

1984

Henry

No. 23255

SUBJECT

C0533/450

Preservation of Objects of Archaeological and

Palaeontological Interest Ordinance

Previous

3067/33

2006/19/33

Subsequent

48106/45

65
title
Archaeological
Palaeontological
Shaw & Leary

General Enquiry 2001
22 July 1934
Some provision, subject of Draft Bill to provide for the
Preservation of Objects of Archaeological & Palaeontological Interest.
Seeks advice as to whether provision should be made in the Bill
requiring that half the objects found shall be handed over to the
Trust & suggests the British Museum may be consulted.

2. L. S. B. Leakey
23 July 1934
States that his expedition is due to sail for Ceylon & that
he understands that the amending legislation then concerning the
Preservation of Ancient Monuments has not yet become law. Enquires
as to the present position & the prospects of amending legislation being
introduced.

Dr. Leakey also refers to Dr. Leakey. When
the letter to B.M. has gone, we are to
Leakey (Leakey), who may be able to
throw light on para 2 of 1.

Shaw & Leary

- 3 To L. S. B. Leakey 24/8/34
- 4 To British Museum 25/8/34
(not sent in ??)

Dr. Leakey called; he had been to the B.M.
where he was told that the Order had in fact
was to be referred to a special Committee
which could not be assembled before the
middle of October. There is no chance of
returning a revised bill to Leakey in time
for it to pass Reg. Co before Dr. Leakey's

his friends' objection suggested in the minutes
of November

On the other hand, it will be very
difficult, if not impossible, to perform
his programme, partly a climatic reason,
+ partly because complicated arrangements
have to be made in order to release
certain members of the expedition from
their employment in London.

Under the existing Ord^s (804 of 17/17)
if Dr Leakey or any of his friends start
digging in a protected area they will be
liable to £100 + 6 months - there being no
provision for permits to accredited excavators.

Dr Leakey goes to write a letter
for us to send out by air mail.
Suggests - short interim amending Ord^s
but since we will
when the letter comes

Director
31.8.34

with reference to your minute of the 24th
August, I annex a statement about the dispersal
and removal of antiquities in all colonies, etc.
where legislation on the subject has been enacted.
As regards the division of the spoils it will be
seen that Ceylon, Cyprus and Palestine provide
useful precedents. In Cyprus and Ceylon the
finder

finder may get, according to circumstances,
as much as two thirds of his finds; while in
Palestine the division is apparently by arrange-
ment and is aimed at being as equitable as
possible. It will also be noticed that in Malta
and Palestine the export of antiquities is
subject to export duty.

J.H. Thompson
31.8.34

Mr. Thompson's note will be useful
when we get the A.P. done.

Director
31.8.34

6. British operations

States that the Trustees will not meet again until 15th Oct.
but makes done on the Bill which we know to be in agreement
with the principles to which they have in similar cases. Requests
that the Bill may be placed before the Archaeological Council &
that some means may be found to give Dr Leakey admission to
sites which it is desired to investigate.

c.f.
minutes
S. Leakey

7. To the Museum (6 and 7) 25/9/34

8. Dr. Leakey's letter

I have rec^d Dr. Leakey's letter (8), &
returned a typed copy
J.H. Thompson

Director
31.8.34

137 4/9/54

810

To Kenya 719 (1/1/54, 4, 6, 7, 8) 1000
1 Unservd

4 SEP 1954

10. Document by me 445 (An. 11.11.54) 3-5 Sept 54
States that it is considered that draft Bill, if
approved should be placed before the next session of
the Leg Council in Oct & requests early answer of Nov.

As you know we are going together
to a meeting of the Arch. Joint Com.
to discuss this on the 25th inst.
I will send you a reply to 10 saying that
the Bill may be introduced at
the Oct meeting & that any objections
should be communicated
to me by tel. or all mail in
order to be considered at the meeting.

G. A. Thomson
12/9/54

I should prefer to await a reply to 9.
Do not know that Leg. Council meets on
16th October.
I will be in a Monday next, if no
reply recd from Kenya.

J. Stanish
13/9/54

Govs. Dept. Feb 20 1954
Ref No. 9, states that it is hoped that enabling legislation
will be passed in October session.

D.A.H.
Stanish
18/9/54

12 Tel. to Kenya 19/9/54

13 To Leaning 21/9/54

Exhibits
file to be noted

My last mail
27/9/54

13A Leaning, L.H. 19/9/54
To Kenya 788 (1/1/54)

13B To Gov. Tel. 21/9/54

Mr. Clouston and ...
on Tuesday morning at the Archaeological
Committee at which the Kenya ...
discussed by a large number of eminent
archaeologists. Their criticisms, such as they
were, are embodied in the attached telegram and
despatch which I showed to Mr. Clouston before
they were sent off. It is to be hoped that on
receipt of the telegram the Attorney-General
will be able to re-introduce the Bill in time for its
publication fourteen days in advance of the
Legislative Council session which starts on
October 16th.

No further action is necessary for
present, beyond sending a copy of No. 14.

the enclosure, to the Director of the British
Museum, etc. Unless Dr. Leakey enquires,
we need hardly communicate with him; no doubt
his fellow-archaeologists on the Committee
will pass on to him anything of interest.

W. M. L.

20.9.34.

etc

29 SEP 1934

... that meeting of the Archaeological Society
at which the draft Bill was considered, was
conducted by Mr. F. ... who will be able to furnish the
... of the Bill.

The ... has done his best under
Nos 14-15, after in the Reading Room

of the ...

P. L.

W. M. L.
2/10 etc

Shank & Lhany

Trans. 22 articles of Report of Select Committee of Leg. Council
on a Bill to provide for the preservation of objects of Archaeological
& Palaeontological Interest

The Bill is introduced into the Leg. Council
on 12th October in Gazette No. 105 of
9th October. The text differs
from that in the Draft Bill
enclosed in No. 1, & provides for
the amendments suggested in
Nos 14 & 15. The amendments
suggested in the Committee are
the most important.

... the ...
...
...

Shank & Lhany

19. Governor Byrne 29.9.34

Trans. 2 authenticated copies of the Provision of
Objects of Archaeological & Palaeontological Interest Ordinance
NO 53 of 1934

20. Lt. Secretary 30.9.34

Trans. 2 copies of Ordinance NO 53 of 1934

The Clause
The Ord. is, of course, in operation
& Dr. Leakey is no doubt busily digging
? Sent a copy to the Hon. Sec. A.I.C.
ref. 17. says that Sigs will be glad
to learn, before taking action to H.T.

I always think this phrase
...
...

whether to take him any other...

17/1
a.s. Williams
1/1
at...

To the Director of the (British Museum)...

24 Es Kenya, 151 (w/c 22) 22 FEB 1935
19 Annual

Lord
Elliott
Kibworth
1/35

W Robert Gray

Library (Legal) to...

To Archaeological & Soc. Com. 24/1/35
(see over in 20)

Library (Legal) to
see file

22. The Archaeological Joint Committee... Feb. 35.
Submits obsns. on the Ordinance.

According to X in the Committee's
letter it would not be a wise
departure to permit competent
researchers to have a share
in the finds.

The second suggestion is that
objects of special value are
better housed in the national
museum in England, than
in Kenya, and that reproduction
would be suitable for Kenya,
the Colonial Museum.

Signify our disapproval of
Order No 10. & enclose a copy
of No 22 for the Governor's
consideration. Thank the Committee
for their letter and say that
their suggestions are being passed
on to the Gov for his consideration.

W. C. ...
1/24

C. H. ...
17/1/35

Kenya
No. 151
Governor

23255/54 Kenya
247

Answered by No. 35106/55

Downing Street
22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Sir,

I have the honour to acknowledge the receipt of your despatch
(?) No. 598 of the 21st of November, and to inform
you that His Majesty will not be advised to exercise his power of assent
in respect of the Ordinance No. 211 of 1934
of the Legislature of Kenya entitled

"An Ordinance to provide for the preservation
of objects of Archaeological and Ethnological
Interest."

Ken. J. A. C. 22-7-35 (1122)

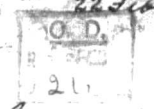
2. I enclose for your consideration
a copy of a letter containing the observations
I have the honour to be,
of the Archaeological and Ethnological
Committee on the
Ordinance.

Your most obedient, humble servant,

J. G. L.
The Officer Administering
the Government of

(566) F. GUNLIFFE-LISTER

23255/4 Kenya. 8 May 1955
22 February, 1955



C. O.

Mr. Hirsch
Mr. Verring 1872/B5
Mr.

Mr. Parke
Sir G. Tomlinson
Sir C. Bottomley
Sir J. Shackleton
Parad. U.S. of S.
Parad. U.S. of S.
Secretary of State

Li.
I am etc. to ask the

receipt of your letter on the
(22) 9th of February, and to request
you to thank the Archaeological
Joint Committee for their

DRAFT.

The Honorary Secretary
The Joint Archaeological
Committee

observations on Kenya
Ordinance N° 4111 of 1954

2. The Committee's
suggestions are being
communicated to the Governor
of Kenya for his consideration

FURTHER ACTION.

2/1/55

I am etc.

J. E. W. FLOOD

THE ARCHAEOLOGICAL JOINT COMMITTEE

FOR ORGANIZING THE CONTROL OF ANTIQUITIES IN THE NEAR AND MIDDLE EAST

CONSTITUENT BODIES: The British Academy; The Society of Antiquaries; The Society of African Archaeologists; The Society for the Promotion of Hellenic Studies; The Society for the Promotion of Hellenic Studies; The Royal Institute of British Architects; The Royal Anthropological Institute; The Royal Asiatic Society; The British Numismatic Society; The British School at Athens; The British School at Assiut; The Palestine Exploration Fund; The Egyptian Exploration Society; The League of Researches in the Near and Middle East.

CHAIRMAN
SIR FREDERIC KENYON, F.R.S.

BRITISH MUSEUM,

LONDON, W.C. 1

February, 1935.

SECRETARY
~~XXXXXXXXXXXXXXXXXXXX~~
Mr. C. J. Gadd, F.R.S.

Sir,

On behalf of the Archaeological Joint Committee I desire to acknowledge the receipt of Mr. Flood's letter of the 24th January (23255/34), and to thank the Secretary of State for his courtesy in communicating to the Committee a copy of Kenya Ordinance No. 1113 of 1934 on the subject of the preservation of objects of archaeological and palaeontological interest.

The Committee are glad to observe that the Ordinance incorporates (in section 3, sub-sections 2 and 3) the suggestions made in para. 2 of Sir George Hill's letter of the 31st August, 1934. They notice, however, that no provision is made such as is suggested in para. 3 of that letter with regard to the disposal of objects found in an excavation or exploration. That is a matter in which an explorer takes much interest, and the principles of which it is desirable to have clearly defined. The principle advocated by the Committee, and incorporated in the Antiquities Laws or Ordinances with regard to which they have been consulted, is that, subject to the prior right of the Colony to retain unique objects and a full representation of all objects found, it is desirable, in the interests of science and to encourage exploration by competent researchers, to allow the explorer as ample a return as possible for his trouble and expense. The ideal to be aimed at is, in their opinion, an approximately equal division between the Colony and the explorer. This presents no difficulty where many objects of similar character are discovered, and in the case of objects which are unique or of special value, which the Colony retains in virtue of its prior rights, it can be met by allowing the explorer a higher proportion of the objects of less value or rarity. The

The Under-Secretary of State,
Colonial Office.

/s/ Committee

Am 1.5
copy to Keny (84)

10
10

23255/32 Kenya
19th January, 1935

C. O.

Mr. ~~Michells~~
Mr. Venning 19/1/35

L. St. 21

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

P
Letter of the 29th of September,
I am etc. to transmit to you,

C. D.
R 21 JAN
D 9 2

to be laid before the
Archaeological Joint
Committee, a copy of Kenya
Ordinance No. LIII of 1934
entitled "An Ordinance to
provide for the preservation
of Objects of Archaeological
and Palaeontological
Interest

DRAFT.

The Honorary Secretary,
The Archaeological
Joint Committee

Order LIII of 1934

FURTHER ACTION.

Interest "

2. The Secretary of State

will be glad to learn before

tendering advice to His

Majesty in respect of the

Ordinance, whether the

Committee have any

observations to offer upon it.

I am etc.

(Signed) J. E. W. FLOOD

ORDINANCE No. LIII of 1934

**An Ordinance to Provide for the Preservation of
Objects of Archaeological and Palaeontological Interest.**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the Preservation of Objects of Archaeological and Palaeontological Interest Ordinance, 1934. Short title.

