

WOTTON & YOUNG  
SOLICITORS.

EDWARD WOTTON  
ALFRED ROBERT YOUNG

TELEPHONE: RAMSGATE 370.

EW/R

Sir,

re Miss Bright-William's case concerning the  
Public Trustee of Kenya  
Your reference: - 38132/46/36

With reference to your letter of the 12th May last,  
in which you observed that a further communication would be sent to  
us when a reply was received from the Governor of Kenya, we think it  
right to report to you that by yesterday's post we received a letter  
from the Public Trustee of Kenya, a copy of which we enclose for your  
information. We also enclose a copy of our reply.

We feel that the acceptance of any such proposal involving  
a partial settlement of the matter as a whole would be definitely  
inadvisable on the matter of principle, but of course we have to study  
the interests of our client, and we think that we must look to you for  
some guidance.

The following are a few comments we are able to make off-  
hand on the proposal, to which we would draw attention.

1. Mr. Douglas's mortgage for £5500 is secured as far as we

contd :-

29th July, 1936.

can ascertain upon a farm of some 7000 acres, which was valued at the time by a Mr. Murray, whom we do not know, we might add, at a considerable amount, namely £14000. We consider that most of this land is now, at any rate, practically worthless. The proposal is to release the most valuable portion of it, about 100 acres of which are planted with coffee, and which presumably might contain all the farm buildings, in order to enable the Land Bank to advance £3500, our client being asked to accept a portion only of the remainder of the farm as security for £2000, leaving a portion of the farm apparently unmortgaged and undealt with.

2. We regard the interest proposal at five per cent. as insufficient, having regard to the security, and a question also might arise as to whether in granting a new mortgage there would be any legal preferential treatment of creditors in the event of the subsequent bankruptcy of Mr. Douglas.

3. If the proposal were accepted, we think that our client ought certainly to have much more detailed official advice as to the value of the security which she was asked to accept, and official advice as to her position in the event of a subsequent bankruptcy, and also we feel that such official advice should amount to practically a warranty that her capital will not be lost.

contd:-

contd.

29th July, 1936.

4. We do not see why, having already waited getting on for five years, our client should be asked to wait a further five years for repayment of a portion of her capital money which the Public Trustee holds, and we would point out that the question of Mr. Harper's mortgage is entirely undealt with and is not <sup>in any means less</sup> ~~least~~ important, since this farm has long since been abandoned.

We personally hope that H.M. Secretary of State for the Colonies will continue to press for the settlement of this matter on a broad basis, and we personally do not look with favour upon this attempt to deal with the matter piecemeal, which we feel sure will result in loss to our client.

We respectfully again refer to our previous letters in the matter setting out more fully than is possible here our views and those of our client in regard to public confidence which it should be possible to place in the Public Trustee Department.

We are, Sir,

Your Obedient Servants,

*Walter Young*

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

NAIROBI, Kenya.

18th July, 1936

BY AIR MAIL

Messrs. Wotton & Young,  
Solicitors,  
28, Cavendish Street,  
Ramsgate, Kent  
ENGLAND.

Gentlemen,

RE MISS E. BRIGHT WILLIAMS  
Trust Cause No. 2 of 1929

Further to my letter No. 2271/A/36 of the 27th May last, Mr. A. Douglas is now proposing to apply to the Land & Agricultural Bank of Kenya for a loan of £3500 to repay part of the principal of his mortgage, against a release of Farms 2808 and 2809, Nyeri; the remaining £2000 of his mortgage to be secured by a first mortgage on Farm 2814, Nyeri. This arrangement is subject to the condition that the mortgage of £2000 is to be for a period of five years, (see copy of Mr. Douglas' letter enclosed), and to carry interest at five per cent per annum, but subject to Mr. Douglas being allowed to pay off portions of the principal during this period as and when funds are available.

