but as agricultural practice improves, individual, family and group ownership is developing satisfactorily. His Majesty's Government consider that the general principle of amalgamating like with like is clearly sound and should be adopted. They propose, however, to await the further consideration of these proposals by the Government of Kenya before a final decision is taken upon the details of amalgamation.

9. The Commission have defined the boundaries of the European Highlands and His Majesty's Government propose to accept their recommendations in regard to this.

10. The Commission recommend that the boundaries of the Reserves and of the Class C lands (native leasehold areas), and of the Highlands, should be declared by Order in Council. This will give an added sense of security, in that these boundaries could not thereafter be altered by local Ordinance. His Majesty's Government approve of this recommendation and propose that in due course these boundaries should be declared by Order in Council.

11. The Commission make a special recommendation about the Northern Frontier and Turkana Districts, large sparsely-populated areas, inhabited by nomadic tribes, which observe no fixed boundaries. They recommend that these territories should not be gazetted as Native Reserves, but that the territories should be recognised as land in which natives have a prior interest, and leases

paras 1444-1447.

Part III,
Chap. IX.

paras 1441,
1449, 1469,
1479.

Part II,
Chap. V.

to non-natives should not be allowed to such an extent as to justify the apprehension that the natives might not have sufficient land remaining for their use; and they recommend that the priority of native interests should be safeguarded by a special section under the Lands Trust Ordinance.

paras 1470-1471.

12. Having disposed of native claims and economic requirements, by the additions of land referred to above, and having determined the boundaries of the Highlands, the Commission recommend that all other lands (Class D) shall be treated as areas in which native will have equal rights with other races in respect of the acquisition of land. His Majesty's Government approve of this and the preceding recommendations.

para 1484-1485

13. It will be seen that the recommendations contained in Parts I and II of the Commission's Report constitute a comprehensive settlement and satisfaction of all native claims which on careful enquiry they hold to be well founded on legal, equitable, or historical grounds. As already stated, His Majesty's Government propose that full effect should be given to these recommendations. It follows as a necessary counterpart that the Order in Council should declare that all claims have been satisfied and extinguished by the settlement which is now recommended and approved.

Part III, Chap VI

14. In various parts of their Report, and particularly in Part III, Chapter X, the Commission deal with the difficult question of overstocking, and confirm and reinforce the views expressed by Sir Daniel Hall's Agricultural Commission as to the gravity and urgency of this problem. The Government of Guyana is already making close investigation, as the Commission recommend, into the practicability of carrying out their proposals in a selected area or selected areas where the need is greatest.

15. The Commission was directed to examine the working of the Native Lands Trust Ordinance and to recommend how the administrative difficulties thereunder can best be met. In Chapters 3-6 of Part III the Commission review exhaustively the working of the Ordinance and make a series of recommendations.

16. The close examination which the Commission have made of the working of the Native Lands Trust Ordinance shows that it is administratively inconvenient in many ways: that its inelasticity has operated to the detriment of the natives, that it ignores native private rights, which are becoming increasingly important; that it tends to cramp initiative and development; and that it involves the Board in a mass of administrative detail with which it is unskilled and unable to cope, and which is the proper function of the Government officers in the District.

17. The Commission emphasize the fact that the Ordinance does not differentiate between the functions of protection and administration. This distinction was clearly laid down by Sir Reginald

Mant, Sir George Schuster, and Mr. Oldham in the Hilton Young Report* :—

"The first and principal need, which may be described as the 'protective need', is to fix the areas to be set aside, and provide secure protection for the preservation of the beneficial rights over such areas to the natives.

"The second and almost equally important need, which we will call the 'constructive need', is to provide for the actual use of land in such a manner as will be of the greatest benefit to the natives.

"It is not sufficient merely to reserve the land under the dead hand of a rigid and unalienable legal restriction, and it is a necessary consequence of these considerations that a measure which aims at preserving the beneficial use of the land to the natives must include regulations for handling it."

18. The Commission demonstrate the results which have ensued from the failure to observe this distinction. Of the provision requiring all matters relating to management and development to be dealt with by the Lands Trust Board, they say :—

para. 1750

"The clause implies a static condition in which the initiation of development lies with the Lands Trust Board, which asks the advice of the Local Board, and, finally, authorises somebody to do something so that the reserve may be developed. We prefer to think of a dynamic condition in which natives are themselves the principal developing agents by cultivating their own crops on their own land and pursuing their lawful vocations, the Lands Trust Board being only concerned in a protective capacity. Advice or regulation required for helping the natives to develop their own land should be the active concern of Government. We agree, however, that the Lands Trust Board should make representations, if it considers that Government is neglecting its duty in this respect."

para 1763.

"Constant reference of petty matters to the Lands Trust Board has the triple disadvantage that it distracts the attention of the Board from more serious duties, holds up legitimate development, and introduces a creeping paralysis into the power, and, ultimately, the will of the Government to govern."

para. 1744.

19. The Commission accordingly recommend that the business of detailed management and of development should be the function of Government and the duty of protection the function of the Board. The areas of the Native Reserves as enlarged and reconstituted will be secured by Order in Council. The Board will be relieved of a mass of minor administrative matters, but will have jurisdiction in all large proposals affecting land within the Reserves.

* Cmd. 3234, pp. 341, 345.

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para 1470-1471

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para 1744

* Cmd. 3234, pp. 341, 346

e.g., exchanges of land, whether by exclusion and addition or by mutual lease; the power of veto over the setting apart or leasing of land in excess of 10 acres; the power to issue general or special instructions in the granting of licences; and consultation in all major cases of water permits. The Board is, moreover, to have a general power and duty of supervision, and of making representations to the Governor, and, if necessary, to the Secretary of State, if it considers that the land is not being devoted to the use and benefit of the natives, or is not being properly conserved and developed.

20. His Majesty's Government have carefully considered the Report of the Commission on this important question, and they are satisfied that the broad criticism which the Commission make of the structure of the Lands Trust Ordinance is well founded, and that their detailed recommendations are generally sound and practicable. The Ordinance has a double object; first, to afford security to the natives in the occupation of the Reserves, and secondly, to encourage and promote development and general welfare within the Reserves. His Majesty's Government are convinced that these two objectives will best be secured and the interests of the natives most surely safeguarded and promoted by adopting the proposals of the Commission for amending the Ordinance, coupled with the security afforded by Order in Council to which reference has been made above. The Government of Kenya will accordingly be authorised to prepare a draft amending Ordinance to give effect to the recommendations of the Commission.

21. The preparation of such an Ordinance will take time, and will involve the consideration of many points of detail. There is, however, one amendment which His Majesty's Government consider should be given effect to forthwith. It will be observed that in Part III Chapter 3 the Commission recommend that the usual procedure for any lease in a Reserve should be by a process of "setting apart" rather than by exclusion. The procedure would be as follows—

The Provincial Commissioner will have the power to set apart land for public purposes or as a step preliminary to the issue of any lease, where he is satisfied that it will be for the benefit of the natives resident in the tribal unit concerned, either in respect of the use to which the land is to be put or because of the revenue to be expected from rents. Before the land is set apart, the Provincial Commissioner must consult the local natives, the Local Native Council and the Local Land Board, which it is proposed should in future consist entirely of natives under the chairmanship of the District Commissioner. In addition to this, due compensation must have been arranged. If the Local Land Board and the Provincial Commissioner are in disagreement, the matter must be referred to the Governor. If the land to be set apart is

more than 10 acres, the Lands Trust Board are to have the power of veto. Where land is set apart and leased, it will remain a part of the Reserve.

22. In paragraphs 1573-1577 the Commission give their reasons why, in their opinion, this process of setting apart as opposed to exclusion from the Reserve is more convenient, more to the advantage of the natives and more in accord with native sentiment.

23. As mining development in Kenya will involve the granting of leases before the general amending Ordinance could be passed, His Majesty's Government think it is essential that power should be taken to grant such mining leases in the form which the Commission consider is more consonant with native interest and native wishes. They have accordingly authorised the Government of Kenya to prepare and introduce an amending Ordinance to deal with this immediate problem, and to authorise the granting of mining leases on the lines which the Commission recommend.

24. In paragraphs 1692-1697 the Commission recommend that the present Land Trust Board in Kenya should be abolished and superseded by a Board appointed by Order in Council. They make the tentative suggestion that the Board so constituted should sit in London, though it will be observed that only one member makes this a definite recommendation.

25. The recommendation appears to have been made under a misconception of the functions of the Privy Council. But, apart from this, His Majesty's Government are convinced that the proposal cannot be maintained in principle and would not work in practice. In principle, the ultimate authority must be the Secretary of State, responsible to Parliament. In practice it is difficult to see how a London Board could adequately discharge its functions. Attention has already been drawn to a number of these. The consent or opinion of the Board is required in all the more important administrative decisions with regard to land within the Reserves, and they have further the general power and duty to make representations to the Governor if they consider that the land is not being used and developed to the best advantage of the natives. These are very important functions. They can only be discharged by a body with intimate and continuing knowledge of local conditions, and by men on the spot able to discuss proposals with the responsible officers of Government and with Local Native Councils. If the Board is to function effectively it must reside in Kenya.

26. His Majesty's Government are therefore of opinion that in the future as in the past the Board should be a local Board. The future composition of the Board is at present under consideration.

27. The recommendations of the Commission will entail considerable expenditure; some of it capital and some recurrent. The Commission recommend that part of this expenditure should be met by the payment by the Imperial Government of a disputed sum

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27. The recommendations of the Commission will entail considerable expenditure; some of it capital and some recurrent. The Commission recommend that part of this expenditure should be met by the payment by the Imperial Government of a disputed sum

of money, which it is alleged was originally owing to dead or missing porters enlisted in Kenya during the War to serve as carriers attached to His Majesty's Forces. It has always been understood in Kenya that this fund or a large part of it had in fact been earned by natives who had served with the Army, and that if these men could not be found the money ought to be paid over to the tribal organisations to which they belonged. On the other hand this view has consistently been challenged on the grounds that every reasonable step has been taken to facilitate the submission of claims, that the claims themselves could not to a large extent for various reasons be considered valid, and that it was impossible to allocate any payments in such a way as to ensure that they should benefit the relatives or dependants of the missing men. The subject was reviewed afresh on several occasions by British Governments and ultimately the Government in office in 1929 decided that it could not be reopened. In these circumstances His Majesty's Government cannot but regret that the Commission should have expressed their views on the merits of the question without affording opportunity for the presentation at first hand of the arguments on both sides of the case.