2. In this Ordinance, unless the context otherwise requires— Definitions.

"authority" includes all Provincial Commissioners, officers in charge of districts not included in any province and any person or body of persons authorized by the Governor to perform the duties of an authority under this Ordinance;

"maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a monument, and the doing of any act which may be necessary for the purpose of maintaining a monument or of securing convenient access thereto;

"monument" means—

- (a) any object of archaeological or palaeontological interest, and
- (b) any area of land in which any such object is believed to exist.

which the Governor has by notice in the Gazette declared under section 6 to be a monument.

"Object of archaeological or palaeontological interest" means any structure, erection, memorial, tumulus, cairn, place of interment, site, dwelling, trench, fortification, irrigation work, mound, excavation, cave, rock, rock drawing, painting, or sculpture, inscription, megalith, or any remains thereof, fossil remains of man or animals or plants or any bed or beds containing such fossil remains thereof, or any object for any

remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, or historic interest, and includes—

- (a) the site on which such object of archaeological or palaeontological interest was discovered or exists;
- (b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and
- (c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest;

"owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee.

Provided that nothing in this Ordinance shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Prohibition
outside land
unless
authorized by
permit.

3. (1) Unless authorized by a permit issued by the Colonial Secretary, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in the Form A set out in the Schedule.

(2) The Colonial Secretary shall, before issuing a permit under this section, satisfy himself that the applicant is a competent both by training or experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may, in his discretion, require to be satisfied that the applicant has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) In every permit issued under this section there shall be implied an undertaking on the part of the permit-holder that he, or the institution which he represents, will, within a period of two years after the completion of the exploration or excavation authorized by the permit or within such longer period as the Colonial Secretary may in writing approve, produce an adequate scientific report or publication on the results of the exploration and/or excavation, as the case may be, and will deposit with the Governor two copies of such report or publication.

(4) The Colonial Secretary may at any time, without assigning any reason, revoke a permit given under this section.

A permit given under the preceding section may specify, in regard to the acts which it authorizes, such limitations and conditions as the Colonial Secretary may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorize excavation for and its removal to a place within the Colony subject to such limitations and conditions as to the Colonial Secretary shall seem fit.

A permit may
specify
limitations
and
conditions

(1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the District Officer in charge of the district.

Discovery
may object
to inspection
authorities

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, stating the precise site and the circumstances of the discovery, to the District Officer in charge of the district, and shall, if so directed by such District Officer, deliver such object to the District Officer.

(3) The District Officer shall forthwith notify the Colonial Secretary of any discovery in respect of which he has received notice under the provisions of this section.

(4) Any person who fails to comply with the provisions of subsection (1) or subsection (2) of this section, as the case may be, shall be guilty of an offence, and shall, on conviction be liable to a fine not exceeding one hundred pounds, or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

4. (1) The Governor may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Ordinance. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Colonial Secretary within one month from the date of the publication of the notice.

Power to
declare object
to be
monument.

(1) A copy of every notice published under sub-section (1) of this section shall forthwith be posted by an authority in a conspicuous place or near the object or on the area to which it relates.

(2) On the expiration of the said period of one month, the Governor, after considering the objections, if any, shall confirm or withdraw the notice.

(3) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the object of archaeological or palaeontological interest or area to which it relates is a monument within the meaning of this Ordinance.

(4) Any monument or antiquity declared, under the provisions of the Ancient Monuments Preservation Ordinance, 1925, to be a protected monument or an antiquity, as the case may be, shall be deemed to be a monument within the meaning of this Ordinance.

7. (1) An authority may, with the sanction of the Governor, purchase or take a lease of any monument.

(2) An authority may, with the like sanction, accept a gift or bequest of any monument.

(3) The owner of any monument may by written instrument constitute an authority the guardian of such monument, and an authority may, with the sanction of the Governor, accept such guardianship.

(4) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the owner shall, except as expressly provided in this Ordinance, have the same estate, right, title and interest in and to such monument as if the authority had not been constituted guardian thereof.

(5) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the provisions of this Ordinance relating to agreements executed under section 8 shall apply to the written instrument executed under the said sub-section.

(6) Where a monument is without an owner, an authority may, with the sanction of the Governor, assume the guardianship of such monument.

8. (1) An authority may, with the sanction of the Governor, enter into a written agreement with the owner of any monument for the protection or preservation of such monument.

(2) An agreement under this section may provide for all or any of the following matters:—

(a) The maintenance of the monument;

(b) the custody of the monument and the duties of any person who may be employed in connection therewith;

(c) the restrictions of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the authority to inspect or to maintain the monument;

(e) the notice to be given to the authority in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the authority to purchase such land or any specified portion of such land at its market value;

(f) the payment of any expenses incurred by the owner or by the authority in connection with the protection or preservation of the monument;

(g) the procedure relating to the settlement of any dispute arising out of the agreement;

(h) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the authority; and

(i) the removal subject to the provisions of this Ordinance of the monument to a place of safe custody.

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Governor and with the consent of the owner.

(4) Subject to the sanction of the Governor, an authority may terminate an agreement under this section on giving six months' notice in writing to the owner.

(5) The owner may terminate the agreement under this section on giving six months' notice to the authority.

(6) An agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates, though not under a party by whom or on whose behalf the agreement was executed.

(7) Any rights acquired by the authority in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under
disability.

9. If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by the last preceding section.

Enforcement
of agreement.

10. (1) If an authority apprehends that the owner or occupier of a monument intends to build on or near the site of such monument in contravention of the terms of an agreement for its protection or preservation under section 8 of this Ordinance, the authority may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the protection, preservation or maintenance of a monument under section 8 refuses to do any act which is in the opinion of the authority necessary to such protection, preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the authority, the authority may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner.

(3) A person aggrieved by an order made under this section may appeal to the Governor, who may cancel or modify it and whose decision shall be final.

Compulsory
purchase of
monument.

11. (1) If the Governor apprehends that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may proceed to acquire such monument under the provisions of the Indian Land Acquisition Act, 1894, as applied to the Colony, as if the preservation of such monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) of this section shall not be exercised in case of—

(a) any monument which, or any part of which, is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting agreement executed under section 8 of this Ordinance.

(3) In any case other than the cases referred to in the last preceding sub-section the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 8 has failed, within such reasonable period as the Governor may fix in this behalf, to enter into an agreement under the said section or has terminated or given notice of his intention to terminate such an agreement.

12. (1) Every monument in respect of which an authority has acquired any of the rights mentioned in section 7 or which has been compulsorily purchased under section 11 shall be maintained by the authority by which such rights were acquired or by such authority as may be appointed in that behalf by the Governor, as the case may be.

Maintenance
of
monument.

(2) When an authority has accepted the guardianship of a monument under section 7, such authority shall, for the purpose of maintaining such monument have access to the monument at all reasonable times for the purpose of inspection and for the purpose of bringing such materials and doing such acts as the authority may consider necessary for the maintenance or preservation thereof.

Provided that the right of access conferred on an authority under this sub-section shall be deemed to extend to the duly authorized agents, inspectors and workmen of such authority.

13. An authority may receive voluntary contributions towards the cost of maintaining a monument and may, subject to the approval of the Governor, give orders as to the management and application of any funds so received.

Voluntary
contributions.

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

14. (1) A place of worship or tomb maintained by an authority under this Ordinance shall not be used for any purpose inconsistent with its character.

Places of
worship, etc.,
from misuse/
pollution or
degradation.

(2) When an authority has, under section 7, purchased or taken a lease of any monument, or has accepted a gift or bequest thereof, or has accepted the guardianship thereof, and such monument or any part thereof is periodically used for religious worship or observances by any community, the authority shall make due provision for the protection of such monument or any part thereof from pollution or degradation.

Preservation of Objects of Archaeological and
Palaeontological Interest

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the sanction of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used; or

(b) by taking such other action as the authority may think necessary in this behalf.

Relinquish-
ment of
rights in a
monument

15. Subject to the sanction of the Governor, an authority

(a) where rights have been acquired by such authority in respect of a monument under this Ordinance by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would, for the time being be the owner of the monument if such rights had not been acquired; or

(b) extinguish any guardianship which such authority has accepted under this Ordinance.

Right of access
by public to
monuments.

16. Subject to such rules as may be made by the Governor or the Council under Section 24, the public shall have a right of access to any monument maintained by an authority under this Ordinance.

Offences

17. Save as is provided in this Ordinance, any person who destroys, removes, injures, alters, defaces or impairs a monument, or any object of archaeological or palaeontological interest, and any owner or occupier who contravenes an order made under sub-section (1) of section 10, and any person who contravenes any of the terms and conditions imposed in a permit granted under this Ordinance, and any person who contravenes the provisions of sub-section (1) or (3) of section 3 or sub-section (1) of section 12 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Permit to
excavate or
remove a
monument

18. Notwithstanding anything contained in this Ordinance where the Colonial Secretary is of the opinion that the excavation or removal of any monument is desirable in the interests of archaeology, science, history or art, he may grant a permit to any person to excavate and/or remove to a place within the Colony any such monument, or any part thereof, on

such terms and subject to such conditions as he may think fit. Such permit shall, as far as is practicable, be in the Form B set out in the Schedule hereto.

19. (1) No monument or object of archaeological or palaeontological interest may be removed from the Colony unless such removal has been authorized by a permit issued by the Colonial Secretary. Such permit shall, so far as is practicable, be in the Form C set out in the Schedule hereto.

Permit to
remove any
object or
monument
from Colony

(2) The Colonial Secretary may issue a permit subject to such terms and conditions, which may include the surrender to the Crown of a portion of the monument or object of archaeological or palaeontological interest, as he may deem fit, or he may, without assigning the reason, refuse to issue a permit.

(3) Where under the provisions of this Ordinance, and this section any portion of a monument or of an object of archaeological or palaeontological interest has been surrendered to the Crown, the Governor may deposit the portion so surrendered in any museum or similar institution in the Colony or elsewhere.

(4) An application for a permit under this section shall be made in writing to the Colonial Secretary at least thirty days before the date of the proposed removal and shall contain a full description of the monument or object of archaeological or palaeontological interest in respect of which the application is made. Before issuing a permit under this section, the Colonial Secretary may cause an inspection to be made and may cause the monument or object of archaeological or palaeontological interest to be sealed.

Provided that no such permit shall authorize the removal from the Colony of any monument or object of archaeological or palaeontological interest except through a Customs port of entry and such permit shall be surrendered to a Customs officer before export is effected. A Customs officer shall detain any monument or object of archaeological or palaeontological interest until such permit shall have been surrendered. Any monument or object of archaeological or palaeontological interest may be confiscated and disposed of as the Governor may direct if such permit is not produced and surrendered within a reasonable period of time.

No. LIII

*Preservation of Objects of Archaeological and
Palaeontological Interest* 1934

20. (1) A district officer in charge of a district, and any other person specially authorized by the Governor, may, at any time, inspect work being done in connection with objects of archaeological or palaeontological interest or a monument, and may order cessation of such work pending further orders from the Governor. Such district officer or such other person shall forthwith report the action he has taken to the Colonial Secretary, and shall at the same time furnish to the Colonial Secretary an inspection report.

(2) Any person who fails to comply with an order issued under this section shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Assessment of
market value.

21. The market value of any property which the Governor is empowered to purchase at such value under this Ordinance shall, where any dispute arises touching the amount of such market value, be ascertained in the manner provided by the Indian Land Acquisition Act, 1904, sections 5, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable.

Exemption
from stamp
duty.

22. Any instrument executed under section 7 or section 8 of this Ordinance shall be exempt from stamp duty.

Protection of
public servants
acting under
the Ordinance.

23. No suit for compensation and no criminal proceedings shall lie against any public servant or authority in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Ordinance.

Power to
make rules.

24. The Governor in Council may make rules for carrying out any of the purposes of this Ordinance.

Repeal.
No. 12 of 1927,
No. 36 of 1932.

25. The Ancient Monuments Preservation Ordinance, 1927, as amended by the Ancient Monuments Preservation (Amendment) Ordinance, 1932, is hereby repealed.

1934 *Preservation of Objects of Archaeological and
Palaeontological Interest*

No. LIII

SCHEDULE

FORM A.

THE PRESERVATION OF OBJECTS OF ARCHAEO-
LOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Sections 3 and 4.)

PERMIT TO SEARCH FOR AND/OR TO REMOVE WITHIN THE COLONY
OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL
INTEREST.