2. I shall, accordingly, be glad if you will let me know at your earliest convenience whether your client agrees to this proposal and if so, whether she wishes the mortgage for £2000 to be in her name or whether it is to remain in mine. In this connection, I would refer you to paragraph 2 of my letter No. 1429/A/36 of the 31st March, 1936 from which you will observe that Farm 2814 comprising 3654 acres nett, was valued by Mr. Murray at £7308, and I am fairly confident that even at present day values, this property provides good security for a mortgage of £2000 and would accordingly, strongly recommend acceptance of the proposals referred to above.

3. As this matter is very urgent, please cable instructions at once.

I am, Gentlemen,

Your obedient Servant,

PUBLIC TRUSTEE

HWG/EFL

Copy to:-

A. Douglas, Esq.,  
Ngare Nyting  
Tinau



135  
NGARE NYTING,  
P.O. THIAU

13.7.36

The Public Trustee,  
Nairobi.

Dear Sir,

I have your letter and note contents. I will check up payments with records. I trust the Land Bank will give me the £3500 but would be grateful if you will give me a definite assurance that the other £2000 will be left at 5% for 5 years as it seems madness for me to go to expense to raise £3500 and then find me sued for £2000 and the show broken up, for the payment of that. If its going to be smashed up there doesn't seem to be reason for further expense to raise the £3500. Its also very unsettling and from my point of view a very uncertain arrangement.

I hope you will see my point of view and trust you will fix the £2000 for 5 yrs at 5%. I will also like it so I can pay off any amounts I get available during the 5 yrs. I would be grateful for an early reply.

(SD) A. DOUGLAS.

28th July, 1936

EW/R

Dear Sir,

Your reference: 3200/A/36  
18th July, 1936  
re Miss. E. Bright-Williams,  
Trust Cause No. 2 of 1929

We are in receipt of your letter of the 18th instant, and we have today had an interview with our client, Miss Bright-Williams.

Whilst we appreciate the efforts that have been made, it appears to us that our client is being asked to loan £2000 upon security of a farm, No. 2814, which is not sufficient security for the Land Bank. It would be, we think, much more palatable if the Land Bank could possibly see their way to advance the whole £5500, and that would still leave the question of Mr. Harper's mortgage undealt with.

We do not feel that we can advise our client (and she instructs us to say that she agrees with us) to give any immediate decision on any such proposal as we have referred to.

As we have already referred the matter to the Colonial Office we feel obliged to consult H.M. Secretary of State upon your proposals, particularly with regard to the proposed security for £2000, and also in regard to the whole matter in general, and as soon as we are in a position to let you have any definite news on behalf of our client we will write to you again.

We would state that as it would be impossible to compress this letter within reasonable limits for a cable, we have not cabled to you, but we are sending this letter by Air Mail.

Yours faithfully,

(SD) WOTTON & YOUNG

The Public Trustee,  
Kenya Colony, Department of the Public Trustee,  
Law Courts, P.O. Box No. 1231, Nairobi, Kenya

C. O.

Mr. Grassmith

7/36

38132/46/36

Mr. *Platton*

Mr. *Duncan*

Mr. *8-7/36*  
Sir C. Parkinson.

Sir G. Tompkinson.

Sir C. Boltonley.

Sir J. Shackburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

*C.D.*  
*H P - JUL*  
*10*

Downing-Street.

11 July, 1936.

Gentlemen,

I am etc. to acknowledge

the receipt of your letter of the  
2nd of July returning the copies of  
Kenya Ordinances No. 7 of 1925,

No. 14 of 1928 and No. 3 of 1930.

2. As regards the second  
paragraph of your letter, I am to  
state that the reference in the  
letter from this Department of the  
30th of June <sup>to</sup> ~~Rule~~ <sup>NO</sup> 11 of the Rules  
issued under the Public Trustee  
Ordinance <sup>and</sup> was made intentionally with

the object of indicating that the  
Public Trustee in Kenya is, in fact,  
empowered by law to invest trust  
funds in mortgages.

**DRAFT.**

MESSRS. WOTTON AND YOUNG.