26. His Majesty's Government have now once more at the request of the Colonial Secretary reviewed the position. They are of opinion that no useful purpose would be served by the reopening of an enquiry into events which happened long ago and the full facts in connection with which are now probably not ascertainable. But it has been represented to them that whether rightly or wrongly there is a strong feeling among the natives of Kenya that they have not received fair treatment in this matter. His Majesty's Government are anxious to remove any cause of grievance at a time when they are endeavouring to resolve a number of problems which have been a cause of vexation in connection with the land and the natives of the Colony. Accordingly they have decided to ask Parliament to make an ex gratia grant of £60,000 to the Government of Kenya to be devoted to carrying out the recommendations of the Commission.

Proof 104

REPORT OF THE COMMISSIONERS OF THE LANDS AND SURVEY DEPARTMENT
KENYA
PART I
CHAPTER I
GENERAL PRINCIPLES
1. The Commission was set up in 1929 to inquire into the claims of the natives of Kenya for land and other benefits which they had earned or were entitled to as a result of their service in the British Army during the War. The Commission's report was published in 1934.



2. The Commission's findings were based on a thorough examination of the evidence presented to it. It found that many of the claims were well founded, and that the Government should be prepared to make a grant of £60,000 to the Government of Kenya to be used for the purpose of carrying out the recommendations of the Commission. The Commission also recommended that the Government should take steps to ensure that the money was distributed fairly and that the claims of the most deserving were given priority.

3. The Commission's report was published in 1934 and has since been widely read and discussed. It has played a significant role in the development of the land and survey department in Kenya and has helped to bring about a more equitable distribution of land and other benefits to the natives of the Colony.

**Printed by the Secretary of State for the Colonies
in Parliament by Command of His Majesty
May 1934**

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1934
Price No.
Ced.

REPORT OF THE KENYA LAND COMMISSION

1. His Majesty's Government have given careful consideration to the Report* of the Kenya Land Commission. In view of the length of the Report, which is a document of some 600 pages, and the mass of detail with which it deals, the Government feel that it will be for the convenience of Parliament if concurrently with the publication of the Report a White Paper is issued drawing attention to its more important features, and stating the views and intentions of the Government with regard thereto.

2. In the first place the Government wish to express their high appreciation of the work of the Commission and of the thorough and comprehensive way in which they have discharged their task.

3. Parts I and II of the Report, covering over 340 pages, contain an exhaustive review of all the claims, legal, equitable, and historical, of every native tribe, and of their economic conditions and requirements, present and prospective. Every class of claim was carefully examined; and additions of land, amounting in all to 1,474 (net) square miles, are recommended in satisfaction of native claims asserted over land not now included in the Reserves. Further additions, totalling 1,155 square miles, are recommended to meet the present and future economic requirements of various tribes. Further areas, amounting to 939 square miles, are recommended for the use of natives, but are not allocated to any particular tribe.

4. The Commission have been careful to consider the prospective needs, not only of natives living within the Reserves, but of natives now living outside the Reserves who may return.

5. A further addition of 1,500 acres to the North Kavirondo Reserve is recommended to compensate for any surface land excluded from that Reserve for mining leases in the future, though the Commission recommend an alternative system for mining leases, to which reference is made later, and which the Commission think will be both more convenient and more popular.

6. The Commission differentiate between land to be added to the Reserves to meet claims made as of right, and land which is to be added to satisfy the economic requirements of the natives. The former (Class A land) they recommend should be added unconditionally. The latter is to be subject to conditions of economic user, and is further divided into three classes:—

Class B (I)—Land added to meet a permanent need.

Class B (II)—Land added to fulfil a need which appears to be of a more temporary character.

Class C—Land to be set apart for alienation on lease to natives, whether as groups, families or individuals.

* Omd.

4566

Table I,
pp. 382-3.

Table II,
p. 384.

Table No. 4,
p. 471.

Part III,
Chap. XIII,
p. 301.

p. 7.

The recommendation that land added on economic grounds should be subject to special conditions appears to the Government to be a very wise provision, having regard to the vital importance of encouraging better methods of agriculture, particularly in over-stocked areas.

His Majesty's Government accept the recommendations of the Commission in regard to these proposed additions of land and will authorise the Government of Kenya to take the necessary steps to give effect thereto.

7. The Commission further recommend that a number of exchanges of land should be carried out in order to make the boundaries of the Reserves more convenient. These recommendations appear to be sound, and His Majesty's Government approve of them in principle and will authorise the Government of Kenya to give effect to them subject to any minor adjustments of detail which may be found necessary or convenient.

8. The Commission further recommend that a number of Reserves should be amalgamated. Separate Reserves have been gazetted in the past for tribes which are closely related; and there is a gradual tendency to inter-penetration, which is greatly to be encouraged, as it is desirable that there should be a natural and spontaneous movement from the more densely to the less densely populated areas. Not only are tribal divisions tending in some cases to become blurred, but as agricultural practice improves, individual, family and group ownership is developing satisfactorily. His Majesty's Government consider that the general principle of amalgamating like with like is clearly sound and should be adopted. They propose, however, to await the further consideration of these proposals by the Government of Kenya before a final decision is taken upon the details of amalgamation.

paras 1444-1447.

9. The Commission have defined the boundaries of the European Highlands and His Majesty's Government propose to accept their recommendations in regard to this.

Part III,
Chap. IX.

10. The Commission recommend that the boundaries of the Reserves and of the Class C lands (native leasehold areas), and of the Highlands, should be declared by Order in Council. This will give an added sense of security, in that these boundaries could not thereafter be altered by local Ordinance. His Majesty's Government approve of this recommendation and propose that in due course these boundaries should be declared by Order in Council.

paras 1441, 1449, 1469, 1979.

11. The Commission make a special recommendation about the Northern Frontier and Turkana Districts, large sparsely-populated areas, inhabited by nomadic tribes, which observe no fixed boundaries. They recommend that these territories should not be gazetted as Native Reserves, but that the territories should be recognised as land in which natives have a prior interest, and leases

Part II,
Chap. V.

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Class B (I)—Land added to meet a permanent need.

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* Cmd.

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8. The Commission further recommend that a number of Reserves should be amalgamated. Separate Reserves have been gazetted in the past for tribes which are closely related, and there is a gradual tendency to inter-penetration, which is greatly to be encouraged, as it is desirable that there should be a natural and spontaneous movement from the more densely to the less densely populated areas. Not only are tribal divisions tending in some cases to become blurred, but as agricultural practice improves, individual, family and group ownership is developing satisfactorily. His Majesty's Government consider that the general principle of amalgamating like with like is clearly sound and should be adopted. They propose, however, to await the further consideration of these proposals by the Government of Kenya before a final decision is taken upon the details of amalgamation.

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10. The Commission recommend that the boundaries of the Reserves and of the Class C lands (native leasehold areas), and of the Highlands, should be declared by Order in Council. This will give an added sense of security, in that these boundaries could not thereafter be altered by local Ordinance. His Majesty's Government approve of this recommendation and propose that in due course these boundaries should be declared by Order in Council.

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Part III,
Chap. IX

Part III,
Chap. IX

Part III,
Chap. IX

Part III,
Chap. IX

10. non-natives should not be allowed to such an extent as to justify the apprehension that the natives might not have sufficient land remaining for their use; and they recommend that the priority of native interests should be safeguarded by a special section under the Lands Trust Ordinance.

para. 1470-1471.

12. Having disposed of native claims and economic requirements, by the additions of land referred to above, and having determined the boundaries of the Highlands, the Commission recommend that all other lands (Class D) shall be treated as areas in which natives will have equal rights with other races in respect of the acquisition of land. His Majesty's Government approve of this and the preceding recommendations.

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13. It will be seen that the recommendations contained in Parts I and II of the Commission's Report constitute a comprehensive settlement and satisfaction of all native claims which on careful enquiry they hold to be well founded on legal, equitable, or historical grounds. As already stated, His Majesty's Government propose that full effect should be given to these recommendations. It follows as a necessary counterpart that the Order in Council should declare that all claims have been satisfied and extinguished by the settlement which is now recommended and approved.

para. 1854-1858.

14. In various parts of their Report, particularly in Part III, Chapter X, the Commission deal with the difficult question of overstocking, and confirm and reinforce the views expressed by Sir Daniel Hall's Agricultural Commission as to the gravity and urgency of this problem. The Government of Kenya is already making close investigation, as the Commission recommend, into the practicability of carrying out their proposals in a selected area or selected areas where the need is greatest.

15. The Commission was directed to examine the working of the Native Lands Trust Ordinance and to recommend how the administrative difficulties thereunder can best be met. In Chapters 3-6 of Part III the Commission review exhaustively the working of the Ordinance and make a series of recommendations.

Part III, Chap. VI.

16. The close examination which the Commission have made of the working of the Native Lands Trust Ordinance shows that it is administratively inconvenient in many ways; that its inelasticity has operated to the detriment of the natives; that it ignores native private rights, which are becoming increasingly important; that it tends to cramp initiative and development; and that it involves the Board in a mass of administrative detail with which it is unequipped and unable to cope, and which is the proper function of the Government officers in the District.

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17. The Commission emphasize the fact that the Ordinance does not differentiate between the functions of protection and administration. This distinction was clearly laid down by Sir Reginald

Mant, Sir George Schuster, and Mr. Oldham in the Hilton Young Report:—

"The first and principal need, which may be described as the 'protective need', is to fix the areas to be set aside, and provide secure protection for the preservation of the beneficial rights over such areas to the natives.

"The second and almost equally important need, which we will call the 'constructive need', is to provide for the actual use of land in such a manner as will be of the greatest benefit to the natives.

"It is not sufficient merely to reserve the land under the dead hand of a rigid and unalienable legal restriction, and it is a necessary consequence of these considerations that a measure which aims at preserving the beneficial use of the land to the natives must include regulations for handling it."

18. The Commission demonstrate the results which have ensued from the failure to observe this distinction. Of the provision requiring all matters relating to management and development to be dealt with by the Lands Trust Board, they say:—

para. 1750.