Subject to the limitations and conditions set out here-
under, of
is hereby authorized to search in the Colony either by means
of excavation or surface operations for objects of archaeological
and palaeontological interest and to remove such objects from
the site on which they are found to

Colonial Secretary.

Nairobi.

This day of 19.....

Conditions:

No. LIII

Preservation of Objects of Archaeological and
Palaeontological Interest 1934

Form B.

THE PRESERVATION OF OBJECTS OF ARCHAEO-
LOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Section 18.)

PERMIT TO EXCAVATE OR REMOVE A MONUMENT
WITHIN THE COLONY.

Subject to the terms and conditions set out hereunder,
..... of

is hereby granted permission to excavate and/or to remove to
..... the following monument:

Colonial Secretary.

Nairobi,
This day of, 19.....

Conditions:

.....

1934 Preservation of Objects of Archaeological and
Palaeontological Interest

No. LIII

Form C.

THE PRESERVATION OF OBJECTS OF ARCHAEO-
LOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Section 19.)

PERMIT TO REMOVE FROM THE COLONY AN OBJECT OF
ARCHAEOLOGICAL AND PALAEOLOGICAL
INTEREST OR A MONUMENT.

Subject to the terms and conditions set out hereunder,
..... of

is hereby authorised to remove from the Colony by air/ship
through the port of the following ob-
ject(s) of archaeological and palaeontological interest/mon-
ument(s) to

Colonial Secretary.

Nairobi,
This day of, 19.....

Conditions:

19

KENYA

No. 596.



GOVERNMENT HOUSE,
NAIROBI,
KENYA

21/11
November, 1934.

RECEIVED
14 DEC 1934
C. O. REGY

Sir,

I have the honour to transmit herewith two authenticated copies of "An Ordinance to Provide for the preservation of Objects of Archaeological and Palaeontological Interest" No. LIII of 1934, together with two copies of the Legal Report by the Attorney General.

General (14)

2. This Ordinance passed its third reading in the Legislative Council on the 26th October, 1934, and I assented to it in the name of His Majesty on the 15th November, 1934.

3. Twelve printed copies of the Ordinance are being forwarded under separate cover.

I have the honour to be,

Sir,

Your most obedient, humble servant,

H. B. Jones
BRIGADIER GENERAL.
GOVERNOR.

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

LEGAL REPORT

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL
AND PALAEOLOGICAL INTEREST BILL, 1934.

The object of this Bill is to consolidate, amplify and to improve the law relating to the protection preservation and treatment of archaeological and palaeontological sites and objects in which this Colony has been proved to be exceptionally rich.

The Bill controls excavation by any person, makes provision to secure the claims of the individual worker and the claims of the Colony to a share of the finds, and also controls the export of finds.

A Comparative Table is attached.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Kairohi,
25th October, 1934.

W. H. H. H.
ATTORNEY GENERAL

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND
PALAEONTOLOGICAL INTEREST BILL, 1954.

Clauses of the Bill.	Remarks.
Long Title.	Cf. Uganda Ordinance 2 of 1954.
1	Short title.
2	"authority" Cf. the interpretation of the same term in Ordinance 27 of 1927 (Kenya).
	"maintain" and "maintenance" - do -
	"monument" is new.
	"object of archaeological or palaeontological interest" is an amplification of the definition in the Uganda Ordinance 2 of 1954.
	"owner" see Section 2 of Kenya Ordinance 27 of 1927.
5 (1)	Cf. Section 5 (1) of the Uganda Ordinance 2 of 1954.
(2)	are new and assigned to give effect to the proposals of the Director of the British Museum contained in his letter of the 51st August, 1954, to the Secretary of State.
(3)	
(4)	Cf. Section 5 (2) of the Uganda Ordinance 2 of 1954.
4	Cf. Section 4 of the Uganda Ordinance 2 of 1954.
5	New but cf. Sections 5 and 6 of the Uganda Ordinance 2 of 1954 and Secretary of State's telegram No. 227 of 25th September, 1954.
NOT	
6	Cf. Section 5 of Kenya Ordinance 27 of 1927. Sub-clause (5) is new.
7	Cf. Section 4 of Kenya Ordinance 27 of 1927.
8	" " 5 -do-
9	" " 6 -do-
10	" " 7 -do-
11	" " 8 -do-
12	" " 9 -do-
13	" " 10 -do-
14	" " 11 -do-
15	" " 12 -do-
16	" " 13 -do-

Clauses of
the Bill.

Remarks.

17	Cf. Section 14 of Kenya Ordinance 27 of 1927.
18	New. Power to permit the excavation or removal within the Colony of a monument.
19	New. The proviso to sub-clause (4) is based on Kenya legislation governing the export of game trophies. Cf. Ordinance 83 of 1955, Section 5.
20	New.
21	Section 16 of Kenya Ordinance 27 of 1927.
22	Section 17 -do-
23	Section 18 -do-
24	Section 19 -do-
25	Repeal.
Schedules.	New.

COPY OF THE BILL
SHOWING IN RED INK ALL DEVIATIONS FROM THE ANCIENT MONUMENTS
PRESERVATION ORDINANCE, 1927, (KENYA) UPON
WHICH THE BILL IS BASED.

COLONY AND PROTECTORATE OF KENYA



▲ BILL TO PROVIDE FOR THE PRESERVATION
OF OBJECTS OF ARCHAEOLOGICAL AND
PALAEOLOGICAL INTEREST

11-001
5.321

156-750 C.C.-01034

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

A Bill to Provide for the Preservation of Objects of Archaeological and Palaeontological Interest.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Preservation of Objects of Archaeological and Palaeontological Interest Ordinance, 1934. Short title

2. In this Ordinance, unless the context otherwise requires— Definitions.

"authority" includes all Provincial Commissioners, officers in charge of districts not included in any province and any person or body of persons authorized by the Governor to perform the duties of an authority under this Ordinance;

"maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a monument, and the doing of any act which may be necessary for the purpose of maintaining a monument or of securing convenient access thereto;

"monument" means—

(a) any object of archaeological or palaeontological interest, and

(b) any area of land in which any such object is believed to exist,

which the Governor has by notice in the Gazette declared under section 5 to be a monument;

"object of archaeological or palaeontological interest" means any structure, erection, memorial, temple, cairn, place of interest, pit-dwelling, trench, fortification, irrigation work, tunnel, excavation, cave, rock, rock drawing, painting, or sculpture, inscription, monument, or any remains thereof, fossil remains of man or animals or plants or any tool or implement

aining such fossil remains thereof, or any object (or any remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, historic or scientific interest, and includes

- (a) the site on which such object of archaeological or palaeontological interest was discovered or exists;
- (b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and
- (c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest.

owner includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument and the successor in title of any such owner and the successor in office of any such agent or trustee.

Provided that nothing in this Ordinance shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

8. (1) Unless authorized by a permit issued by the Colonial Secretary, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in the Form A set out in the Schedule hereto.

(2) The Colonial Secretary shall, before issuing a permit under this section, satisfy himself that the applicant is competent both by training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may, in his discretion, require to be satisfied that the applicant has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) In every permit issued under this section there shall be implied an undertaking on the part of the permit-holder that he, or the institution which he represents, will, within a period of two years after the completion of the excavation or excavations authorized by the permit or within such longer period as the Colonial Secretary may in writing approve, produce an adequate scientific report or publication on the results of the exploration and/or excavation, as the case may be, and will deposit with the Governor two copies of such report or publication.

Prohibition of certain acts unless authorized by permit

44/2/1

(4) The Colonial Secretary may, at any time, without assigning any reason, revoke a permit given under this section.

4. A permit given under the preceding section may specify, in regard to the acts which it authorizes, such limitations and conditions as the Colonial Secretary may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorize excavation for and its removal to a place within the Colony subject to such limitations and conditions as to the Colonial Secretary shall seem fit.

A permit may specify limitations and conditions.

5. (1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the district officer in charge of the district, and to the Colonial Secretary.

Discoverer of any object to inform authorities.

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating the precise site and the circumstances of the discovery to the district officer in charge of the district, and shall, if so instructed by such district officer, deliver such object to such district officer.

(3) The district officer shall forthwith notify the Colonial Secretary of such discovery.

notice under the provisions of this section

(4) Any person who fails to comply with the provisions of sub-section (1) or sub-section (2) of this section, as the case may be, shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

6. (1) The Governor may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Ordinance. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Colonial Secretary within one month from the date of the publication of the notice.

Power to declare objects of interest

(2) A copy of every notice published under sub-section (1) of this section shall forthwith be posted in a conspicuous place on or near the object or on the area to which it relates.

2
taining such fossil remains thereof, or any object (or any remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, historic or of scientific interest, and includes—

- (a) the site on which such object of archaeological or palaeontological interest was discovered or exists;
- (b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and
- (c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest.

owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee.

Provided that nothing in this Ordinance shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee—

3. (1) Unless authorized by a permit issued by the Colonial Secretary, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in the Form A set out in the Schedule hereto.

(2) The Colonial Secretary shall, before issuing a permit under this section, satisfy himself that the applicant is competent both by training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may, in his discretion, require to be satisfied that the applicant has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) In every permit issued under this section there shall be implied an undertaking on the part of the permit-holder that he, or the institution which he represents, will, within a period of two years after the completion of the exploration or excavation authorized by the permit or within such longer period as the Colonial Secretary may in writing approve, prepare an adequate scientific report or publication on the results of the exploration and/or excavation, as the case may be, and will deposit with the Governor two copies of such report or publication.

Prohibition of certain acts unless authorized by permit

4/25/01

3
(4) The Colonial Secretary may, at any time, without assigning any reason, revoke a permit given under this section.

4. A permit given under the preceding section may specify, in regard to the acts which it authorizes, such limitations and conditions as the Colonial Secretary may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorize excavation for and its removal to a place within the Colony subject to such limitations and conditions as to the Colonial Secretary shall seem fit.

A permit may specify limitations and conditions.

5. (1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the district officer in charge of the district, and to the Colonial Secretary.

Discoverer of any object to inform authorities.

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating the precise site and the circumstances of the discovery to the district officer in charge of the district, and shall, if so instructed by such district officer, deliver such object to such district officer.

(3) The district officer shall forthwith notify the Colonial Secretary of ~~such~~ discovery, in respect of which he has received notice under the provisions of this section.

(4) Any person who fails to comply with the provisions of sub-section (1) or sub-section (2) of this section, as the case may be, shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

6. (1) The Governor may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Ordinance. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Colonial Secretary within one month from the date of the publication of the notice.

Notice to be published in the Gazette.

(2) A copy of every notice published under sub-section (1) of this section shall forthwith be posted in a conspicuous place on or near the object or on the area to which it relates.

4/25/01

which he has received notice under the provisions of this section.

3) On the expiration of the said period of one month, the Governor, after considering the objections, if any, shall confirm or withdraw the notice.

(4) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the object of archaeological or palaeontological interest or area to which it relates is a monument within the meaning of this Ordinance.

1947. No. 17 of 1947. (5) Any monument or antiquity declared under the provisions of the Ancient Monuments Preservation Ordinance, 1947, to be a protected monument or an antiquity, as the case may be, shall be deemed to be a monument within the meaning of this Ordinance.

Acquisition of rights in or guardianship over monuments.

7. (1) An authority may, with the sanction of the Governor, purchase or take a lease of any monument.

(2) An authority may, with the like sanction, accept a gift or bequest of any monument.

(3) The owner of any monument may by written instrument constitute an authority the guardian of such monument, and an authority may, with the sanction of the Governor, accept such guardianship.

(4) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the owner shall, except as expressly provided in this Ordinance, have the same estate, right, title and interest in and to such monument as if the authority had not been constituted guardian thereof.

(5) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the provisions of this Ordinance relating to agreements executed under section 8 shall apply to the written instrument executed under the said sub-section.

(6) Where a monument is without an owner, an authority may, with the sanction of the Governor, assume the guardianship of such monument.

Preservation of monuments by agreement.

8. (1) An authority may, with the sanction of the Governor, enter into a written agreement with the owner of any monument for the protection or preservation of such monument.