*The amended  
Rule 11 is  
quarantined in the  
Mortgage below  
No 1*

*(10)*  
*copy to Mr. [unclear]*  
*(7)*

FURTHER ACTION:

*? Copies of  
? + 8 with  
Laird,  
for. [unclear]*

*with that  
Rule*

3. ~~I am to add that~~ your

further representations will be borne

in mind when the reply to the despatch

which was sent to the Governor of Kenya

refers to the despatch which has been sent to him

on the 11th of May is received, and

but that in the meantime it is not thought

necessary to ask you to furnish copies

of your correspondence with the Public

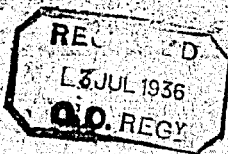
Trustee of Kenya and Messrs. Hamilton,

Harrison and Mathews.

I am, etc.

(Signed) J. E. W. FLOOD

WOTTON & YOUNG.  
SOLICITORS.  
EDWARD WOTTON.  
ALFRED ROBERT YOUNG.  
TELEPHONE: RAMSGATE 370.



28, Cavendish Street,  
Ramsgate, Kent

2nd July, 1936

EW:ME

*Copy to  
to D. if required*

re Miss Bright-Williams  
Reference: 38132/46/36

Sir,

We thank you for your letter of the 30th of last month on the subject of the Public Trustee's investments in Kenya, and as requested return herewith the copy of the Public Trustee's Ordinance 1925, together with the copy of the amending Ordinance of 1928 and the like of 1930.

*Point 9.  
copy to Kenya (10)*

We thank you for calling our attention to Rule No. 11, by which we take it that you meant probably Section 11 of the Ordinance, and we shall take the opportunity under Subsection 5 of Section 11 of notifying the Public Trustee in Kenya that Miss Bright-Williams formally claims the money which is due to her, so as to take it out of the period of limitation, namely, twelve years, in case the correspondence, of which there is a good deal, might not be held to be a sufficient formal claim. Section 26 of the Ordinance of 1925, you will notice, gives power to the Government and Council to make Rules defining the duties of the Public Trustee, and these are the

Colonial Office: 1.

2nd July, 1936

contd :-

2.

Rules which we referred to in our previous letter

We have had a good deal of correspondence with the Public Trustee of Kenya, and should you like to have copies of it before you in connexion with our previous communication and our original communication to the Prime Minister, we should be happy to supply you with copies. We also had some correspondence with the firm of Hamilton Harrison & Matthews, Solicitors of Nairobi, which threw a certain amount of light on the matter, of which we could supply copies, if required.

We still feel very strongly that the Government of the Colony should in some way make good the loss to our client, and that it is inequitable and unjust that trust funds should be left upon such extremely doubtful security for what amounts to practically the benefit of the progress of the Colony, when they could have invested in any of the large range of ordinary Trustee securities, and that when the money is lost the Government should hide behind an Ordinance which protects

Colonial Office:

140  
2nd July, 1936

contd :-

3.

them or their Department from any ordinary legal action. Especially we consider that the Agricultural Depression Committee, in recommending the postponement of the rights of first mortgagees in favour of the Government, is putting forward a financial proposal, which, if adopted by an individual firm, much less by the Government of Kenya, we should consider almost immoral.

Our whole point is that the Public Trustee is a Government institution, and the reason for his existence as such is that the public shall be assured of a measure of safety, and shall have confidence that the moneys will be managed and invested with the utmost possible caution and in the best possible manner of trustees, and that if the Government is not going to support and encourage this idea, the whole raison d'être of a Public Trustee falls to the ground. We are of opinion, if we may say so, that investments on mortgage of land should not be an authorised trustee investment in any Colony or Protectorate, and we are further inclined to the opinion that Public Trustees in these places are unnecessary and that it would be better if in place of them there were Colonial Office:

2nd July, 1936

contd :-

4.

branches of the British Public Trustee's Department, if even branches were necessary.