"The clause implies a static condition in which the initiation of development lies with the Lands Trust Board, which asks the advice of the Local Board, and, finally, authorises somebody to do something so that the reserve may be developed. We prefer to think of a dynamic condition in which natives are themselves the principal developing agents by cultivating their own crops on their own land and pursuing their lawful occasions, the Lands Trust Board being only concerned in a protective capacity. Advice or regulation required for helping the natives to develop their own land should be the active concern of Government. We agree, however, that the Lands Trust Board should make representations, if it considers that Government is neglecting its duty in this respect."

para 1763.

"Constant reference of petty matters to the Lands Trust Board has the triple disadvantage that it distracts the attention of the Board from more serious duties, holds up legitimate development, and introduces a creeping paralysis into the power, and, ultimately, the will of the Government to govern."

19. The Commission accordingly recommend that the business of detailed management and of development should be the function of Government and the duty of protection the function of the Board. The areas of the Native Reserves as enlarged and reconstituted will be secured by Order in Council. The Board will be relieved of a mass of minor administrative matters, but will have jurisdiction in all large proposals affecting land within the Reserves.

e.g. exchanges of land, whether by exclusion and addition or by mutual lease; the power of veto over the setting apart or leasing of land in excess of 10 acres; the power to issue general or special instructions in the granting of licences; and consultation in all major cases of water permits. The Board is, moreover, to have a general power and duty of supervision, and of making representations to the Governor, and, if necessary, to the Secretary of State, if it considers that the land is not being devoted to the use and benefit of the natives, or is not being properly conserved and developed.

20. His Majesty's Government have carefully considered the Report of the Commission on this important question, and they are satisfied that the broad criticism which the Commission make of the structure of the Lands Trust Ordinance is well founded, and that their detailed recommendations are generally sound and practicable. The Ordinance has a double object; first, to afford security to the natives in the occupation of the Reserves, and secondly, to encourage and promote development and general welfare within the Reserves. His Majesty's Government are convinced that these two objectives will best be secured and the interests of the natives most surely safeguarded and promoted by adopting the proposals of the Commission for amending the Ordinance, coupled with the security afforded by Order in Council to which reference has been made above. The Government of Kenya will accordingly be authorised to prepare a draft amending Ordinance to give effect to the recommendations of the Commission.

21. The preparation of such an Ordinance will take time, and will involve the consideration of many points of detail. There is, however, one amendment which His Majesty's Government consider should be given effect to forthwith. It will be observed that in Part III Chapter 3 the Commission recommend that the usual procedure for any lease in a Reserve should be by a process of "setting apart" rather than by exclusion. The procedure would be as follows—

The Provincial Commissioner will have the power to set apart land for public purposes or as a step preliminary to the issue of any lease, where he is satisfied that it will be for the benefit of the natives resident in the tribal unit concerned, either in respect of the use to which the land is to be put or because of the revenue to be expected from rents. Before the land is set apart, the Provincial Commissioner must consult the local natives, the Local Native Council and the Local Land Board, which it is proposed should in future consist entirely of natives under the chairmanship of the District Commissioner. In addition to this, due compensation must have been arranged. If the Local Land Board and the Provincial Commissioner are in disagreement, the matter must be referred to the Governor. If the land to be set apart is

more than 10 acres, the Lands Trust Board are to have the power of veto. Where land is set apart and leased, it will remain a part of the Reserve.

In paragraphs 1573-1577 the Commission give their reasons why, in their opinion, this process of setting apart as opposed to exclusion from the Reserve is more convenient, more to the advantage of the natives and more in accord with native sentiment.

23. As mining development in Kenya will involve the granting of leases before the general amending Ordinance could be passed, His Majesty's Government think it is essential that power should be taken to grant such mining leases in the form which the Commission consider is more consonant with native interest and native wishes. They have accordingly authorised the Government of Kenya to prepare and introduce an amending Ordinance to deal with this immediate problem, and to authorise the granting of mining leases on the lines which the Commission recommend.

In paragraphs 1692-1697 the Commission recommend that the present Land Trust Board in Kenya should be abolished and superseded by a Board appointed by Order in Council. They make the tentative suggestion that the Board so constituted should sit in London, though it will be observed that only one member makes this a definite recommendation.

25. The recommendation appears to have been made under a misconception of the functions of the Privy Council. But, apart from this, His Majesty's Government are convinced that the proposal cannot be maintained in principle and would not work in practice. In principle, the ultimate authority must be the Secretary of State, responsible to Parliament. In practice it is difficult to see how a London Board could adequately discharge its functions. Attention has already been drawn to a number of these. The assent or opinion of the Board is required in all the more important administrative decisions with regard to land within the Reserves, and they have further the general power and duty to make representations to the Governor if they consider that the land is not being used and developed to the best advantage of the natives. These are very important functions. They can only be discharged by a body with intimate and continuing knowledge of local conditions, and by men on the spot able to discuss proposals with the responsible officers of Government and with Local Native Councils. If the Board is to function effectively it must reside in Kenya.

26. His Majesty's Government are therefore of opinion that in the future as in the past the Board should be a local Board. The future composition of the Board is at present under consideration.

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of money, which it is alleged was originally owing to dead or missing porters enlisted in Kenya during the War to serve as carriers attached to His Majesty's Forces. It has always been contended in Kenya that this sum or a large part of it had in fact been earned by natives who had served with the Army, and that if these men could not be found it would be fair that this money should be expended on behalf of the native tribes. An ordinance was passed locally at the end of the War to give effect to this principle. Though this Ordinance had the approval of the military authorities on the spot, it was admittedly *ultra vires*, as it purported to deal with Imperial funds without the authority of the home Government. While opinion in Kenya has always felt that Kenya natives had an equitable claim to these balances and this view has always been supported by the Colonial Office, it is only fair to state that this view has equally consistently been challenged by the War Office on both general and special grounds. The question was raised from time to time without a final decision being taken, and ultimately after a long delay the British Government in 1929 decided that the question could not be reopened. In these circumstances His Majesty's Government cannot but regret that the Commission should not have afforded to the War Office and the Treasury the opportunity to present at first hand the arguments on the other side which they would have wished to advance on the merits of this particular claim.

28. It has always been the aim of successive British Governments to deal fairly with native interests; and His Majesty's Government have felt it right to review the whole position, not so much in the light of past controversy as in the light of present circumstances and present needs. This they have done. They feel that at this time a great attempt is being made to resolve many vexed questions which have arisen in regard to land in Kenya and the problems which are involved therein. They consider that the settlement which the Commission recommend after such long and careful enquiry is a fair and just settlement of these questions. They recognise that the Government at home must accept its share of responsibility for the problems which past dealings have created, and that it is therefore fair that the Government of this country should make its contribution towards their solution. The Government have accordingly decided to invite Parliament to make a grant of £ _____ as a contribution to the Government of Kenya in the expense which will necessarily be incurred in giving effect to the recommendations of the Commission.

C. O.

Mr. Freeston. 12/5

Mr. Hood (12)

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley 12/6 (23 on 23043/3)

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

X Secretary of State.

DRAFT.

FURTHER ACTION.

23034/3m
Answered by Mr. Kiery on 23034/7/54
To go on Monday 11th May.

25
Coded + sent 108
3m
14/5/54
h.m.

No. 126

My telegram 9th May No. 126.

white Paper on Kenya Land Commission

report contains the following

paragraphs.

"In paragraphs 1573-1577 the Commission give their reasons why, in their opinion, this process of setting apart as opposed to exclusion from the Reserve is more convenient, more to the advantage of the natives and more in accord with native sentiment.

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Please

To.

~~Confidential~~
Please report by telegraph
when draft Bill is published and
forward copies by air mail.

Secer:

COPY FOR REGISTRATION

REC
E 11 MAY 1934

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2/4 A.
109

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

Dated 11 May 1934. Received 3.45 p.m. 11 May 1934.

No 23
23034/3/34
IMPORTANT. No.102. Your telegram of the 9th May No.112.

(# 122). In view of your proposed statement in the House of Commons 14th May the following question and answer which were given in the Legislative Council this morning are forwarded for your information. Begins. Lord Francis Scott asked can the Government state what when the Report of the Agricultural Commission under the Chairmanship of Sir Morris Carter will be published.

Will the Government give an undertaking that no action will be taken on any of the recommendations contained therein until the elected representatives of the people of the country have had ample time to study and discuss the Report.

Colonial Secretary replied that the Report of the Land Commission will be published 14th May when the Secretary of State will make a statement upon it to the House of Commons. As the Report is addressed to the Secretary of State it will be appreciated that in advance of such statement it is not competent for the Government to give an undertaking in ^{the} general terms suggested by the Noble Lord. Ends.

C.O.

23034/3

110 24
Coded Event
7203m. Cf.
11/5/34

- Mr. Freeston. 11/5
- Mr. Flood 11.5
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.

Kiemy

~~16~~ To go tonight

- X Sir C. Bottomley. 11.5 *alone*
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

SECRET No. 123

23)

230 14/3/4

My telegram 9th May No. 122.

White Paper will be published here on Monday simultaneously with ^{Carte} Report

DRAFT. TELEGRAM. Conf Code

NIGERIA.

gov.

IMPORTANT. ✓

Govern
Nairobi

summarising conclusions of H.M. Government. Copies will be sent by air mail; meanwhile any announcement that you may wish to make may be based on the assumption that H.M. Government accept in principle all the main recommendations of Commission with following exception :-

(a) If new Native Lands Trusts Board is to be effective it must reside in Kenya. Future composition of Board is at present under consideration.

(b) Finance. (Part III Chapter 11) H.M. Government ^{cannot but} regret that Commission should have expressed views on merits of question of

FURTHER ACTION.

carriers'

carriers' balances without affording

opportunity for presentation at first

hand of arguments on both sides of the

case. ^{H.M.G. now on more at my request} They have ~~again~~ reviewed the position.

~~They are~~ ^{They are} ~~and~~ while of opinion that no useful purpose

would be served by re-opening an enquiry into

~~and the full facts in connexion with which are now probably not ascertainable.~~ But it has

events which happened long ago ~~is~~

anxious to remove any sense of grievance

at a time when they are endeavouring to

resolve a number of problems which have been

a cause of vexation in connexion with the

land and the natives of the Colony. Accordingly

they have decided to ask Parliament to make

an ex-gratia grant of £50,000 to the Government

of Kenya to be devoted to carrying out the

recommendations of the Commission.