(2) An agreement under this section may provide for all or any of the following matters:

(a) The maintenance of the monument;

(b) the custody of the monument and the duties of any person who may be employed in connection therewith;

(c) the restrictions of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the authority to inspect or to maintain the monument;

(e) the notice to be given to the authority in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the authority to purchase such land or any specified portion of such land at its market value;

(f) the payment of any expenses incurred by the owner or by the authority in connection with the protection or preservation of the monument;

(g) the procedure relating to the settlement of any dispute arising out of the agreement;

(h) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the authority; and

(i) the removal subject to the provisions of this Ordinance of the monument to a place of safe custody.

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Governor and with the consent of the owner.

(4) Subject to the sanction of the Governor, an authority may terminate an agreement under this section on giving six months' notice in writing to the owner.

(5) The owner may terminate the agreement under this section on giving six months' notice to the authority.

(6) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates through or under a party by whom or on whose behalf the agreement was executed.

(7) Any rights acquired by the authority in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

K 4

K 55

Owners under disability.

K. 2.6

9. If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by the last preceding section.

Enforcement of agreement.

K. 2.7

10. (1) If an authority apprehends that the owner or occupier of a monument intends to build on or near the site of such monument in contravention of the terms of an agreement for its protection or preservation under section 8 of this Ordinance, the authority may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the protection, preservation or maintenance of a monument under section 8 refuses to do any act which is in the opinion of the authority necessary to such protection, preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the authority, the authority may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner.

(3) A person aggrieved by an order made under this section may appeal to the Governor, who may cancel or modify it and whose decision shall be final.

Compulsory purchase of monuments.

K. 2.5

11. (1) If the Governor apprehends that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may proceed to acquire such monument under the provisions of the Indian Land Acquisition Act, 1904, as applied to the Colony, as if the preservation of such monument were a public purpose within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) of this section shall not be exercised in respect—

- (a) any monument which, or any part of which, is periodically used for religious worship or observances;
- (b) any monument which is the subject of a subsisting agreement executed under section 8 of this Ordinance.

(3) In any case other than the cases referred to in the last preceding sub-section the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 8 has

failed, within such reasonable period as the Governor may fix in this behalf, to enter into an agreement under the said section or has terminated or given notice of his intention to terminate such an agreement.

Maintenance of monuments.

K. 2.9

12. (1) Every monument in respect of which an authority has acquired any of the rights mentioned in section 7 or which has been compulsorily purchased under section 11 shall be maintained by the authority by which such rights were acquired or by such authority as may be appointed in this behalf by the Governor, as the case may be.

(2) When an authority has accepted the guardianship of a monument under section 7, such authority shall, for the purpose of maintaining such monument have access to the monument at all reasonable times for the purpose of inspection and for the purpose of bringing such materials and doing such acts as the authority may consider necessary for the maintenance or preservation thereof.

Provided that the right of access conferred on an authority under this sub-section shall be deemed to extend to the duly authorized agents, inspectors and workmen of such authority.

Voluntary contributions.

K. 2.10

13. An authority may receive voluntary contributions towards the cost of maintaining a monument and may, subject to the approval of the Governor, give orders as to the management and application of any funds so received :

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of places of worship, etc., from misce-pollution or desecration.

K. 2.11

14. (1) A place of worship or tomb maintained by an authority under this Ordinance shall not be used for any purpose inconsistent with its character.

(2) When an authority has, under section 7, purchased or taken a lease of any monument, or has accepted a gift or bequest thereof, or has accepted the guardianship thereof, and such monument or any part thereof is periodically used for religious worship or observances by any community, the authority shall make due provision for the protection of such monument or such part thereof from pollution or desecration—

- (a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument

or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used; or

(b) by taking such other action as the authority may think necessary in this behalf.

Relinquishment of rights in a monument.

15. Subject to the sanction of the Governor, an authority may—

(a) where rights have been acquired by such authority in respect of a monument under this Ordinance by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument, if such rights had not been acquired; or

(b) relinquish any guardianship which such authority has accepted under this Ordinance.

Right of access by public to monuments.

16. Subject to such rules as may be made by the Governor in Council under section 24, the public shall have a right of access to any monument maintained by an authority under this Ordinance.

Offences

17. Save as is provided in this Ordinance, any person who destroys, removes, injures, alters, defaces or imperils a monument or any object of archaeological or palaeontological interest, and any owner or occupier who contravenes an order made under sub-section (1) of section 10, and any person who contravenes any of the terms and conditions imposed in a permit granted under this Ordinance, and any person who contravenes the provisions of sub-section (1) or (3) of section 19 or sub-section (1) of section 19 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Permit to excavate, remove or transport

18. Notwithstanding anything contained in this Ordinance, where the Colonial Secretary is of the opinion that the excavation or removal of any monument is desirable in the interests of archaeology, science, history or art, he may grant a permit to any person to excavate and/or remove in a place within the Colony any such monument, or any part thereof, on such terms and subject to such conditions as he may think fit. Such permit shall, as far as is practicable, be in the Form B set out in the Schedule hereto.

19. (1) No monument or object of archaeological or palaeontological interest may be removed from the Colony unless such removal has been authorized by a permit issued by the Colonial Secretary. Such permit shall, so far as is practicable, be in the Form C set out in the Schedule hereto.

Permit to remove any object or monument from Colony

(2) The Colonial Secretary may issue a permit subject to such terms and conditions, which may include the surrender to the Crown of a portion of the monument or object of archaeological or palaeontological interest, as he may deem fit, or he may, without assigning the reason, refuse to issue a permit.

(3) Where under the provisions of the preceding subsection any portion of a monument or of an object of archaeological or palaeontological interest has been surrendered to the Crown, the Governor may deposit the portion so surrendered in any museum or similar institution in the Colony or elsewhere.

(4) An application for a permit under this section shall be made in writing to the Colonial Secretary at least thirty days before the date of the proposed removal and shall contain a full description of the monument or object of archaeological or palaeontological interest in respect of which the application is made. Before issuing a permit under this section, the Colonial Secretary may cause an inspection to be made and may cause the monument or object of archaeological or palaeontological interest to be sealed.

Provided that no such permit shall authorize the removal from the Colony of any monument or object of archaeological or palaeontological interest except through a Customs port of entry and such permit shall be surrendered to a Customs officer before export is effected. A customs officer shall detain any monument or object of archaeological or palaeontological interest until such permit shall have been surrendered. Any monument or object of archaeological or palaeontological interest may be confiscated and disposed of as the Governor may direct if such permit is not produced and surrendered within a reasonable period of time.

C. K. 10/12/32 22

20. (1) A district officer in charge of a district, and any other person specially authorized by the Governor, may, at any time, inspect work being done in connection with objects of

archaeological or palaeontological interest or a monument, and may order cessation of such work pending further orders from the Governor. Such district officer or such other person shall forthwith report the action he has taken to the Colonial Secretary, and shall at the same time furnish to the Colonial Secretary an inspection report.

(2) Any person who fails to comply with an order issued under this section shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Assessment of
market value

K 216

21. The market value of any property which the Governor is empowered to purchase at such value under this Ordinance shall, where any dispute arises touching the amount of such market value, be ascertained in the manner provided by the Indian Land Acquisition Act, 1894, sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable.

Exemption
from stamp
duty

K 217

22. Any instrument executed under section 7 or section 8 of this Ordinance shall be exempt from stamp duty.

Protection of
public servants
acting under
the Ordinance

K 218

23. No suit for compensation and no criminal proceedings shall lie against any public servant or authority in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Ordinance.

Power to
make rules

K 219

24. The Governor in Council may make rules for carrying out any of the purposes of this Ordinance.

Repeal
No. 17 of 1927
No. 35 of 1932

25. The Ancient Monuments Preservation Ordinance, 1927, as amended by the Ancient Monuments Preservation (Amendment) Ordinance, 1932, is hereby repealed.

SCHEDULE

FORM A.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST ORDINANCE, 1934.

(Sections 3 and 4.)

PERMIT TO SEARCH FOR AND/OR TO REMOVE WITHIN THE COLONY OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST.

Subject to the limitations and conditions set out hereunder, of is hereby authorized to search in the Colony either by means of excavation or surface operations for objects of archaeological and palaeontological interest and to remove such objects from the site on which they are found to

Colonial Secretary.

Nairobi,

This day of, 19...

Conditions:

FORM B.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934

(Section 18.)

PERMIT TO EXCAVATE OR REMOVE A MONUMENT
WITHIN THE COLONY.

Subject to the terms and conditions set out hereunder,

..... of

is hereby granted permission to excavate and/or to remove to

..... the following monument:

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions:

FORM C.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Section 19.)

PERMIT TO REMOVE FROM THE COLONY AN OBJECT OF
ARCHAEOLOGICAL AND PALAEOLOGICAL
INTEREST OR A MONUMENT.

Subject to the terms and conditions set out hereunder,

..... of

is hereby authorized to remove from the Colony by air/ship
through the port of the following ob-
ject(s) of archaeological and palaeontological interest/monu-
ment(s) to

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions:

OBJECTS AND REASONS

The object of this Bill is to consolidate, amplify and to improve the law relating to the protection, preservation and treatment of archaeological and palaeontological sites and objects in which this Colony has been proved to be exceptionally rich.

The Bill controls excavation by any person, makes provision to secure the claims of the individual worker and the claims of the Colony to a share of the finds, and also controls the export of finds.

The Bill has been scrutinized by the Archaeological Joint Committee of the British Museum and has been endorsed by that body.

No expenditure of public moneys will be involved if the provisions of this Bill become law.

18

REPORT
OF
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE
PROVISIONS OF A BILL TO PROVIDE FOR THE
PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL
AND PALAEOLOGICAL INTEREST.

Your Excellency,

We, the members of the Select Committee appointed to consider and report upon the provisions of the above Bill, have the honor to recommend that the Bill be amended in the following respects:

1. That Clause 3 of the Bill be amended by deleting the words "historic or of scientific" which occur in the ninth line of the definition of "object of archaeological or palaeontological interest" and substituting therefor the words "or historic".

2. That sub-clause (2) of Clause 4 of the Bill be amended by substituting the word "or" for the word "and" which occurs in the third line of the sub-clause.

3. (1) That sub-clause (1) of Clause 5 of the Bill be amended -

(a) by deleting the words "and to the Colonial Secretary." which occur in the last line of the sub-clause; and

(b) by inserting a full-stop after the word "district" which occurs in the same line.

(2) That sub-clause (3) of Clause 5 of the Bill be deleted and the following be substituted therefor -

"(3) The district officer shall forthwith notify the Colonial Secretary of any discovery in respect of which he has received notice under the provisions of this section."

That sub-clause (2) of Clause 6 of the Bill be amended by inserting the words "by an authority" between the word "posted" and the word "in" which occur in the second line of the sub-clause.

We have the honour to be,
Your Excellency's most obedient servants,

- SD. W. L. ...
- SD. H. L. SIKES
- SD. S.H. LA FORTAINE
- SD. G. BURNS
- SD. A.C. TANNHILL
- SD. J.B. ...

Nairobi,
24th October, 1934.

THE ARCHAEOLOGICAL JOINT COMMITTEE

FOR ORGANIZING THE CONTROL OF ANTIQUITIES IN THE NEAR AND MIDDLE EAST.

CONSTITUENT BODIES: The British Academy; The Society of Antiquaries; The Society of Antiquaries of Scotland; The Society for the Promotion of Hellenic Studies; The Society for the Promotion of the Roman Studies; The Royal Institute of British Architects; The Royal Anthropological Institute; The Royal Asiatic Society; The Royal Numismatic Society; The British School at Athens; The British School at Jerusalem; The Palestine Exploration Fund; The Egypt Exploration Society; The Egyptian Research Account; The Byzantine Research Fund.

CHAIRMAN

SIR FREDERIC G. KENYON, K.C.B., F.B.A.

HON. SECRETARY

MR. GEORGE F. HILL, F.R.A.

BRITISH MUSEUM,

LONDON, W.C.1.

September 29th., 1934.

Sir,

With reference to Mr. Freeston's letter no. 23255/34 of August 25th. last, I have the honour to inform you that a meeting of this Committee held on September 26th. considered the draft Bill for the preservation of objects of archaeological and palaeontological interest in the Colony of Kenya.

This meeting was attended by Mr. Freeston himself, who took full notes of the proceedings, and will be able to represent to the Secretary of State the opinions of the Committee.

I have the honour to be,

Sir,

Your obedient Servant,

B. J. Gadd.

Hon. Secy.

The Under Secretary
of State,
Colonial Office.

B.W.A.

12
20
38

Arrest 25/9 atom

Case reverts Sp.
25/9/34 W.N.

Dept. Tel.

Gov. Nairn.