We trust you will be able to persuade the Government of this Colony that it is in their own interests to make some arrangement to take over these mortgages in return for the cash, so as to avoid financial criticism, which in the long run is likely to affect them adversely. If the Government believes in their future and in the future of the land of the Colony, and if it is true that it is only a matter of time before land values return to the peak which they formerly attained, (which we ourselves do not think is a correct view), the Government will come to no harm, and are in a much better position to wait than is a private individual.

Moreover, the Government could sell these farms as mortgagees, and buy them in for a nominal sum, thus becoming possessed of them, so that if they believe in the future values of the land they would reap perhaps not only

Colonial Office :



2nd July, 1936

contd :-

5.

the mortgage principal, but also any increment on the value, besides getting some interest or rent in the meantime.

We are, Sir,

Your obedient Servants,

*Wooten & Co*

Encls. 3

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

C.O.

Mr. Flood 24-6

Mr. Duncan 25/6/36

Mr.

Sir C. Parkinson

Sir G. Tomlinson

Sir G. B. Barclay

Sir J. Stuckey

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

*Ans'd 8  
small note*

DOWNING STREET.

30 June, 1936.

Gentlemen,

I am etc. to acknowledge the receipt of your letters of the 19th and 22nd of June, and to state that the Rules sent to you by the Public Trustee in Kenya <sup>appear to be</sup> the only rules which have been made under the Ordinance, apart from minor amendments ~~on points of detail~~ which were issued in 1928 and ~~1930~~ <sup>1930</sup> but in no way affect the matter at issue. Copies of the Rules and of all other Colonial legal instruments may be consulted in the Library of this office, which is open on weekdays between 10.30 a.m. and 5.30 p.m. (1.0 p.m. on Saturdays).

You appear to be correct in your opinion that the Rules add nothing to the Ordinance of 1925 as to the

DRAFT.

MESSRS. WOTTON & YOUNG.

Ordinance 1925.

Amending Ordinances

*copy herewith  
copy to W. G. (10)*

FURTHER ACTION:-

[Empty box for further action]

the freedom from liability of the Public  
Trustee. What the Rules do prescribe is  
the power of the Public Trustee to invest  
money in mortgages in Kenya, and I am to  
invite your attention to Rule 11 of the  
1925 Rules as modified by the 1927 Rules amendment.  
The legal immunity would appear to be  
conferred on the Public Trustee by  
Section 24(6) of the Ordinance, a copy of  
which is enclosed for your examination,  
together with subsequent amending Ordinances.

I am to request that these documents may be  
returned in due course.

I am, etc.,

(Signed) J. E. W. FLOOD

Mr. ~~Head~~ 22.6.

Mr. ~~Duncan~~

Mr.

Mr. Parkinson

Mr. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S.

Party. U.S. of S.

Secretary of State

See New draft

DRAFT.

Messrs. Wotton & Young

~~2 volumes (copies herewith)~~

~~Ordinances (copies herewith)~~

gentlemen

I am to ask the  
 recd. of your letter of the 19<sup>th</sup> of  
 June and to enclose for your  
 personal two volumes which  
 contain copies of the Rules made  
 under the Public Trustee Ordinance of  
 Kenya. The original Rules are well  
 indexed & found on pages 1440-5  
 of the 1926 volume and a  
 later amendment to add rule 11(b)  
 on page 614 of the 1927 volume.

2. There are no separate copies available here apart from the bound volumes and I am to request that they may be returned to this office in due course. Postage need not be prepaid.
3. I am to add that copies of these and other Colonial & Legal documents are kept in the library of the Colonial office.

while they may be consulted. The

library is open on week-days between

10.30 a.m. and 5.30 p.m. (1 p.m. on

Saturdays)

4. Copies of the Ordinance and two  
amending Ordinances are also enclosed; and

I am to make attention especially

to section 24 (c)

§

WOTTON & YOUNG  
SOLICITORS

EDWARD WOTTON,  
AND ROBERT YOUNG,  
TELEPHONE: RAMSGATE 370.