If you desire more detailed information

on any specific point before receipt of copies

of White Paper, please telegraph.

been represented to them that
whether rightly or wrongly there
is a strong feeling among the
natives of Kenya that they
have not received fair
treatment in this matter.
H.M.G. are

Copy, Draft on 23034/4/54
Sent

23 III

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

Sent 4.30 p.m. 9th May, 1954.

Important.

Private and Personal.

My private and personal telegram 2nd May

My telegram No.122 9th May. Cabinet agreed that an ex gratia

payment should be made, amount to be settled between

Chancellor and myself. Cannot at the moment say what this

sum will be, but the figure will be included in the White

Paper. It is part of this arrangement that Government

here should defend previous Cabinets against charge of

bad faith.

No 22

No 23

23034/4/54

23034/4/34

Copy
Draft no 23034/4/34
Secret

22 11B

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

Sent 4 p.m. 2nd May, 1934.

Private and Personal. My telegram No. 116. Cabinet considered my memorandum this morning and approved the whole except the financial contribution discussion on which is postponed till next Wednesday. Cabinet considered it would be unreasonable to publish Part III Chapter eleven until they had taken their decision. They accordingly decided that publication should take place here and in Kenya on 10th May and that I should make statement in House of Commons on 14th. This will enable Government here, if they so decide, to issue a statement in regard to Part III Chapter eleven concurrently with publication of Report. I shall of course do my utmost to persuade Cabinet to support recommendation with regard to money due to dead porters.

You will appreciate that decision taken today authorises amendment of Land Trust Ordinance so as to grant mining leases in accordance with 'setting apart' procedure recommended by Commission, but this Ordinance cannot be introduced until the Report is published.

Cabinet decision also covers principle of Board in Kenya and not in London and in making announcement I shall say as arranged with you constitution of Board still under consideration.

C. O.

112
21

Mr. Cliffe 1/5 p.
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.



DRAFT.

Sir W. Morris Carter CBE.

(address of cc
w/ing of
4th April

for Mr Cliffe

211

Dear Sir Morris Carter,

Enclosed is a copy
for a few days
and I hope you will
acknowledge your two
letters in return

one of the signed
copies of your Report
has been handed to
the Secretary of State,
& one sent to Sir
Joseph
St. Byrne by this week
Air Mail, in such case

FURTHER ACTION.

R Carter.

with your covering letter.

Yours sincerely
(Signed) C. A. L. CLIFFE.

20
25 Upper Berkeley Street
W. 1 113

29.4.74

Dear Freiston

I took round to my club - the Royal Societies, St James's Street, this afternoon a parcel with the two printed originals of the Land Report, one for the Secretary of State & one for the Governor of ~~East~~ Kenya, (with covering letters), addressed to you. I asked them to send them to you to-morrow without fail, so if you don't get them would you telephone to the Hall Porter?

I'm afraid I spelt your name incorrectly in the letter which I put inside the parcel, please forgive me.

Yours sincerely
W Morris Porter

19
25 Upper Berkeley Street
Portman Square
W. 1

28th April 1934

Dear Freeston

2/5
I am sending herewith
two copies of the Kenya Land Report which are
to be accepted as the authentic originals.

I received them by air-mail today
and have dated them accordingly; needless to say I
have not been through the Report to see whether
the corrections have been duly made, but I take
it can be accepted as the fact as the copies
have been sent by our Secretary.

He has sent me a copy for myself so that
there will now be no need to send one to Mwitani,
Avenue Langsat, Le Tourist-Rivier-Plage, P. de B.
France, whither I go on Monday morning.

Would you please have one copy handed
to the Secretary of State together with the

19
25 Upper Berkeley Street
Portman Square

W. 1

28th April 1934

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I am sending herewith
two copies of the Kenya Land Report which are
to be accepted as the authentic originals.

I received them by air-mail today
and have dated them accordingly; needless to say I
have not been through the Report to see whether
the corrections have been duly made, but I take
it can be accepted as the fact as the copies
have been sent by our Secretary.

He has sent me a copy for myself so that
there will now be no need to send one to Mauritania,
Avenue Langnet, Le Touquet-Ries-Plage, P. de B.
France, whither I go on Monday morning.

Would you please have one copy handed
to the Secretary of State together with the

letter to him, and the other sent
by Air-mail to the Governor of Kenya
together with the letter to him?

Yours sincerely
W. Thomas Carter

2. 2/11/34

To,
The Rt.-Hon. Major Sir Philip Cunliffe-Lister,
P.C., G.B.E., M.P.
Secretary of State for the Colonies
Downing Street, London. S.W.

Sir,

I have the honour to send to you the accompanying printed version of the Report of the Kenya Land Commission which has been signed by us at page 535, and to request that it may be accepted as the authentic original in substitution for the typescript provisionally signed on 7th July 1933 and now in your hands. The printed version contains several minor corrections of an editorial character and a few small alterations made by agreement between the Commissioners.

A second signed copy of the printed report is being sent to the Governor of Kenya with a similar request.

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

Thomas Carter

Chairman
Kenya Land Commission

28th April 1934

25 Upper Berkeley Street¹¹⁵
Patman Square
W. 1

22nd April 1934

Dear Sir Philip

I have been thinking over the last section of your memorandum to the Cabinet which appears to me to imply that the Commission has recommended that the money due to deceased porters should be applied as compensation for the injuries which the natives have sustained by the alienation of some of their land.

What we have said was intended to show that some of the natives have suffered by the actions of Government in alienating land and that satisfaction in respect of this matter should be given them; we express the opinion that the Imperial Government should at least contribute towards this, as it was responsible in the main for the action taken.

Quite apart from this we consider that considerable sums should be expended in conserving and developing the estates of the natives of which Government is trustee and we think that much of the requisite initial expenditure for this should be found from the money due to deceased porters, which has been so unjustly withheld by the Imperial Government.

Our view therefore is that two separate wrongs have

been done to the native and I could not feel that these wrongs
have been adequately redressed by utilizing the money obtained
by the redress of one wrong for the redress of the other.

Apart from the fact that only one of two legitimate
claims could thus be satisfied the money received could not be
equitably distributed in accordance with the losses which
the various tribes suffered owing to the war; for example,
the Kavirondo who must have supplied a large proportion of
the fighting parties would get little or nothing.

I quite see that you may not feel that it is wise to
press the Cabinet to satisfy both claims, even if you regard
both as good, or that you may not consider that the claim
to a contribution from the Imperial Government in respect of
the compensation for the alienation of native land is un-
answerable; but, in either event I feel very strongly that
both wrongs should be redressed and that in addition to the payment
of the money by the Imperial Government of the money due to the
deceased parties the Kenya Government should find the
money for the compensation of the natives for the alienation of
their land. If the money due to the deceased parties be
applied wisely in the direction indicated by us the Kenya
Government will benefit very materially in revenue
from the increased wealth which the natives

will enjoy.

116

I feel sure that as you asked me to mention
any points which occurred to me in reading your Memorandum
that you will wish me to deal with these points quite
fully.

Yours sincerely
Thomas Carter

Extract from minute sent to Private Secretary, 19/4/34.

17

(Original in Secretariat)

Sir Morris also wished the S. of S. to know that 117

since his discussion yesterday, he has come definitely round to the opinion that it would be a mistake to appoint the Chief Native Commissioner as Chairman of the Lands Trust Board. He feels that that post could best be held by the Chief Justice of the Colony, or, in the event of the position of Chief Justice being filled by a stranger to East Africa, a Puisne Judge who knew the country should be made Chairman of the Land Board.

(Sd.) L.B. FRESTON.
19.4.34.

Extract from minute sent to Private Secretary, 1943.

17

(original in Secretariat)

Sir Morris also wished the S. of C. to know that 117

since his discussion yesterday, he has come definitely round to the opinion that it would be a mistake to appoint the Chief Native Commissioner as Chairman of the Lands Trust Board. He feels that that post could best be held by the Chief Justice of the Colony, or, in the event of the position of Chief Justice being filled by a stranger to East Africa, a Puisne Judge who knew the country should be made Chairman of the Land Board.



(S. C.) L.B. FREESTON.
19.4.34.

C. O.

C. D.

20 APR

21

Mr. Flood 20.4

at once

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.

DRAFT. ^{code} telegram

Governor

Nairobi

on S. of's directions

Private & Personal

My private & personal telegram 19 April

please substitute words "after I

have announced Govt. decision in

House of Commons" for words

"after publication of report" at end

Secer

118
16
Booked to report
5.0. from
20/4/34
W.L.G.

18c

FURTHER ACTION.

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

(Sent 7.30.p.m. 19th April, 1934.)

Private and Personal.

I trust that steps are being taken to draft Bill
(foreshadowed at end of paragraph 22 of my Cabinet
memorandum) to enable mining leases to be dealt with
under the procedure in Part III, Chapter 3, Paragraphs
1558 and onwards of Carter Report. It is important

that, Bill should be published and introduced into
Legislative Council as soon as possible after publica-
tion of report.

*I have announced
Govt. Decision in House of Commons.
Action*

in Hand,

*S. J. under the
committee to
consider the
Bill
C. J. J. J.
etc.*

AIR MAIL



170
15

GOVERNMENT HOUSE
NAIROBI
KENYA

KENYA
No. 44
CONFIDENTIAL

RECEIVED
1934
C. O. REGY

March, 1934.

sir,

I have the honour to refer to paragraph 18b4 of the report of the Kenya Land Commission and to the accompanying copy of an extract from the notes of a discussion which took place with you here on the 16th February.

2. The question of the method which should be adopted to effect the extinction of native rights outside land of class A, B or C has been considered by my Attorney General, who was present at the discussion. He considers that any provision that it may be desired to include in the proposed Order in Council to give effect to the Commission's recommendations on this point will have to be no less clear and unequivocal than the recommendations themselves; he can suggest no alternative method.

3. Chapter VII of Part III of the report sets out the whole position clearly and fully, and public attention will necessarily be directed to this section of the report. In these circumstances it does not appear to me that anything is to be gained by avoiding a direct statement in equally clear terms. The Commission would be the first to admit that their proposal does involve the rejection of certain native claims, but only as part of the general composition which they recommend and which they regard as providing adequate compensation for the loss of such individual rights, if any, as may exist.

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

GOVERNOR
or LEADER-GENERAL.

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

21

EXTRACT FROM NOTES OF A MEETING HELD AT GOVERNMENT
HOUSE, NAIROBI, ON FRIDAY, FEBRUARY 16TH,
1934 AT 10 A.M.