No. 227 My tel 18 Sept 22

Archaeological Joint Committee
entire views expressed in paras
2 and 3 of letter from
Director of British Museum enclosed
in my des. 4th Sept 719. In
para. 3, third line from end,
for "permanent" read "indefinite".
Paragraph from Committee says
no reason for discontinuance in
favor of foreigners, and
Director agrees. Clause 5(2)
of Bill last two lines should
read "prejudicially the sale and
circumstances of the discovery, and
deliver it if so instructed to
the District Officer in charge of
the district"

Office Secretary of this Council as
accordingly. Despatch follows.

22255/10

Air Mail

14

25 SEP 1934

Dft.
Attenta 25/9/34

Gov.
Kerry
No. 788

S:

I have to
confirm the date of my letter
No. 227 of the 25th of August, in the
following terms:

~~The Department for~~
Committee The enquiry raised
in the second paragraph of your
letter No. 571 of the 25th of July is
met by the advice tendered by the
Director of the British Museum in
his letter of the 31st of August. I
enclose for purposes of comparison
a summary of the existing Colonial
legislation on the subject; you
will recognize however that many

(11)

of the proposed amendments there are very
out of date, and should not be accepted
as models for new legislation.

3. The Interdepartmental Joint Committee
assume that the duty of allocating the
antiquities objects found between the
finder and the National and local
museums will devolve upon the
Colonial Secretary, in virtue of the powers
proposed to be conferred upon him under
Clause 19 of the draft Bill. In
exercising this discretion the Col. Sec. will
no doubt be guided, in suitable cases,
by the advice of the leader of the
expedition, and by any representations
which may be received from the
British Museum or ^{other} learned bodies
interested in the expedition.

4. In conclusion, the Committee desire
me to express the great inconvenience
which is caused to the ^{recipients} repositories of
such objects if they are not accompanied,
at the time of deposit, with full particulars

of the nature, provenance, etc. It
no doubt be found possible to include
among the conditions of the permit for
which provision is made in Clause 14
of the Bill a stipulation that
objects deposited with a museum
(whether local or National) shall be
accompanied with a fully descriptive
inventory.

(Sgd.) P. OUNLIFFE-LISTER

THE EAST AFRICAN ARCHAEOLOGICAL EXPEDITION
Fourth Season (1934-35)

Leader: L. S. B. LEAKEY, M.A., Ph.D., F.S.A.

Address in England:
St. John's College,
Cambridge

13A. 41
Address in E. Africa:
c/o Standard Bank of S. Africa,
Nairobi, Kenya

Sept 23. 34

Dear Mr Cliff

No 13
Thank you for your
letter with news of what

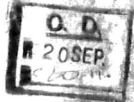
the Kenya field propose to do
from it I take it all will be ok
now Professor Beswille visit etc
to end of November etc

Yours sincerely
L. S. B. Leakey

22859/210

Frederick
Mr.
Mr.

Kenya
W



- Mr. Parkinson
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shackburgh
- Permt. U.S. of S.
- Party U.S. of S.
- Secretary of State.

21 SEP 1934

DRAFT.

D. L.S.B. Leachy
 M.A. Ph.D. F.S.A.
 [St. John's College
 Cambridge]

Dear Dr. Leachy

The despatch forwarded
 to Kenya your letter of
 Sept. 2nd asked the Governor
 to state "whether there is a
 reasonable probability that the
 Expedition will find it
 possible to adhere to its
 present programme." The
 reply, just received,
 says "It is hoped that
 enabling legislation will
 be passed in October
 session."

a la

FURTHER ACTION.

Committee Legislative
 Committee meets on Oct
 14th We shall hope

any further criticisms of the draft
Ordinance that may emerge
from the meeting of the Joint
Archaeological Joint Committee on
Sept. 26th & under

Yours sincerely

(Signed) D. A. L. CLIFFE

for ~~(Signed)~~ L. B. FREESTON

C. O.

Mr. Jackson 12/9 aton

23255/20

Mr.

Keay

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S. 18

Parly. U.S. of S.

Secretary of State.

DRAFT. Tel

Yours sincerely

No. 224 You tel. 17 Sept. 206.

Joint Archaeological Joint
Committee meets 26th Sept.
Comments will be forwarded
by telegraph or air mail.

FURTHER ACTION.

COMPTON RECEIVED TRATIC

RECEIVED
17 SEP 1934
C. O. REGY

11 44

Telegram from the Deputy Governor Kenya to the Secretary of State for the Colonies.

Dated 17th September. Received at 4-32pm 17th September 1934.

No 206. Your despatch No 719. It is hoped that enabling legislation will be passed in October session.

KENYA

No. 1145


 10
 45
 GOVERNMENT HOUSE
 NAIROBI
 KENYA

RECEIVED

114 SEP 1934

G. O. REGY

SEPTEMBER, 1934.

Sir,

No/

With reference to my despatch No. 371 of 25th July, 1934, on the subject of a Draft Bill for the Preservation of Objects of Archaeological and Palaeontological interest, I have the honour to inform you that because under present legislation certain proposed expeditions cannot be adequately controlled it is considered advisable that the draft Bill, if approved, should be placed before the next session of Legislative Council in October.

I should be glad if early consideration could be given to the draft Bill and to the question raised in paragraph 2 of my despatch under reference.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER GENERAL,
GOVERNOR.

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

C. G.

207250/30

Mr. Jackson 3/2/34

Kenny

Approved by No 11

Mr.

Mr. Parkinson

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State

RECORDED
R 3-SEP
14

4 SEP 1934

S-

DRAFT.

Kenny

No 1719

for

I have etc. to add.

No 371

the rec. of V. help. 2 of the
25th July, and to transmit
to you a copy of correspondence
with the Director of the British
Museum on the subject of the
draft Bill to provide for
the preservation of objects of
archaeological or palaeontological
interest.

~~to~~
~~to~~
~~to~~
~~to~~
(copy of)

FURTHER ACTION.

2. You will receive
from Sir George Hill, letter
of the 25th August that
the necessary reference to

The Joint Mechanical Council
will present occasion some delay
in arriving at a considered
judgment on the Bill. The

Director expresses the hope that steps may
be taken, possibly by means of
an interim amending Ordinance

may be submitted to the Hong-

Legislature in time to enable

the East African Mechanical
Expedition to carry out its

programme involving the
exploration of certain protected
sites in the latter part of this
year.

3. This suggestion is
elaborated in a letter (of which
a copy is enclosed) which has
been received from Dr L. S. B.
Leakey, the leader of the Expedition.

I shall be glad if, after considering
the possibilities, you will ^{inform} ~~notify~~ me

C. D.

Mr.

Mr.

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Stuckburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

By telegram whether there is a reasonable
probability that the Expedition will
find it possible to adhere to its
present programme.

(200) F. CUNLIFFE-LISTER.

DRAFT.

FURTHER ACTION.

25/10/34
S. J. Davis (Collector)
Cambridge 48
Sept 23/34

Dear Mr. Freeston

After I received your letter saying that you had referred the new draft Bill to the British Museum I had a telegram from the Director asking me to come over here, which I did.

2. I understand that he cannot make any comment upon the Bill, or return it to the Colonial Office until it has been discussed by a Committee of the Museum which deals with all such matters.

I gathered that this committee would at its meeting under about the middle of October.

3. I then discussed with him the possibility of the proposed union because of Professor 1-month visit, & he suggested that I should see whether it would not be possible to get some small amending clause passed by the Kenya Legislature pending the passing of the new Bill. He also suggested that I should get in touch with you again, & as you remember I came in & saw you on Monday afternoon.

4. The situation which is causing me very considerable worry as leader of the East African Expedition is as follows

copy to Kenya (4)

When the Royal Society made the grant for next
 year's Expedition they expressed the hope that
 I would try to arrange for one of England's leading
 geologists to come to Karon, Kanyera
 with me, to help elucidate some of the problems there.

5 After much negotiation I was able to get
 Professor R.G.H. Boswell F.R.S. the Professor of the Royal
 School of Mines, & he has obtained permission from
 the School of Mines from the ^{school} middle of November till the end of February. He has
 moreover booked to go by air on November 21st.

6 The Royal Society are particularly keen that he
 shall go & have in fact arranged to send him
 as "officially sent by the Royal Society".

7 As the existing Ancient Monuments Ordinance of
 Kenya stands however, it is illegal for any
 excavations to be carried out at a protected site
 (the whole of the Karon - Kanyera area is protected ^{in Kenya Island} & so
 is ^{in Kenya Island} Kenia Island). The new ordinance (includes
 clauses which will enable the Governor to
 grant licences to excavate, but this ordinance
 will not I fear have become law by the
 time we will begin to work.

8 Professor Russell should arrive about 25th of 50
November, & I'd like to be there at least 10 days
before he gets away, ready to do some preliminary
preparatory work as his time is to be so limited

9 If I alone were concerned I would not
be worrying, as I could very well do other
work in East Africa first & leave the Kanam
Reserve area until the new Bill had been
passed, but Professor Russell cannot get
leave of absence from his duties later in the year
to take a course to give them which he cannot
delegate to his junior lecturers.

Instead of all this I wonder whether it would not be
possible to get a small amending clause
passed in the Legislative Council early in November.
Such an amendment would nearly be ~~going~~ making
possible something that the new Bill is designed to make
frustrate.

10 I suggest tentatively that some such clause
of the following type inserted after Section 14 of the
present existing ordinance would serve the purpose.
14a Provided that the Governor may at his discretion
grant authority in writing to the accredited representatives
or representatives of Council bodies to enter upon such

monument or antiquity or protected area, and
to conduct scientific investigations and
excavations thereon within the limits of a period
to be fixed by him."

12 I should be extremely grateful if you
can do anything in this matter, and as soon
as possible, as ~~soon~~ until something of
the sort has been done, or at least until I know
that there is a prospect of something of the sort being
done. I am in a very difficult position.

13 It is I think, hardly necessary for me to
emphasize that the Royal Society is the learned
body in the country, consider that the further
elucidation of the problems of the Karan &
Kenya was one of the highest importance, although
perhaps I may point out that the reasons why
the Royal Society, the British Association, the
Geographical Society, other bodies made approaches
to the Kenya Government why that their idea in
Kenya should be frustrated, was because they
urgently hoped that further scientific work would
be carried out there by my expedition.
Yours sincerely
L.S. Searcy

As from

St. John's College,
Cambridge,

Sept. 8. 1934.

Dear Mr. Freeston,

After I received your letter saying that you had referred the new draft Bill to the British Museum I had a telegram from the Director asking me to come and see him, which I did.

2. I understand that he cannot make any comments upon the Bill, or return it to the Colonial Office until it has been discussed by a Committee of the Museum which deals with all such matters, and I gathered that the Committee would not be meeting until about the middle of October.

3. I then discussed with him the difficulty which the involved us in because of Professor Beswell's visit, and he suggested that I should see whether it would not be possible to get some small amending clause passed by the Kenya Legislature pending the passing of the new Bill. He also suggested that I should get in touch with you again, and as you remember I came in and saw you on Thursday afternoon.

4. The situation which is causing me very considerable worry as Leader of the East African Expedition is as follows.

When the Royal Society made the grant for next season's Expedition they expressed the hope that I would try to arrange for one of England's leading geologists to come to Karen and Kangera, with me, to help elucidate some of the problems there.

5. After much negotiation I was able to get Professor P.G.H. Boswell, F.R.S., the Professor of the Royal School of Mines, and he has obtained permission to be absent from the School of Mines from the middle of November till about the end of February. He has moreover booked to go by air on November 21st.

6. The Royal Society are particularly keen that he should go and have in fact arranged to send him as "officially sent by the Royal Society".

7. As the existing Ancient Monuments Ordinance of Kenya stands however, it is illegal for any excavations to be carried out at a protected site (the whole of the Kapon - Kangera area is protected and so is Rasinga Island). The new Ordinance I believe includes clauses which will enable the Governor to grant licences to excavate, but that ordinance will not I fear have become law by the time we wish to get to work.

8. Professor Boswell should arrive about 26th of November, and I'd like to be there at least 10 days before to get camp ready and do some preliminary preparatory work as his time is to be so limited.

9. If I alone were concerned I would not be worrying as I could very well do other work in East Africa first and leave the ^{Keron} Karon-Kangera area until the new Bill had been passed, but Professor Boswell cannot get leave of absence from his duties later in the year and he has a course to give then which he cannot delegate to his junior lecturers.

10. In view of all this I wonder whether it would not be possible to get a small amending clause passed in the Legislative Council early in November.

Such an amendment would merely be making possible

something that the new Bill is designed to make

possible.

11. I suggest tentatively that some such clause of the following to be inserted after section 14 of the present existing ordinance would serve the purpose.

14.a. "Provided that the Governor may at his discretion grant authority in writing to the accredited representative or representatives of learned bodies to enter upon such monument or antiquity or protected area, and to conduct scientific investigations and excavations thereon within the limits of a period to be fixed by him".

12. I shall be extremely grateful if you can do anything in this matter, and as soon as possible, as until something of this sort has been done, or at least until I know that there is a prospect of something of this sort being done I am in a very difficult position.

13. It is I think hardly necessary for me to emphasise that the Royal Society and other learned bodies in this country consider that the further elucidation of the problems of the Karon and Kangera area of the highest importance, although perhaps I may point out that the reasons why the Royal Society, the British Association, the Geological Society and other bodies made representations to the Kenya Government asking that these areas in Kenya should be protected, were because they urgently hoped that further scientific work would be carried out there by my Expedition.

Yours, etc,

(sgd) L.S.B. Leakey.

5. After much negotiation I was able to get Professor P.O.H. Boswell, F.R.S., the Professor of the Royal School of Mines, and he has obtained permission to be absent from the School of Mines from the middle of November till about the end of February. He has moreover booked to go by air on November 21st.

6. The Royal Society are particularly keen that he should go and have in fact arranged to send him as "officially sent by the Royal Society".

7. As the existing Ancient Monuments Ordinance of Kenya stands however, it is illegal for any excavations to be carried out at a protected site (the whole of the Karon - Kangeru area is protected and so is Rasings Island). The new Ordinance I believe includes clauses which will enable the Governor to grant licences to excavate, but that ordinance will not I fear have become law by the time we wish to get to work.

8. Professor Boswell should arrive about 26th of November, and I'd like to be there at least 10 days before to get camp ready and do some preliminary preparatory work as his time is to be so limited.

9. If I alone were concerned I would not be worrying as I could very well do other work in East Africa first and leave the ^{Karon} Karon-Kangeru area until the new Bill had been passed, but Professor Boswell cannot get leave of absence from his duties later in the year and he has a course to give then which he cannot delegate to his junior lecturers.

10. In view of all this I wonder whether it would not be possible to get a small amending clause passed in the Legislative Council early in November. Such an amendment would merely be making possible something that the new Bill is designed to make

possible.

11. I suggest tentatively that some such clause of the following to be inserted after section 14 of the present existing ordinance would serve the purpose.

14.a. "Provided that the Governor may at his discretion grant authority in writing to the accredited representative or representatives of learned bodies to enter upon such monument or antiquity or protected area, and to conduct scientific investigations and excavations thereon within the limits of a period to be fixed by him".

12. I shall be extremely grateful if you can do anything in this matter, and as soon as possible, as until something of this sort has been done, or at least until I know that there is a prospect of something of this sort being done I am in a very difficult position.

13. It is I think hardly necessary for me to emphasise that the Royal Society and other learned bodies in this country consider that the further elucidation of the problems of the Kerou and Kerou-Kangera area of the highest importance, although perhaps I may point out that the reasons why the Royal Society, the British Association, the Geological Society and other bodies made representations to the Kenya Government asking that these areas in Kenya should be protected, were because they urgently hoped that further scientific work would be carried out there by my Expedition.

Yours, etc,

(sgd) L.S.B. Leakey.

As from

St. John's College,

Cambridge,

Sept. 2. 1954.

Dear Mr. Freeston,

After I received your letter saying that you had referred the new draft Bill to the British Museum I had a telegram from the Director asking me to come and see him, which I did.

2. I understand that he cannot make any comments upon the Bill, or return it to the Colonial Office until it has been discussed by a Committee of the Museum which deals with all such matters, and I gathered that the Committee would not be meeting until about the middle of October.

3. I then discussed with him the difficulty which this involved us in because of Professor Boswell's visit, and he suggested that I should see whether it would not be possible to get some small amending clause passed by the Kenya Legislature pending the passing of the new Bill. He also suggested that I should get in touch with you again, and as you remember I came in and saw you on Thursday afternoon.

4. The situation which is causing me very considerable worry as Leader of the East African Expedition is as follows.

When the Royal Society made the grant for next season's Expedition they expressed the hope that I should try to arrange for one of England's leading geologists to come to Kaseso and Kangeru, with me, to help elucidate some of the problems there.

5. After much negotiation I was able to get Professor F.O.H. Boswell, F.R.S., the Professor of the Royal School of Mines, and he has obtained permission to be absent from the School of Mines from the middle of November till about the end of February. He has moreover booked to go by air on November 21st.
6. The Royal Society are particularly keen that he should go and have in fact arranged to send him as "officially sent by the Royal Society".
7. As the existing ancient monuments ordinance of Kenya stands however, it is illegal for any excavations to be carried out at a protected site (the whole of the Karon - Kangeru area is protected and so is Masigi Island). The new Ordinance I believe includes clauses which will enable the Governor to grant licences to excavate, but that ordinance will not I fear have become law by the time we wish to get to work.
8. Professor Boswell should arrive about 26th of November, and I'd like to be there at least 10 days before to get camp ready and do some preliminary preparatory work as his time is to be so limited.
9. If I alone were concerned I would not be worrying as I could very well do other work in East Africa first and leave the Karon-Kangeru area until the new Bill had been passed, but Professor Boswell cannot get leave of absence from his duties later in the year and he has a course to give then which he cannot delegate to his junior lecturers.
10. In view of all this I wonder whether it would not be possible to get a small amending clause passed in the Legislative Council early in November. Such an amendment would merely be making possible something that the new Bill is designed to make

possible.

11. I suggest tentatively that some such clause of the following to be inserted after section 14 of the present existing ordinance would serve the purpose.

14.a. "Provided that the Governor may at his discretion grant authority in writing to the accredited representative or representatives of learned bodies to enter upon such monument or antiquity or protected area, and to conduct scientific investigations and excavations thereon within the limits of a period to be fixed by him".

12. I shall be extremely grateful if you can do anything in this matter, and as soon as possible, as until something of this sort has been done, or at least until I know that there is a prospect of something of this sort being done I am in a very difficult position.

13. It is I think hardly necessary for me to emphasise that the Royal Society and other learned bodies in this country consider that the further elucidation of the problems of the Maron and Kungera area of the highest importance, although perhaps I may point out that the reasons why the Royal Society, the British Association, the Geological Society and other bodies made representations to the Kenya Government asking that these areas in Kenya should be protected, were because they urgently hoped that further scientific work would be carried out there by my Expedition.

Yours, etc,

(sgd) L.S.B. Leakey.

C. O.

29255/34

58

Mr. *Frederick* 1/9 p.

Keny-

Mr.

Mr.

Mr. Parkinson.

Sir G. Tomkinson

Sir C. Bottomley.

Sir J. Shuckburgh

Permt. U.S. of S.

Parly U.S. of S.

Secretary of State.

To go early in Monday

23

3 SEP 1934

Sir

DRAFT.

The Director

The Brit. Museum.

I am so to ask,
 with thanks, the rest of
 your letter of the 31st of
 August containing certain
 preliminary observations on
 the Bill prepared by the
 Govt of Kenya to
 provide for the preservation
 of objects of archaeological
 & palaeontological interest.
 The S. of S. will be
 grateful if the Bill
 may be placed upon
 the agenda for the
 for the next meeting

Copy to Kenyon (4)

FURTHER ACTION.

Review in ref to

me

[Signature]

Make copies for
and in diff.

of the Independent Joint Committee

2. A copy of your letter
under acknowledgment is, in the
reaction, being sent to the
Governor of Kenya for his
info.

(Signed) L. B. FREESTON



Tel. Museum 1070

BRITISH MUSEUM, LONDON, W.C.1

659

RECEIVED
31 AUG 1934
C. O. R.

31 August, 1934.

Sir,

I am instructed by the Trustees of the British Museum to acknowledge Mr. Freeston's letter No. 23255/34 of 25th August respecting the Bill prepared by the Government of Kenya to provide for the preservation of objects of archaeological and palaeontological interest in that Colony.

Not
1
Ans

1. The Trustees will not meet again until 13th October, but, as I understand that an early reply is required, I propose to make certain observations which I know to be in agreement with the principles to which they have adhered in similar cases. I may add that it has been usual for the Colonial Office to allow the Archaeological Joint Committee (on which the Office is actually represented by Mr. Clauson) to offer remarks on the drafting of Bills concerning Laws of Antiquities, as for instance in the cases of Iraq, Palestine and, quite recently, Cyprus. I would therefore ask permission to place the draft of the Kenya Bill before the Archaeological Joint Committee, which will probably be meeting towards the end of September.

W.P. & Kanga (G)

The Under Secretary of State,
Colonial Office.

12.

2. The provisions in the Ordinance relating to excavation and the removal from the Colony of objects found in such excavations seem to be in general accordance with the principles accepted in recent enlightened legislation. Such detailed provisions as are required in countries of the Near East are probably unnecessary in Kenya; but it is suggested that it might be advisable to insert two clauses on the following lines:-

A. The applicant for permission to explore or excavate shall satisfy the Colonial Secretary (a) that he is competent, by training and experience, to carry out an exploration or excavation in accordance with the most recent scientific methods; (b) that he has the support, financial and other, of an archaeological or scientific society or institution of repute.

B. The holder of a license to excavate, or the society or institution on whose behalf he acts, shall produce within a period of two years after the completion of his excavations (unless this period be extended by the Colonial Secretary) an adequate scientific report or publication on the results of his excavations, and shall deposit two copies of such report or publication in the Library of the Coryndon Museum.



Tota Munus 1807

BRITISH MUSEUM, LONDON, W.C.1

3. As regards the final destination of objects found, the rule generally adopted is to divide antiquities found between the excavator and the Museum of the Colony, the latter taking all that appears to be indispensable for the scientific completeness of the Museum; a division of the remainder is then made, aiming as far as possible at giving the excavator a fair share of the results. Where administered in a liberal spirit, this rule has worked very satisfactorily. But the circumstances in Kenya are peculiar. The Coryndon Museum is not sufficiently staffed or equipped (fossils, for instance, require constant watching and frequent skilled treatment) and it is situated in an earthquake zone. Unique or type specimens ought therefore to come to the National Museums in England. If necessary they could be regarded as being the property of the Coryndon Museum and only on permanent loan here. Reproductions should be provided for the Coryndon Museum at the cost of the National Museums.

4. In the case of excavations by foreigners, who can hardly be expected to sacrifice the best results of

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ANTIQUITIES AND OBJECTS OF ARCHAEOLOGICAL AND
PALAEONTOLOGICAL INTEREST

LAW IN COLONIES, ETC. AS TO DISPERSAL AND REMOVAL.

BRITISH HONDURAS

Under the Ancient Monuments Ordinance (Cap. 152 Revised Edition, 1924) all monuments, etc. found on crown land are vested in the Governor as trustee for the colony. Permits are required to search for and remove relics. The Antiquities Ordinance (No. 1 of 1929) prohibits the export of antiquities except under licence from the Governor-in-Council.

CEYLON

The searching for, the ownership of, and the export of antiquities is governed by the Antiquities Ordinance, 1900 (No. 15 of 1900). Under this Ordinance certain immovable antiquities such as temples, churches, monuments, tombs, buildings, etc. are declared to be the absolute property of the Crown. On the discovery of any antiquities other than the above the ordinance provides that -

"One third part thereof shall be taken by the Crown, one third part by the owner of the land where the antiquities have been discovered, and subject to the provisions of this Ordinance, one third part by the finder.

Where the finder is himself the owner of the land where the antiquities have been discovered, subject as aforesaid, two third parts shall be taken by him and one third part by the Crown.

Where any such antiquities as aforesaid are discovered on land belonging to the Crown, two third parts of the same shall be taken by the Crown, and, subject as aforesaid, the remaining one third part by the finder.

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Under section 18 of the ordinance the export of antiquities without permission is prohibited and permission can always be refused when the antiquities in question are required by the Colombo or other museum. In the latter event the ordinance provides machinery for fixing the price as between the finder of the antiquity and the purchasing museum.

CYPRUS

The Antiquities Law, 1905 (No. 4 of 1905) contains similar provision for the division of antiquities as between finder, landowner and government as in Ceylon. The Cyprus law adds, however, that -

"the parties interested in any antiquities in virtue of the provisions of this section may agree to apportion their respective interests in them, as the case may be, either in kind or in value; but on failure to agree as to the manner in which they shall be apportioned, the apportionment shall be referred to arbitration and determined in the manner provided".