LAND COMMISSION REPORT.

THE SECRETARY OF STATE read a rough draft of a note which he had prepared and which he said he proposed to re-write. In regard to the Commission's recommendation that steps should be taken to render Section 86 of the Crown Lands Ordinance, 1915, and Section 31 of the Crown Lands Ordinance, 1902, inoperative both in existing and in future leases, he said that the method of giving effect to this recommendation in the Order in Council was a matter for careful investigation by lawyers.

MR. MOORE asked whether it was contemplated that the Order in Council would contain a clause extinguishing suppositious native claims under these sections, which claims the Commission recommended should be expunged as part of the bargain.

THE SECRETARY OF STATE said that he did not see why in some very general terms a provision to this effect should not be included. He did not think that it would be wise to make such specific reference to this point as it might give rise to the criticism that they were taking away native rights, and would like the point examined at once by the Government of Kenya and a suggested formula sent him as soon as possible by airmail.

C. O.

23034/54 KENYA.

Mr. Preston. 19

Mr. Hand 19

Mr. Parkinson.

Mr. Tomlinson.

X Sir C. Bottomley. 19

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Answered by No 54

Coded & sent
7.30 pm
19.4.34
JHW

DEPT. OF STATE.

April, 1934.

DRAFT. TELEGRAM.

GOV.

NAIROBI.

PRIVATE & PERSONAL.

I trust that the draft Bill to draft Bill (foresaid) at paragraph 22 of my report on enable mining leases the procedure in Part III, Paragraphs 18 Report. It is important that be published and introduced into Council as soon as possible after publication of report.

FURTHER ACTION.

3 123

Telegram from the Secretary of State for the Colonies to the
Governor of Kenya. Dated 19th April 1934. Sent 3.30 p.m.
19th April 1934.

Private and Personal.

Your telegram 14th April private and personal. Glad to see that your advisers are prepared to accept principle of Local Board, which I regard as essential. Very difficult to see how Board on lines which I suggested could be strengthened on Government side without weakening its independence and would be glad of any suggestion which you can offer. As regards veto in 1926 proviso 2 (c) I think it would be difficult to make it subject to appeal to Secretary of State. I have however consulted Sir Morris Carter as to the meaning of word primarily. He authorises me to state that in his view it was never intended this should apply to mining leases. A mining lease is obviously primarily in the interest of the mine-owner and the report lays down a complete procedure for the grant of mining leases, which it is intended should be followed. He suggests that you should ascertain that the other members of the Commission agree with him. I think his explanation makes the position clear and is satisfactory.

You will of course realise that Cabinet memorandum will not receive any publicity at all it being a purely confidential document for information of Ministers. Present suggestion is that report should be discussed by Cabinet on

2nd May placed on sale on 4th May and that no statement should be made about it until 9th May.

I should propose in Parliamentary Answer to say that H.M.G. was in favour of a local board but that its constitution is under consideration. I think it essential if we are to carry the whole report through with the maximum support I should be as definite as possible in pronouncement I make on behalf of H.M.G.

C. O.

Collected 13
3:00 hrs
19/4/34
H.A.

Mr. Flood.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley. (S. 4)

Sir J. Shuckburgh.

→ Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

(For comment)

PK

DRAFT. tel.

GOVERNOR,

NAIROBI.

DOWNING STREET,

April, 1934.

Private and Personal.

Your telegram 14th April

private and personal. Glad to see that

your advisers are prepared to

accept principle of Local Board,

which I regard as essential.

Very difficult to see how Board on

lines which I suggest should be

strengthened on Government side

without weakening its independence and

would be glad of any suggestion which you

can offer. ~~At the same time I am~~

not altogether convinced that absolute

independence of Board from Government

is ^{necessary} ~~essential~~ if position can be

^{maintained} ~~accepted~~ that Government's ^{duty} ~~task~~ is

to safeguard native interests by

~~holding balance between all sections.~~

I suggest the
this should be
on the
J.H.

FURTHER ACTION.

R.S.
A

As regards veto proposed in
paragraph 1526 proviso 2(c) of

report.

report I am inclined to deprecate reference to
Secretary of State. Would it not suffice
if veto/^{is}subject to appeal to Governor
with possible provision that consent
of Secretary of State required if
area involved over some definite
amount such as 50 or 100 acres.
Do not however consider reference
to Secretary of State essential and
would be glad of your view on
suggestion that veto might be
subject to appeal to Governor
without further reference.

You will of course realise that
Cabinet memorandum will not receive
any publicity at all it being a
purely confidential document for
information of Ministers. Present
suggestion is that report should be
discussed by Cabinet on 2nd May placed
on ~~safe~~ on 4th May and that no statement
should be made about it until 9th May.

~~There will be a little time for~~

but

Rim A

126

As regards veto in 1526 proviso
2 (c) I think it wd. be difficult
to make it subject to appeal
to S of S. I have however
consulted Sir H Carter as to the
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He authorises me to state that
in his view it was never intended
this shd apply to mining leases.
~~The report lays down a complete
procedure for mining leases~~ A
mining lease is obviously primarily
in the interest of the mineowner;
~~and~~ and the report lays down
a complete procedure for the
setting grant of mining leases,
which it is intended wd. be
followed. ~~The duty of the~~ ~~report~~
reports that you shd. ascertain
that the other members of the
Commission agree with him.
I think his explanation makes
the position clear & is satisfactory.

C. O.

Mr.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

I should propose in Party Answer
to say that H. was in favour
of a local board but that
its constitution is under consideration.

I think it essential if we
are to carry the White Report
through with the maximum
support I should be as definite
as possible in pronouncement
I make on behalf of H. C.

FURTHER ACTION.

PRIVATE AND PERSONAL.

AIR MAIL.

1/28

copy

6th April, 1954.

{ Recd. 16th April }

My dear Sir Philip,

I am dictating this from bed. Many thanks for sending me the draft of your Cabinet Memorandum. I have shown it - in strict confidence - to the Colonial Secretary, the Attorney General and the Acting Chief Native Commissioner: none of them has any suggestions or criticisms to offer. If anything occurs to us later I will send you a cable.

If I may say so, I think we are extraordinarily fortunate in having a Secretary of State who has taken the trouble to make himself so thoroughly acquainted, as you have done, with this very long, very complicated and very technical report. It will make all the difference both in the House of Commons and subsequently to know that you are speaking from your own knowledge and not from a brief specially prepared for you. We will naturally have some set-backs and disappointments but I now believe that the report will be generally accepted and that we will be able to implement it to the lasting benefit of Kenya.

AS.....

Mr. Flood.

You may care to have some extracts from the to you file?

*Edwin
16/4*

As soon as I can get down to work again I will get my people together and see whether we can offer any constructive suggestion about the Land Trust Board.

I am very glad to hear that you are moving the Archbishop of Canterbury in the right direction: the more he is touched with remorse (as he should be touched) the more he is likely to be helpful to us in the future. In a letter I wrote to Lady Cunliffe Lister last week I mentioned the Bishop of Croydon. I wish you could meet him as he will be a great advocate in our cause, not only with the Archbishop of Canterbury, but also with the Archbishop of York.

Bushe's opinion on the communal labour question will be helpful and when the Report is published I shall make a point of giving special attention to paras 2070 - 2074.

Yours very sincerely,

(Sgd.) J. A. BONE

Major the Rt. Hon.
Sir P. Cunliffe Lister, P.C., G.C.B., &c.
The Colonial Office,
LONDON, S.W.1.

ORIGINAL

Decode

of a telegram from the

Governor Kenya

Dated 14th April 1934

Received in the

Colonial

Dominions

Office at

10.59 a

on

14th April 1934

Decoded

by

Deciphered

MS
Maw

Private Personal

your telegram of 6th April

Private Personal I have now had opportunity of consulting Provincial Commissioners who are assembled here in conference. In the absence of London Board they prefer that no Board at all and favour proposal in paragraph 8 of memorandum enclosed in my despatch of 23rd March. They realise however that existence of local board must now be definitely accepted but they press for its being strengthened on the Government side. How far such strengthening could be carried out without weakening its independence

ORIGINAL

of a telegram from the

Dated

192

Received in the

Colonial

Office at

on

Dominions

Decoded

by

Decyphered

(2)

independence of the Government is a real difficulty. They press that veto proposed in paragraph 1526 proviso 2 (c) of report should not be absolute but subject to appeal to yourself. If this could be conceded it would remove some of our ~~Dis~~ Discussion also indicated possibility of difficulty both in practical application and in legal interpretation of proposed classification of lands.

In view of above and admitted uncertainty of reception of the Report will receive locally I would suggest that in Cabinet Memorandum and any statement made to the House any alternatives to a Toronto Board be left an open question at present.

ORIGINAL

of a telegram from the

Colonial

Dated

192

Received in the

Office at

on

Dominions

Decoded

by

Decyphered

(3)

① Further I would suggest at the top of
 page 3 of your memorandum words "Kenya
 Government" should be omitted since no
 opportunity has yet been given to Executive
 Council to express an opinion on the report
 as a whole ② while I have no reason to
 believe that report will not be generally
 adopted by the Government it might have
 unfortunate political repercussions here if a
 suggestion gained currency that official
 decision had been taken in private before actual
 publication of Report ③

Governor ④

133
Code + ref
4/1
13/4
13/4

Govt.
Tel. (Conf. Clk)
Open
L.C.S.
6-2-34
at 22

Government
Kairati
P.C.P. Amendment by No. 11

Your letters 22 & 23 March. I can't
get Report taken of Cabinet till
which an executive decision is
sent. I am sure decision of Cabinet
will not be sent to members
of Parliament.

As regards Board, I am sure in view
of past history a recommendation of
Commission is not possible
to advise the Board. It is a big
job to do since the Board is large
in its functions & it is only the
weight of the Commission's recom-
mendations which will enable
enable us to do this. Some of
Commission and recommendation
abolition of Board, I do not see
much. But we could have
got that accepted here.

We must therefore accept the
existence of a Board and best to
a practical board working

reasonably & in harmony
with Govt. & the Board
constituted on lines I suggest
would insure this a good working
arrangement in the country

PRIVATE & PERSONAL.

AIR MAIL.

9
134

23rd March 1934.

Dear Sir Philip,

Since I posted an Air Mail letter to you yesterday I have had an interview with the Colonial Secretary, the Attorney General and the Commissioner of Lands: the Chief Native Commissioner is at present on Safari.