As in the Ceylon ordinance immovable antiquities are declared to be the absolute property of the Crown and the export of antiquities is similarly restricted. The law gives power to the Cyprus Museum Committee to excavate for antiquities and also provides that all antiquities so found shall be the property of the Government. Private persons desiring to excavate on their own property or otherwise must first obtain permission to do so from the Governor. Such permit shall contain such stipulations as the Governor may think fit -

- (1) As to the supervision of the excavation by officers appointed by the High Commissioner for that purpose;
- (2) As to the payment of the officers by the person to whom the permit is granted;
- (3) As to the keeping by the person to whom the permit is granted of a record in duplicate, in such form as may be prescribed, of all antiquities discovered.

MALTA

Under section 11 of the Protection of Antiquities Act, 1925 (No.11 of 1925) no excavations for the discovery of antiquities are allowed except by the Government or by Government authority and under its direction or superintendence; and under section 14, the Government may carry out excavations in any part of the Maltese Islands, and all objects found belong to the Government. The right to export articles of antiquarian interest is subject to the permission of the Minister and to the payment of export duty at the following rates:-

<u>value of object.</u>	<u>exportation duty</u>
on the first £100 or part thereof.	10 per cent.
" second £100 or part thereof.	20 per cent.
" third £100 or part thereof.	30 per cent.
" fourth £100 or part thereof.	40 per cent.
On any further value.	50 per cent.

Section 4 of the Act provides that on the occasion of the sale of any antiquities the Government shall have a right of preference on parity of conditions.

NORTHERN RHODESIA

Section 6 of the Archaeological Objects Preservation Ordinance (Cap.146 revised edition, 1930) provides that no person may conduct archaeological excavations in or near any cave, building, ruin, grave, etc. unless authorised to do so by permit granted by the Chief Secretary to the Government.

PALESTINE

The searching for antiquities in Palestine is governed by the Antiquities Ordinance, 1929 (No.51 of 1929) Under section 9 of this Ordinance no person may dig or

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search for antiquities, whether on his own land or elsewhere, unless he has obtained a licence from the High Commissioner. Such licence shall be granted only to persons -

- (a) who are in the opinion of the Director prepared to expend on the excavations proposed a sum of money sufficient to secure a result satisfactory on archaeological grounds; and
- (b) whose scientific competence is reasonably assured by the guarantees of learned societies or institutions, or in other ways, to the satisfaction of the Director.

The division of the antiquities found as between the finder and the Department of Antiquities is provided for in section 9(3)(c) of the Ordinance as follows:-

"At the close of the excavation or at such other times as the Director may require, the holder of a licence to excavate shall afford an opportunity to the Director to divide the antiquities so found by exercising or renouncing the right of the Department to acquire such antiquities; and, in making the division, the Director shall acquire for the Palestine Museum all antiquities which are in his opinion indispensable for the scientific completeness of the museum or for the purpose of illustrating the history or art of Palestine. He shall then make a division of the remaining antiquities, aiming as far as possible at giving the holder of the licence a fair share of the results of the excavation".

provided that in order to make such a division possible the Director may supplement the share of the licence holder by objects which are the property of the Government or alternatively/^{he} may be granted such compensation as the Director, with the approval of the High Commissioner, may determine.

Section 7 of the Ordinance provides that the High Commissioner has the right to acquire .

"in accordance with the provisions of this Ordinance, any antiquity which may be discovered in Palestine after the date hereof; and until such right has been renounced no person shall enjoy any right or interest in such antiquity by reason of his being the owner of the land in which the antiquity is discovered or being the finder of the antiquity. nor shall any such person be entitled to dispose of the antiquity; and any person to whom such antiquity is transferred shall have no right or property therein".

and, save as provided above -

"the right of the High Commissioner to acquire an antiquity under this Section shall be subject to the payment to the finder of the value thereof. such value shall be fixed by agreement, or in case of dispute by an arbitrator appointed by the Archaeological Advisory Board, whose award shall be final".

no person may export from Palestine any antiquities unless he has obtained a licence and paid the prescribed fee.

under section 5(4) of the Regulations made under the ordinance the fee on the exportation of antiquities is at the rate of 10% on the declared value of the antiquities or if the Director disputes the declared value, then at the value fixed by an independent appraiser appointed by the Archaeological Advisory Board.

ST. VINCENT

The Ancient Monuments and Antiquities Ordinance (Cap.178 Revised Edition, 1926) provides that the Governor may purchase by agreement any object which appears to the Governor in Council to be an antiquity. the export of any antiquities found or excavated is prohibited except under licence.

TANGANYIKA TERRITORY

Under the preservation of Archaeological Objects Ordinance, 1929 (No.1 of 1929) the Governor may declare areas likely to contain objects of archaeological or

palaeontological interest to be reserved areas. permission to excavate for such objects and for their removal may be given by the Chief Secretary subject to such limitations and conditions as he shall see fit.

UGANDA PROTECTORATE

unless authorised by permit given by the Chief Secretary to the Government no person may, under section 3(1) of the Preservation of Archaeological Objects Ordinance, 1934 (No.2 of 1934), search for any object of archaeological or palaeontological interest, and such permit may contain such limitations and conditions as the Chief Secretary may see fit.

ZANZIBAR PROTECTORATE

The Ancient monuments Preservation Decree, 1927 (No.23 of 1927) deals very largely with preservation and, where necessary compulsory acquisition of immovable monuments and also for the local control of excavations.

Mr. Freeston, 24/2
Mr.
Mr.
Mr. Parkinson.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh
Perm. U.S. of S.
Parly. U.S. of S.
Secretary of State.

C. D.
P. 24/116
M

Downing Street,
25 August, 1934.

Sir,

I am etc. to transmit to you, to be laid before the Trustees, a copy of a draft Bill prepared by the Govt. of Kenya to provide for the preservation of objects of archaeological and palaeontological interest in that Colony.

The Governor of Kenya has expressed the desire that this draft measure ~~might~~ ^{shall} be submitted to the British Museum for any comment which the Trustees may have to offer and I am to request that any such observations may be communicated to this Office. As the Trustees may be aware, the E.African Archaeological Expedition, under the leadership of Dr. L.S.B. Leakey, is contemplating a further visit to Kenya in October

DRAFT.

THE DIRECTOR,
THE BRITISH MUSEUM.

Bill enclosed in No. 1.

Copy to Mervyn

FURTHER ACTION.

next and Dr. Leakey has expressed anxiety lest
delay in carrying through the legislation
now proposed should interfere with the
arrangements of the Expedition. In these
circumstances I am to request the favour
of an early reply.

I am, etc.

(Signed) L. B. FREESTON

Downing Street,
24th August, 1934.

Dear Dr. Leakey,

The Kenya amending legislation reached us four days ago in the shape of a draft Bill "To provide for the preservation of objects of archaeological and palaeontological interest" in the Colony. The Governor suggests reference to the British Museum and we are writing to them today mentioning the need for dealing with the matter as expeditiously as possible. You may depend upon it that when we get the museums reply we shall waste no time in communicating with Kenya and it will then be for the local Government to introduce the Bill into Legislative Council.

This is all that I can tell you at the moment. You may think it well to get in touch with the Museum yourself and also to explain the urgency, from your point of view, to the Kenya Government.

Yours sincerely,

DR. L. S. B. LEAKEY, M.A., Ph.D., F.S.A.

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Address in England
St. John's College,
Cambridge

RECEIVED
24 AUG 1934
C. O. REGY

Address in Kenya
c/o Standard Bank of S. Africa
Nairobi, Kenya

23rd August 1934

Dear Mr Freeston,

I have received a letter this morning from the Kenya Government in connection with my plans for another Expedition to East Africa, in which I am informed that the amending legislation concerning the Preservation of Ancient Monuments Ordinance has not yet become law and has, in fact, at the moment been referred to the Secretary of State.

This is rather perturbing to me, as it is now over a year ago since attention was drawn to the fact that, without the amendment, no further work could be carried out on these important scientific areas, and I had very much hoped that the necessary amending legislation would have been effected by this time. Under the present plans my Expedition, which is under the auspices of the Royal Society and the Percy Sladen Trustees, is due to sail in October, and we had intended to commence investigations in the Kanam and Kanjera area in the middle of November. In fact, Professor P.G.H. Boswell, the leading British geologist, is due to leave England by air at the end of November in order to co-operate with me in that area and clear up certain important scientific points in connection with the dating of some of our material. If there is no likelihood of the amendment of the legislation concerning these areas becoming law before that date, it will be necessary for me to alter the whole of my programme of work, and also to try to postpone Professor Boswell's visit to some later date. This, however, will be exceedingly difficult to arrange.

I should be very grateful indeed if you could let me know what the situation is in regard to this matter, and what prospects there are of the amending legislation going through fairly speedily. If you consider it necessary, I will come up any time and talk the matter over with you.

Yours sincerely,

L. B. Freeston

L. B. Freeston, Esq.,
Kenya Department, Colonial Office.

KENYA.

No. 371



GOVERNMENT HOUSE,
NAIROBI,
KENYA

25th JULY, 1934.

Sir,

No 30

2006/19/33

Handwritten note:
K. 2006 (9)
5-

Handwritten note:
copy sent to British Museum

With reference to your despatch No. 900 of the 28th November, 1933, I have the honour to forward, for your consideration, the accompanying copies of a Draft Bill to provide for the Preservation of Objects of Archaeological and Palaeontological Interest, which has been prepared with the object of amending and consolidating present legislation on the subject.

2. With reference to Clause 19(2) of the Bill it is understood that other Governments, when issuing permits for the export of any object of archaeological or palaeontological interest, require that half the objects found in a Colony or Protectorate shall be handed over to the Government concerned. I should be glad of advice upon this practice and to be informed whether it should be provided for in the Bill.

3. Before proceeding with the Bill I shall be glad if reference to the authorities of the British Museum might be made and to know whether you desire to raise any objection to its provisions.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER GENERAL.
GOVERNOR.

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

COLONY AND PROTECTORATE OF KENYA



A BILL TO PROVIDE FOR THE PRESERVATION
OF OBJECTS OF ARCHAEOLOGICAL AND
PALAEOLOGICAL INTEREST

A Bill to Provide for the Preservation of Objects of Archaeological and Palaeontological Interest.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Preservation of Short title. Objects of Archaeological and Palaeontological Interest Ordinance, 1934.

2. In this Ordinance, unless the context otherwise Definitions. requires—

"authority" includes all Provincial Commissioners, officers in charge of districts not included in any province and any person or body of persons authorized by the Governor to perform the duties of an authority under this Ordinance ;

"maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a monument, and the doing of any act which may be necessary for the purpose of maintaining a monument or of securing convenient access thereto ;

"monument" means—

- (a) any object of archaeological or palaeontological interest, and
- (b) any area of land in which any such object is believed to exist,

which the Governor has by notice in the Gazette declared under section 6 to be a monument.

"object of archaeological or palaeontological interest" means any structure, erection, memorial, tumulus, cairn, place of interment, pit-dwelling, trench, fortification, irrigation work, mound, excavation, cave, rock, rock drawing, painting, or sculpture, inscription, monolith, or any remains thereof, fossil remains of man or animals or plants or any bed or beds con-

taining such fossil remains thereof, or any object (or any remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, historic or of scientific interest, and includes—

- (a) the site on which such object of archaeological or palaeontological interest was discovered or exists;
- (b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and
- (c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest;

“owner” includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee:

Provided that nothing in this Ordinance shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Prohibition of certain acts, unless authorized by permit.

3. (1) Unless authorized by a permit issued by the Colonial Secretary, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in the Form A set out in the Schedule hereto.

(2) The Colonial Secretary may at any time, without assigning any reason, revoke a permit given under this section.

A permit may specify limitations and conditions

4. A permit given under the preceding section may specify, in regard to the acts which it authorizes, such limitations and conditions as the Colonial Secretary may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorize excavation for and its removal to a place within the Colony subject to such limitations and conditions as to the Colonial Secretary shall seem fit.

Discoverer of any object to inform authorities.

5. (1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the district officer in charge of the district, and to the Colonial Secretary.

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating precisely the spot where it was found, and deliver it, if portable, to the district officer in charge of the district.

(3) The district officer shall forthwith notify the Colonial Secretary of such discovery.

(4) Any person who fails to comply with the provisions of sub-section (1) or sub-section (2) of this section, as the case may be, shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

6. (1) The Governor may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Ordinance. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Colonial Secretary within one month from the date of the publication of the notice.

Power to declare object to be monument.

(2) A copy of every notice published under sub-section (1) of this section shall forthwith be posted in a conspicuous place on or near the object or on the area to which it relates.

(3) On the expiration of the said period of one month, the Governor, after considering the objections, if any, shall confirm or withdraw the notice.

(4) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the object of archaeological or palaeontological interest or area to which it relates is a monument within the meaning of this Ordinance.

7. (1) An authority may, with the sanction of the Governor, purchase or take a lease of any monument

Acquisition of rights in or guardianship over monuments.

(2) An authority may, with the like sanction, accept a gift or bequest of any monument.

(3) The owner of any monument may by written instrument constitute an authority the guardian of such monument, and an authority may, with the sanction of the Governor, accept such guardianship.

taining such fossil remains thereof, or any object (or any remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, historic or of scientific interest, and includes—

- (a) the site on which such object of archaeological or palaeontological interest was discovered or exists;
- (b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and
- (c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest;

"owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee :

Provided that nothing in this Ordinance shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Prohibition of certain acts unless authorized by permit.

3. (1) Unless authorized by a permit issued by the Colonial Secretary, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in the Form A set out in the Schedule hereto.

(2) The Colonial Secretary may at any time, without assigning any reason, revoke a permit given under this section.

A permit may specify limitations and conditions.

4. A permit given under the preceding section may specify, in regard to the acts which it authorizes, such limitations and conditions as the Colonial Secretary may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorize excavation for and its removal to a place within the Colony subject to such limitations and conditions as to the Colonial Secretary shall seem fit.

Discovery of any object to inform authorities.

5. (1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the district officer in charge of the district, and to the Colonial Secretary.

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating precisely the spot where it was found, and deliver it, if portable, to the district officer in charge of the district.

(3) The district officer shall forthwith notify the Colonial Secretary of such discovery.

(4) Any person who fails to comply with the provisions of sub-section (1) or sub-section (2) of this section, as the case may be, shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months, or to both such fine and imprisonment.

6. (1) The Governor may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Ordinance. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Colonial Secretary within one month from the date of the publication of the notice.

Power to declare object to be monument.

(2) A copy of every notice published under sub-section (1) of this section shall forthwith be posted in a conspicuous place on or near the object or on the area to which it relates.

(3) On the expiration of the said period of one month, the Governor, after considering the objections, if any, shall confirm or withdraw the notice.

(4) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the object of archaeological or palaeontological interest or area to which it relates is a monument within the meaning of this Ordinance.

7. (1) An authority may with the sanction of the Governor, purchase or take a lease of any monument

Acquisition of rights in or guardianship over monuments

(2) An authority may, with the like sanction, accept a gift or bequest of any monument.

(3) The owner of any monument may by written instrument constitute an authority the guardian of such monument, and an authority may, with the sanction of the Governor, accept such guardianship.

(4) When an authority has accepted the guardianship of a monument under sub-section (1) of this section the owner shall, except as expressly provided in this Ordinance, have the same estate, right, title and interest in and to such monument as if the authority had not been constituted guardian thereof.

(5) When an authority has accepted the guardianship of a monument under sub-section (3) of this section the provisions of this Ordinance relating to agreements executed under section 8 shall apply to the written instrument executed under the said sub-section.

(6) Where a monument is without an owner, an authority may, with the sanction of the Governor, assume the guardianship of such monument.

8. (1) An authority may, with the sanction of the Governor, enter into a written agreement with the owner of any monument for the protection or preservation of such monument.

(2) An agreement under this section may provide for all or any of the following matters:-

- (a) The maintenance of the monument;
- (b) the custody of the monument and the duties of any person who may be employed in connection therewith;
- (c) the restrictions of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;
- (d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the authority to inspect or to maintain the monument;
- (e) the notice to be given to the authority in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the authority to purchase such land or any specified portion of such land at its market value;
- (f) the payment of any expenses incurred by the owner or by the authority in connection with the protection or preservation of the monument;
- (g) the procedure relating to the settlement of any dispute arising out of the agreement;

Preservation of monuments by agreement

(h) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the authority; and

(i) the removal subject to the provisions of this Ordinance of the monument to a place of safe custody.

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Governor and with the consent of the owner.

(4) Subject to the sanction of the Governor, an authority may terminate an agreement under this section on giving six months' notice in writing to the owner.

(5) The owner may terminate the agreement under this section on giving six months' notice to the authority.

(6) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(7) Any rights acquired by the authority in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

9. If the owner is unable, by reason of insanity or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner under disability by the last preceding section.

10. (1) If an authority apprehends that the owner or occupier of a monument intends to build on or near the site of such monument in contravention of the terms of an agreement for its protection or preservation under section 8 of this Ordinance, the authority may make an order prohibiting any such contravention of the agreement.

Enforcement of agreement.

(2) If an owner or other person who is bound by an agreement for the protection, preservation or maintenance of a monument under section 8 refuses to do any act which is in the opinion of the authority necessary to such protection, preservation or maintenance; or neglects to do any such act within such reasonable time as may be fixed by the authority, the authority may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner.

(3) A person aggrieved by an order made under this section may appeal to the Governor, who may cancel or modify it and whose decision shall be final.

Compulsory purchase of monuments.

11. (1) If the Governor apprehends that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may proceed to acquire such monument under the provisions of the Indian Land Acquisition Act, 1894, as applied to the Colony, as if the preservation of such monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) of this section shall not be exercised in case of—

- (a) any monument which, or any part of which, is periodically used for religious observances; or
- (b) any monument which is the subject of a subsisting agreement executed under section 8 of this Ordinance.

(3) In any case other than the cases referred to in the last preceding sub-section the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 8 has failed, within such reasonable period as the Governor may fix in this behalf, to enter into an agreement under the said section or has terminated or given notice of his intention to terminate such an agreement.

Maintenance of monuments.

12. (1) Every monument in respect of which an authority has acquired any of the rights mentioned in section 7 or which has been compulsorily purchased under section 11 shall be maintained by the authority by which such rights were acquired or by such authority as may be appointed in that behalf by the Governor, as the case may be.

(2) When an authority has accepted the guardianship of a monument under section 7, such authority shall, for the purpose of maintaining such monument have access to the monument at all reasonable times for the purpose of inspection and for the purpose of bringing such materials and doing such acts as the authority may consider necessary for the maintenance or preservation thereof:

Provided that the right of access conferred on an authority under this sub-section shall be deemed to extend to the duly authorized agents, inspectors and workmen of such authority.

13. An authority may receive voluntary contributions towards the cost of maintaining a monument and may, subject to the approval of the Governor, give orders as to the management and application of any funds so received:

Voluntary contributions.

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

14. (1) A place of worship or tomb maintained by an authority under this Ordinance shall not be used for any purpose inconsistent with its character.

Protection of places of worship, etc., from misuse, pollution or desecration.

(2) When an authority has, under section 7, purchased or taken a lease of any monument, or has accepted a gift or bequest thereof, or has accepted the guardianship thereof, and such monument or any part thereof is periodically used for religious worship or observances by any community, the authority shall make due provision for the protection of such monument or such part thereof from pollution or desecration—

- (a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used; or
- (b) by taking such other action as the authority may think necessary in this behalf.

15. Subject to the sanction of the Governor, an authority may—

Relinquishment of rights in a monument.

- (a) where rights have been acquired by such authority in respect of a monument under this Ordinance by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or
- (b) relinquish any guardianship which such authority has accepted under this Ordinance.

16. Subject to such rules as may be made by the Governor in Council under section 24, the public shall have a right of access to any monument maintained by an authority under this Ordinance.

Right of access by public to monuments.

Offences.

17. Save as is provided in this Ordinance, any person who destroys, removes, injures, alters, defaces or imperils a monument, or any object of archaeological or palaeontological interest, and any owner or occupier who contravenes an order made under sub-section (1) of section 10, and any person who contravenes any of the terms and conditions imposed in a permit granted under this Ordinance, and any person who contravenes the provisions of section 3 (1) or section 10 (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

Permit to excavate or remove a monument.

18. Notwithstanding anything contained in this Ordinance, where the Colonial Secretary is of the opinion that the excavation or removal of any monument is desirable in the interests of archaeology, science, history or art, he may grant a permit to any person to excavate and/or remove to a place within the Colony any such monument, or any part thereof, on such terms and subject to such conditions as he may think fit. Such permit shall, as far as is practicable, be in the Form B set out in the Schedule hereto.

Permit to remove any object or monument from Colony.

19. (1) No monument or object of archaeological or palaeontological interest may be removed from the Colony unless such removal has been authorized by a permit issued by the Colonial Secretary. Such permit shall, so far as is practicable, be in the Form C set out in the Schedule hereto.

(2) The Colonial Secretary may issue a permit subject to such terms and conditions which may include the surrender to the Crown of a portion of the monument or object, as he may deem fit, or he may, without assigning the reason, refuse to issue a permit.

(3) An application for a permit under this section shall be made in writing to the Colonial Secretary at least thirty days before the date of the proposed removal and shall contain a full description of the monument or object of archaeological or palaeontological interest in respect of which the application is made. Before issuing a permit under this section, the Colonial Secretary may cause an inspection to be made and may cause the monument or object to be sealed:

Provided that no such permit shall authorize the removal from the Colony of any monument or object of archaeological or palaeontological interest except through a Customs port of entry and such permit shall be surrendered to a Customs officer before export is effected. A customs officer shall detain any monument or object of archaeological or palaeontological interest until such permit shall have been surrendered. Any monument or object of archaeological or palaeontological interest may be confiscated and disposed of as the Governor may direct if such permit is not produced and surrendered within a reasonable period of time.

20. (1) A district officer in charge of a district, and any other person specially authorized by the Governor, may, at any time, inspect work being done in connection with objects of archaeological or palaeontological interest or a monument, and may order cessation of such work pending further orders from the Governor. Such district officer or such other person shall forthwith report the action he has taken to the Colonial Secretary, and shall at the same time furnish to the Colonial Secretary an inspection report.

(2) Any person who fails to comply with an order issued under this section shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment for any term not exceeding six months or to both such fine and imprisonment.

21. The market value of any property which the Governor is empowered to purchase at such value under this Ordinance shall, where any dispute arises touching the amount of such market value, be ascertained in the manner provided by the Indian Land Acquisition Act, 1894, sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable.

Assessment of market value.

22. Any instrument executed under section 7 or section 8 of this Ordinance shall be exempt from stamp duty.

Exemption from stamp duty.

23. No suit for compensation and no criminal proceedings shall lie against any public servant or authority in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Ordinance.

Protection of public servants acting under the Ordinance.

Power to
make rules.

24. The Governor in Council may make rules for carrying out any of the purposes of this Ordinance.

Repeal
No. 17 of 1927.
No. 39 of 1932.

25. The Ancient Monuments Preservation Ordinance, 1927, as amended by the Ancient Monuments Preservation (Amendment) Ordinance, 1932, is hereby repealed.

SCHEDULE.

FORM A.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934

(Sections 3 and 4.)

PERMIT TO SEARCH FOR AND/OR TO REMOVE WITHIN THE COLONY
OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL
INTEREST.

Subject to the limitations and conditions set out hereunder, of
is hereby authorized to search in the Colony either by means of excavation or surface operations for objects of archaeological and palaeontological interest and to remove such objects from the site on which they are found to

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions :

FORM B.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Section 18.)

PERMIT TO EXCAVATE OR REMOVE A MONUMENT
WITHIN THE COLONY.

Subject to the terms and conditions set out hereunder.

..... of
is hereby granted permission to excavate and/or to remove to
the following monument :

Colonial Secretary.

Nairobi,

This day of, 19.....

Conditions :

FORM C.

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST
ORDINANCE, 1934.

(Section 19.)

PERMIT TO REMOVE FROM THE COLONY AN OBJECT OF
ARCHAEOLOGICAL AND PALAEOLOGICAL
INTEREST OR A MONUMENT.

Subject to the terms and conditions set out hereunder,

....., of.....
is hereby authorized to remove from the Colony by air/ship
through the port of the following ob-
ject(s) of archaeological and palaeontological interest/monu-
ment(s) to*Colonial Secretary.*

Nairobi,

This day of, 19.....

Conditions :