As you may have gathered from my previous telegrams we are all very anxious to see that the question of the composition and personnel of the Land Trust Board should receive the most careful consideration before we become definitely committed. The enclosed Memorandum, which was handed to me at the interview referred to above, is worthy of your attention. Forgive the hurried letter but the Air Mail is just closing.

Yours very sincerely,

(Sgd.) J. A. BYRNE

The Right Honourable,
Sir P. Cunliffe Lister. P.C., G.B.E., &c.
The Colonial Office.
LONDON. S.W.1.

COM

No 8

The Commission appear to have started from the point that a Lands Trust Board is necessary, and to have proceeded then to consider:

- (a) what the Board's duties should be;
- (b) how, in the light of the duties which they propose, the Board should be constituted.

2. There is nothing in the Report to show that the Commission considered whether in fact a Board was necessary or not. The whole basis of Chapter V of Part III seems to be to accept the Board as a fait accompli and a starting-point for discussion as to what it should do.

3. The duties of the Board in the Commission's view would be:-

- (a) to act as owners of the 'Native Lands';
- (b) to preserve the boundaries of 'Native Reserves' intact;
- (c) to exercise in a protective capacity a general power of supervision over the Government in the latter's management and administration.

4. It seems doubtful whether (a) by itself can be regarded as an adequate reason for the constitution of a Board. It is not clear why any Board should be regarded as inspiring more trust or actually more trustworthily than the Crown itself or His Majesty's Government, who have already accepted the position of trusteeship for native interests.

5. There is nothing at all in (b), since boundaries are to be altered by Order in Council. The Commission themselves give the Secretary of State the power of cancelling the Board and of diminishing Native Reserves Class B against the Board's vote.

6. It is not mentioned how any self-respecting

130
Government could submit to (c), unless in personnel
the Board were effectively identified with itself. But
such a proviso the Commission emphatically reject. They
replied "that occasions may arise in which the native
"reserves may have to be protected even against the
Government of Kenya". They are "most strongly in
favour of an independent Board", and regard the Board
as "in a sense the representative of the Privy Council".
"They would be able to interpose a veto on
leases or licences which the Government of Kenya had
recommended to be granted. If the members of the
Board are resident in Kenya, the position, if not
actually embarrassing to Government, would certainly be
very hard for the natives to understand, and would be
more likely to build up than to inspire confidence."

7. The Secretary of State having rejected the
Commission's proposal for a London Board on grounds
which apply with almost equal force to the proposal for
a Kenya Board, the Commission themselves having rejected
a Kenya Board, and there being some reason to believe that,
had they known that their proposal for a London Board would
not be accepted, they would not have recommended a Board
at all, the question arises whether any alternative method
suggests itself.

8. An alternative which seems to deserve considera-
tion is that there should be no Board; that the
members of the Native Lands and Native Reserves should
be appointed by Order in Council; that the ownership of
the Native Lands should be vested in the Secretary of
State on behalf of His Majesty's Government, and that
the Secretary of State should reserve to himself by Order
in Council powers of the character which the Commission
proposes should be exercised by a London Board.

Copy

22nd March 1964.

March 3 1964

Dear Sir Philip,

We were all delighted to see in the local papers the announcement of your safe arrival home apparently none the worse for your serious illness. You both appear to have made the best of a bad job on that horrible boat: I did pity you when I said good-bye to you in Mombasa.

My wife sailed in the "Gripsholm" - a Swedish Tourist ship - on the 17th March, she seems to be enjoying the voyage and expects to arrive at Southampton on the 28th March. I hope to get her back within the next two or three months if all goes well with my younger daughter who is expecting her infant towards the end of April.

I have been on safari in the Voi, Taveta and Teita Hills area. It is a part of the colony that is not sufficiently known and I was surprised to see the developments that have taken place there within the past

two years.

two years. Major Groyan has a particularly fine property at Taveta and I hope to be able to help in a joint irrigation scheme, European and Native - which I see is recommended by the Morris Carter Commission (Paras 1234 and 1235).

During my travels I was lucky enough to get a very fine bull Rhino and quite a good bull buffalo.

Things have been fairly quiet politically since you left. They were all a bit sore at being told the truth but I am sure that it has done a lot of good. The early publication of the verbatim reports of your interviews will still further clear the air and give the lie to some silly rumours about the tone adopted at these interviews.

Now as regards the various questions you have put me on the Morris Carter Report there are two only which require time for consideration. As to the personnel of the new board, we all lead for time to think things out. No doubt you will state in the House that His Majesty's Government have definitely decided in favour of a local board and that the composition of this board.....

3.

Board is being considered in consultation with the local Government. If we act too hastily now and make a mistake over this important matter we may have trouble in the future. The personnel of the Board leads up to your second query as to the possible difficulty over para 100 proviso 2(c). I have today sent you a telegram on this subject and in it expressed my personal view that we should not anticipate unreasonableness on the part of the Board.

Now there is one point which I hope you will be able to clear up when you make your statement in the House. You will recollect the conversation you had with Robert Williams at Mombasa when you assured him that he need have no apprehensions over the granting of mining leases in proper cases. On the strength of this he has been here endeavouring to exercise his option over the Eldoret Mining Syndicate's properties (particularly over Kimingini, which you saw). I thought that everything was absolutely settled but now learn that O'Shea and his fellow shareholders have been rather sticky - possibly Williams.....

Williams was also sticky - and negotiations have been held up for the moment. I gather, however, that they will soon be resumed and that the option will be exercised before the 30th April, which is the final date.

Williams was good enough to send me copies of some of his letters to his London Office. The following is an extract from one of these letters:-

"By the end of April Sir Cunliffe Lister promised
"to get the Law re Titles through Parliament and
"as the Title question has hung up several
"flotations here it is just as well to wait a
"bit. I hear the London Stock Exchange refuses
"to admit quotations until this law is passed: "

It will be quite impossible to have Legislative Rules, regulations, etc., finally passed before the end of April but I do hope you will be able to give such assurances in House as will remove these doubts which are having a very bad effect just at the time when we badly want to get a move on.

We are in the throes of Electioneering and on
the.....

the whole the addresses by the more sensible and more acceptable candidates are reasonable. The much talked of Economic Development Committee has just been appointed under the Chairmanship of Sandford. He is a level headed and capable fellow and will, I trust, ride off fantastic proposals.

We are at the moment working on the Fertiliser Factory scheme and on the scheme to assist Sisal Companies to acquire more modern machinery. Both have required more detailed thought than we first anticipated.

I expect you are terribly busy now you have got into harness again.

With kind regards.

I am,
Yours very sincerely,

(Sgd.) J. A. BYRNE

Major The Right Honourable
Sir P. Cunliffe Lister, P.C., G.B.E., &c.
The Colonial Office.
LONDON. S.W.1.

BY AIR MAIL.

The Secretariat,
Nairobi.

21st March, 1934.

7/42

Dear Flood,

You will remember that when I was acting you wrote to me on the subject of the Carter Commission Report and suggested that it would be of assistance to us all if we could, at the time that we forwarded the printed copies of the Report, let you have some general ideas as to the Government's attitude on some of the major questions. It had been my intention to comply with your request, as you know. The Secretary of State's visit, however, has rather upset that arrangement. He took the keenest personal interest in the Report while he was here, had long conversations with Wilson and Hemsted upon it and also spent a whole morning with Fazan. Subsequently, after his recovery, he discussed it with the Governor and some others of us, as you will have seen from the typed records of interviews. You will therefore have got from the Secretary of State's notes probably all the material that you require.

Quite frankly - and this is for your privy ear - I am a little alarmed as to whether we are not all going to be rather rushed in coming to decisions on the Report. None of the Provincial Commissioners has yet been given the Report to read as a whole or expressed his views upon it, and such discussion and opinions as some of us had with or gave to the Secretary of State at the interviews in question are based on very hurried reading of certain sections of the Report. I do hope, therefore, that you may find it possible to arrange that in any statements made to the Cabinet or to Parliament, we are not committed too much in detail.

The Secretary of State will have nothing of the London Board, and personally I think he is right, but it must be remembered that the recommendations of the Commission as to the powers to be given to the Board were presumably all based on the assumption that it would be an independent Board of persons of high standing in London. I am very doubtful whether we can safely hand over such powers to a local Board unless there is adequate Government representation upon it. That, however, the Report definitely does not envisage, as it seems to suggest that the Board should as far as possible be independent of Government. The dangers of this, where a local Board is concerned, are obvious - for example, the Board is to become the owners of Native Lands. I do not see how we could hand over the ownership of such lands to a local Board consisting of the Chief Native Commissioner and four unofficals. Personally I am inclined to the view that the grounds on which the Secretary of State objects to a London Board are equally applicable to a local Board, namely, that they cannot be reconciled with the ultimate responsibility of the Government ^{or} and the Secretary of State for the proper administration and development of the areas in question. If the territorial integrity of the Reserves is secured by an Order-in-Council and necessary safeguards are provided against the lease of large areas by requiring such leases to receive the prior approval of the Secretary of State, I am inclined to doubt whether any local Board is required at all. These are the lines on which I am thinking at present, but please understand that they are purely my personal views, and on further examination they may be found impracticable.

Yours sincerely,

John A. Kinnear

J. E. W. FLOOD, ESQ., C.M.G.,
 COLONIAL OFFICE,
 DOWNING STREET, S.W.1.
 L O N D O N.

LB 144

Private and Personal

26th March 1964.

My dear Anne.

I am sending you by air mail today a draft of my memorandum to the Cabinet on the Morris Carter Report. I propose to circulate this as soon as copies of the Report are available in England. I think that you will be in complete agreement with the whole memorandum. It safeguards your position both with regard to the constitution of the Len's Trust Board and the details about amalgamation of Reserves. If there is any really important point on which you think the memorandum requires amendment, please telegraph.

I had a very satisfactory talk with the Archbishop of Canterbury this morning. He had seen Wade and been much impressed by him. He also made some very pleasant observations about yourself. He is, I think, very well satisfied as to the development of events in Kakanaga. He attributes this largely to the skill and sympathy of our administration on the spot.

-2-

I told him all my experiences up there and he was very friendly. He ended by saying that he did not regret having raised the question, as it showed people out there that an interest was taken here. I replied that I had no objection to his raising the question, but what had roused me was that he had rushed into print without coming to see me and find out the facts. He said, purringly: "Perhaps perhaps."

I also told him a good deal about the Carter Commission Report. He seemed very favourable disposed on this head also. I reminded him of our previous conversation about the establishment of a Board in London. I elaborated to him my objections, constitutional and practical, as deployed in my Cabinet memorandum. He was in complete agreement. I think, however, that he, like myself, will come to the conclusion that the criticism of the present constitution of the Board as made by the Commissioners must be met.

I also explained to him the point made by the Commissioners as to the essential difference between the functions of protection and administration, and I explained to

him

-3-

him the proposals of the Commission for the future distribution of functions between the Board and officers of Government. I took care to say that Oldham and others had presciently foreseen the importance of maintaining this distinction, and that unhappily the Colonial Office had lost sight of it. I think that he is likely to be quite friendly on this also.

He asked me what opportunity I proposed to give Parliament of a discussion. I said that there would be a full opportunity in both Houses; that I proposed, as soon as the Cabinet had considered the question, to make a full statement in the House in answer to a question, and that thereafter the matter could be debated in both Houses - in the House of Commons on my vote, and in the House of Lords on any Motion he cared to raise. I told him that it would be necessary to take immediate action to amend the Lands Trust Ordinance in order to give the power to grant mining leases by "setting apart" as an alternative to exclusion. He quite agreed to this. The result of our talk, I think, is that we shall probably have his support on all the general findings of the Commission.

I told him that Archdeacon Owen had again got into trouble by making allegations against the police which the Busha Committee had investigated and repudiated, and I warned him that this report must be made public. He said how unfortunate it was that a good man should be so indiscreet as to let himself go without adequate knowledge - a most satisfactory frame of mind.

X

You will remember that the Commission, while emphasising the importance of native communal labour being available for clearing bush areas, expressed some doubt as to whether this might not be contrary to the International Convention. I enclose a minute by Busha, with a comment by myself, from which you will see that he has little or no doubt that such action would be no breach of the Convention.

Mrs. v. Simons

(Sgd.) P. OUNLIFFE-LISTER.

6th 148
Mr. Paskin 22/3.
Mr. Vernon 22
Mr. Bushe. 73

I have attached below a copy of paragraphs 2070 to 2074 of the Kenya Land Commission Report. You will see that this refers to the urgent necessity of the reconditioning of native pasture lands by the clearing of bush, the drainage of swamps and the construction of dams, etc., and urges that this work should be carried out by means of communal labour, especially where the land is communally held.

Doubt is however expressed as to whether it would be possible to arrange for such work, having regard to the provisions of the International Convention concerning forced and compulsory labour, and the suggestion is made that necessary steps should be taken to amend the particular ^{man} ~~local~~ Convention to admit of such work.

The Secretary of State would be glad to learn whether, in your view, work of the nature described could be held to fall within the exemptions allowed under the Convention. The Secretary of State's own view, which he holds strongly, is that if ever there were work which could properly be called work of emergency, this is it - since, unless steps are taken in the very near future, it is no exaggeration to say that whole areas will be reduced to a state of ^{depression} ~~destitution~~.

Bushe

21.3.34.

Mr. Vernon.

We have discussed and are ^{inclined} ~~to doubt whether~~ compulsory labour of the kind suggested in this Report could ~~be~~ be regarded as work-exacted "in a case of emergency" (Article 2(d) of the Forced Labour Convention), or as "minor communal services" (Article 2(e)).

A case of emergency is defined as "the event of war or a calamity or threatened calamity such as" and it is, I think, ~~clear~~ clear from the list of examples of "calamities" given in the text that the kind of "calamity" envisaged is something much more sudden ^{or unforeseeable} than the state of affairs now existing in these areas of Kenya.

I agree
- 1.1.44

As regards "minor communal services", it is quite certain that what was everybody's mind when the Convention was framed was such routine matters as village sanitation, upkeep of local native tracks, wells, water/courses etc., and this has been made clear to all the African dependencies (e.g. despatch to Kenya of 12/1/32, of which a copy is registered at No. 17 on 90089/2/32). The employment of a gang of 1,000 natives to clear 30,000 acres of land would be a very different matter.

We ~~are~~ therefore ^{doubt whether} ~~inclined~~ labour of the kind suggested could ~~be~~ be regarded as being covered by any of the exemptions from the definition of forced or compulsory labour in the Convention.

I agree. But I think it is just equal.
- 1.1.44

As regards the suggestion that the Convention might be amended, so as to exclude/work of the kind ~~contemplated~~ from the scope of the Convention, I would point out:

(a) that the normal International Labour Office machinery only contemplates amendment when a Convention has been in operation for ten years;

(b) that experience in relation to other International Labour Office Conventions has demonstrated the extreme difficulty in securing ^{even} what would appear to be quite uncontroversial amendments (e.g. the exclusion of women in managerial and supervisory positions from the prohibition of the night work of women).

(c) that paragraph 3 of Article 1 of the Forced Labour Convention contemplates its revision in the direction of ~~increased~~ increased stringency rather than of relaxation, and

Yes. I think amendment of the Convention in the manner suggested is quite impracticable.
- 1.1.44

(d) that a proposal from His Majesty's Government to amend this particular convention in the direction of relaxation would undoubtedly create a storm of misrepresentation.

On the other hand, subject to what is said below, I see no reason why the work suggested should not be done frankly by "forced labour" as defined by the Convention.

The Convention does not require the immediate prohibition of forced labour, but only its ultimate prohibition. In the meantime it is only to be employed in the circumstances and under the conditions laid down in the Convention. With the exception of

the Gambia and Northern Rhodesia provision is made in the Ordinances of all the East and West African dependencies for the continued employment (in greater or less degree) of one form or other compulsory labour as defined by the Convention. Thus (with one exception) all the East and West African dependencies have provision for the compulsory employment of porters, and most of them also provide for compulsory labour for such work as the maintenance of roads and bridges etc. (though very little compulsory labour is in fact so employed); in Uganda a good deal of "luwalo" labour is still employed by the native chiefs, and in Tanganyika large numbers of tax defaulters are still employed on various kinds of compulsory labour.

In Kenya, Section 4 of the Compulsory Labour Ordinance gives the Governor power to authorise the employment of compulsory labour in certain circumstances; and Section 5 authorises him to delegate this power in cases where the labour is required for Government portage or "does not involve the removal of the workers from their place of habitual residence."

As regards the conditions under which compulsory labour can be employed in Kenya, the only one which would be likely to give rise to the least difficulty is that relating to payment of wages.

Section

Section 4(c) of the Ordinance prescribes that, before authorising the employment of compulsory labour, the Governor shall first satisfy himself that "it has been impossible to obtain voluntary labour for carrying out the work by the offer of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work"; and Section 9(1) lays it down that "compulsory labour shall be remunerated in cash at rates not less than those prevailing for similar kinds of work" (though by Section 9(4) ordinary rations may be given as part of wages).

It is for the East African Department to consider whether these stipulations could be met.

On the other hand while neither the Convention nor the local Ordinance would make it impossible to employ compulsory labour for this work, under the conditions laid down, it must be pointed out that in the last few years very little compulsory labour has been employed in Kenya, otherwise than on "minor communal services". (In this connection see my minute of 0/3 on 10132/4/33). Having regard therefore to the whole tenour of the Convention, a decision to embark on a fairly extensive employment of compulsory labour would be bound to excite a good deal of interest, and the Secretary of State would have to be prepared to justify it, not only in the report to Geneva, but also (probably) in Parliament. So far as I can see, however, in the

case

case contemplated, this should not present any great difficulty.

J. J. Paskin
22/3.

I do not think
high in Kenya
secondary administrative
function.

Since writing the above, it has occurred to me that, in defg. their own, Kenya refrained from taking advantage of the first two parts of Article 14 of the Convention, which permit the execution of compulsory labour by chiefs, without payment of wages. This under Sec 9, all compulsory labourers have to be paid wages, even when employed by headmen to whom authority may have been delegated under Sec. 5.

J. J. P.

Mr. Paskin discussed this with me yesterday, and his minute represents our joint opinion as to our obligations under the International Convention on Forced and Compulsory Labour. In short, it comes to this. It will be quite possible to provide for the work contemplated to be performed by compulsory labour provided that the Governor is satisfied that voluntary labour cannot be obtained by the offer of standard wages and conditions.

Compulsory

Compulsory labour so employed would have to be "remunerated in cash at rates not less than those prevailing for similar kinds of work". Therefore, it is quite possible for the Government to get this work done if they are prepared to pay for it. The main object in view would, therefore, be achieved. But the secondary object which may be inferred from paragraph 2070 of the Land Commission Report, namely, that of "saving considerable expenditure", would not be achieved as ordinary wages would have to be paid.

T. V. Varma
22.3.34

To take this proposal out of the definition of forced labour, we have got to bring it within either paragraph (d) or (e) of Article 4 of the Convention.

It is said in the preceding minutes that this cannot be done because in the first place, to clear and keep clear the land is not work executed in the case of an emergency, but work carried out from time to time to prevent the occurrence of an emergency, and in the second place, that it is not minor communal services, since it is a matter of clearing 30,000 acres with a gang of 1,000 natives.

Both objections are true up to a point, but I think there is another way of looking at the position. I think we should divide the matter into two parts:

- (1) the clearing of the land;
- (2) the keeping of it clear.

Now what is the position under (1)? You have

have got large tracts of bush which have been for some time, and still are, encroaching over the reserves. Everybody knows the dangers of that, the danger of sleeping sickness, of fire, of animal pests, and of famine. Do the dangers amount to an emergency? They do not, of course, create a sudden emergency in the sense of an earthquake, because what has been going on has been a gradual process. But surely a time must arise in that process when unless it is allayed, an emergency arises in the sense that there is a threatened calamity that would endanger the existence and the well-being of the population. The question is, has that moment arrived? If it has, and I can well believe it, then I think we should be entitled to say that the clearing of this land comes within paragraph (d).

(2) To keep the land cleared is clearly not due to an emergency, but the work involved here is very different. It is not a question of employing an army of natives, but of seeing that each year a certain and diminishing amount of work is done to keep down the bush. I do not see why this should not come under (e); that is to say, as a minor communal service. To keep your reserve clear seems to me to be just as necessary and just as much a civic obligation as the upkeep of roads, the provision for sanitation, and the digging of wells and water courses.

It seems to me, therefore, that there is a case for saying that the clearing of the area comes under paragraph (d), and the keeping of it clear comes under paragraph (e).

I recognise, however, that this is

152
all largely a question of fact, and I put the suggestion forward subject to the views of those who know more about the facts than I do.

So far as I am concerned, nothing struck me more forcibly in Kenya than (a) the beautiful land which the natives had been given as reserves, and (b) the appalling way in which they were allowed to neglect it, and in the case of forest land, actually to destroy it.

Afio 23.3.34.

I think this is convincing, & completely so when we consider the prime motive for the clearance. It is an essential part of the campaign against overstocking, which is in itself the greatest emergency with which we have to deal.

P.L.L.

23/3/34

Communal
Labour in
Reserves.

1070. Much of the work required for the reconditioning of pasture land, the reclamation of fly areas by the cutting down of bush, for the drainage of swamps and construction of dams, in fact for any such work which would be of direct benefit to the natives themselves, should, in our opinion, be carried out by means of communal labour, especially where the land is communally held, thus saving considerable expenditure.

1071. There are hundreds of square miles in reserves where stock are frequently on the verge of starvation for lack of grazing, which are covered with bush and which if cleared would become excellent pasture land.

1072. In these reserves, the natives complain of the lack of land for grazing, and ask for more, whereas they have that land in their present reserve if they would only clear the bush. Their idle-youth and men live for the most part a life of idleness and are prevented by Government from indulging in their main form of manly exercise - hunting. If they are unemployed for years they come to appreciate less and less their position as stockowners by word of their chiefs; so that it is unlikely that their Local Native Councils will pass such resolutions as have been passed in other districts, as mentioned by Lord Moyne in paragraph 4 of his report with regard to normal civic obligations. It would, moreover, seem doubtful whether such work would come under the provisions of Article 23 of the International Convention concerning forced and compulsory labour, unless and until "a case of emergency" arises; in our opinion, calamity is ultimately threatened by these increasing invasions of insect (fly) and vegetable pests (increase of bush), and cases of emergency in this connection would never arise if such work could be ordered to be done.

1073. It seems that the natives in these areas, owing

to the decrees of European Governments, directed towards the prevention of compulsory labour by natives for others, are likely to find themselves in that unfortunate position described by the Prince of Wales in a recent speech:

"It is hard enough to be out of a job, but it is far worse not to be fit enough through enforced idleness to take up a job when given the opportunity."

It is true that in this case the lack of a job and the enforced idleness is in part due to the disinclination of such natives to work, and it is submitted that it is to their undoubted moral and physical interests that they should be required, for a few months in each year, under proper safeguards, to do work for their own material benefit, rather than that they should be permitted to degenerate, as they undoubtedly will, if they are permitted to live a life of idleness.

We suggest that if the words "in cases of emergency" in the above-mentioned Article are held to prevent reclamation work of this kind, steps be taken to delete them, and that the scope of the Article might with advantage be somewhat widened to embrace other work for the benefit of the natives themselves.

The above remarks apply not only to the pastoral, but also to some extent to some of the semi-pastoral and agricultural tribes.

1074. That such a course would have real results in increasing the land available for native use may be gathered from Appendix 11, in which it is shown that a thousand natives, working for a year under supervision, should be able to clear 30,000 acres of land.

COPY FOR REGISTRATION

155

RECEIVED
11 - March 1934
C. O. [unclear]

6

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

Dated 9th March, 1934.

Received 9.33.a.m. 9th March.

Unnumbered.

4

My telegram of the 8th March, No 135 alter number
to 55 error regretted.

5

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

Dated 8th March. Received at 4-11pm 8th March 1934.

No 135.

~~Should~~ Your telegram 6th March from the Dunluce Castle I agree in principle to proposed reduction in number of native reserves but consider that Provincial Commissioner concerned should be consulted as to details before final decision is taken as some modification may prove necessary.

Mr. Flood B
H 157

Outline of Air Mail letter from Secretary of State to
Governor of Kenya 2 20th February 1934.

How you would constitute L.T.B.

Give membership as it exists today.

Make local and meet point it ought to be independent of
Government.

? C.N.C. plus 2 Members representing natives.

plus 2 independent members who are not members
of Council.

You would get 2 men who are able agriculturists or
business men active or retired to act.

Did Went Schuster and Oldham in letter to Young Cttee.
actually recommend that Bd. should be ~~but~~ but Govt.
should manage.

Answered by No 5

in 2 lines 44
158

Telegram from the Secretary of State on board the "Dunluce Castle" to the Governor of Kenya, dated 6th March 1934.

Land Report. Do you agree with recommendations for reducing numbers of separate Native Reserves?

Yes

ORIGINAL

Dawood

of a telegram from the

Governor Kenya

Dated 23rd March 1934 Received in the Colonial Office at 3.19 pm on 23rd April 1934

Colonial

Documents

Decoded

by Anon. P.L.S.

Decyphered

Private & Personal ①

I have consulted my
 advisers on the point raised in your telegram
 13th March transmitted by Governor of Gibraltar ①
 We agree with your interpretation of
 recommendations in question ① The views of
 above I trust you will agree that I should
 not be committed at this stage on the
 question of composition and powers of a local
 Board if such is ultimately decided on ①
 Air Mail letter leaves today ①

Governor ①

3160



COLONIAL SECRETARY'S OFFICE.
GIBRALTAR.

R

13th March, 1934.

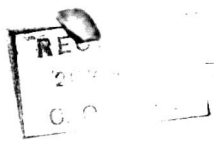
Recd 19/3/34

Dear Private Secretary,

I enclose herewith a copy of the text of a telegram which the Secretary of State handed to me in manuscript for despatch when he passed through on the S.S. Dunluce Castle on the 12th March. The telegram was duly despatched to Nairobi early on the 13th March.

Yours sincerely,

J. H. ...



The Private Secretary,
to the Secretary of State,
Colonial Office,
Downing Street,
London, S.W.1.

Following from secretary of state begins. Carter Report. Is there possible difficulty as regards mining leases under paragraph 1526 proviso 2 c? A surface mining lease is primarily for benefit of mining Company. Land Trust Board would have absolute power of veto and could if unreasonable veto any surface lease. Presumably board would act reasonably ~~and~~ only veto lease of particular area if it thought another area would be suitable for Company's use and better from native point of view.

Does recommendation in paragraphs 1520 and 1521 read with chapter 5 mean that if Governor and Board differ on exclusion or setting apart the only case in which Secretary of State can overrule board is where land is required for public purposes. I so read it. In all above matters I think we cannot reduce powers which Commission intend Board to have; but I wish to be sure that I interpret their recommendations correctly. Reply London by telegram ends Governor.

12

*Copy kept folder to
S. V. Ed. 102
13/3*

ORIGINAL ~~decide~~

of a telegram from the Sir Joseph Byrne, Voi.

Dated 13th March, 1934, Received in the Colonial Office at 2-31 p.m. on 13th March.

2A

Decoded

by

A.J.S.

Deciphered.

PERSONAL.

Following for Secretary of State begins.

Just arrived at Voi station from Safari. Will telegraph
replies to your questions from Nairobi. Sincerely hope that
voyage and rest have completely restored your health.

Byrne.

C. O.

Mr. Lee 14 wms

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permd. U.S. of S.

Parly. U.S. of S.

Secretary of State.

(a by his instructions)

Coded

C.D. 2
R 20MAF
20
1163

9/- 19/3/18

200

Your file no. 61.

Private and Personal. / I

DRAFT.

Telegram
Code

GOVERNOR.

NAIROBI.

think it will be difficult to avoid making statement about constitution of new Board. I hope to obtain Cabinet decision on the report in second week in April, and to make statement in Parliament as soon as possible afterwards. I intend to obtain Cabinet approval to rejection of London Board, but I shall certainly be asked how Board in Kenya is to be constituted so as to meet criticism of Commission that it is over-weighted with Government representatives. I must at any rate say that the constitution of the Board is under consideration. I hope you can at any rate let me have your own views after consultation with your advisers as to

FURTHER ACTION.

Return (with 2 copies) to Mr Lee

suggestion I have made. When you say
your Government has had no opportunity
of considering Report, do you include
Unofficial Members of Executive Council?
We must I think assume that Unofficial
Members would object to any proposal
which eliminated them. But surely there
is a strong argument in favour of elimi-
nating both Government officers and
Unofficial European Members from Board
in order that Board may both appear and
be independent of Government and Council.

suggestion I have made. When you say your Government has had no opportunity of considering Report, do you include Unofficial Members of Executive Council?

We must I think assume that Unofficial Members would object to any proposal which eliminated them. But surely there is a strong argument in favour of eliminating both Government officers and Unofficial European Members from Board in order that Board may both appear and be independent of Government and Council.

COPY FOR REGISTRATION

164
END

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

Dated 17th March, 1934.

(Received, Colonial Office, 10.47 a.m., 17th March, 1934.)

No. 61. Private and Personal.

6
2
2

Your letter of 20th February. Following is personnel of existing Land Trust Board. Governor, Colonial Secretary, Attorney General, Chief Native Commissioner, Commissioner of Land, Provincial Commissioner Kikuyu, Francis Scott O'Shea, Canon Burns, Father Stam. As to new Board I regard this matter as of such paramount importance that I would prefer not to be committed at this ^{indeed} stage and would rather wait until report is published as this Government as a Government has had no opportunity of considering report which at present has been seen by a few officers only. With reference to paragraph No. 1673 of report Gurney informs me that he cannot give you any more information than that recorded on page 341 of Hilton Young Report.

COPY FOR REGISTRATION

114
END

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

Dated 17th March, 1934.

(Received, Colonial Office, 10.47 a.m., 17th March, 1934.)

No. 61. Private and Personal.

6
2
2

Your letter of 20th February. Following is personnel of existing Land Trust Board. Governor, Colonial Secretary, Attorney General, Chief Native Commissioner, Commissioner of Land, Provincial Commissioner Kikuyu, Francis Scott O'Shea/Canon Burns Father St... As to new Board I regard this matter as of such paramount importance that I would prefer not to be committed at this stage and would/rather wait until indeed report is published as this Government as a Government has had no opportunity of considering report which at present has been seen by a few officers only. With reference to paragraph No. 1673 of report Gurney informs me that he cannot give you any more information than that recorded on page 341 of Hilton Young Report,