RECEIVED

23 JUN 1936

C. O. REGY

115  
28, Cavendish Street,

Ramsgate, Kent

22nd June, 1936  
*(115) A. R. G.*

EW:ME

re Miss Bright-Williams  
Reference : 38138/46/36

Sir,

(5) With reference to our letter of the 19th instant, we have to inform you that we have to-day received a letter from the Public Trustee in Kenya sending us copies of the Public Trustee Rules 1925 published in the Official Gazette of 30th September 1925, and of the Public Trustee (Amendment) Rules 1927 published in the Official Gazette of 7th June 1927. We assume these are the only Rules which have been made under the Public Trustee Act 1925, and that there are no others.

Neither set of Rules seems to add in any way to the Act of 1925 as to the Public Trustee's non-liability.

We are, Sir,

Your obedient Servants,

*Ans. (7)*

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

*Wotton & Young*

WOTTON & YOUNG,  
SOLICITORS:  
EDWARD WOTTON,  
REG. MORTG. SOLIC.  
TELEPHONE: RAMSGATE 376.

28, Cavendish Street,  
Ramsgate, Kent

RECEIVED  
20 JUN 1936  
C. O. REGY

19th June, 1936

EW,MB

Your reference: 38132/46/36  
re Miss Bright-Williams

Sir,

(3)

We thank you for your letter of the 13th of May last, and note that we shall be hearing from you again when a reply to your communication is received from the Governor of Kenya.

We wrote to the Public Trustee of Kenya by Air Mail on the 28th of April last to inform him that we wished to verify that he as a public body is fully protected by Ordinances and Rules made thereunder against any liability in respect of any act done bona fide in the performance of his duties, and asked him to forward us a copy of the Public Trustee Rules made under the Ordinance of 1925 and of any other Rules affecting the matter, as no copy was available at the Crown Agents for the Colonies.

As stated in our memorandum addressed to the Prime Minister, we do not think that our client should for one moment contemplate proceedings, even if proceedings were available to her, in such

Under-Secretary of State,  
Colonial Office

19th June, 1936

2.

a matter, and we should much prefer, of course, that the Government of the Colony could see their way, if the amount involved is not too large, to pay off the first mortgages for the benefit of the borrowers, who would then be in the hands of the Government instead of private mortgages, as it were. We consider that the Public Trustee is practically in the position of a private mortgagee, as he may at any time have to realise the mortgage if the money is required owing to circumstances such as death, and otherwise, as in this case.

Moreover, our client, we think, would not be able to find sufficient money to go through the long Court procedure, with the probable necessity of appealing to the Privy Council, but as we shall be seeing her again shortly, we expect, we should like to be in a position to confirm to her that she is in fact definitely barred from taking any such action, and for that reason we should be glad to have a copy of the Public Trustee Rules above referred to.

Since the Public Trustee has not yet replied to our letter, we should be grateful if you would indicate to us from what source we can obtain a copy of these Rules.

We are, Sir,

Your obedient Servants,

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

*W. H. Young*



C.O.

Mr. Crossmith. 28 5.36  
Mr. Flood 28/36  
Mr.  
Sir C. Parkinson.  
Sir G. Tomlinson.  
Sir C. Bottomley.  
Sir J. Shackburgh.  
Permt. U.S. of S.  
Parly. U.S. of S.  
Secretary of State.

O.D.  
R 28MAY  
D 2 P

38132/46/36.

Semi-official for Sir G. Bottomley's signature.

AIR MAIL

Downing Street.

29 May, 1936.

DRAFT.

A. Le V. Wada, Esq., C.M.G., O.B.E.  
IR JOSEPH BIRME, G.C.M.G., K.B.E.,  
(Kenya)

*Le V. Wada*

(2)

You will no doubt have seen the Secretary of State's despatch No. 312 of the 11th of May regarding Miss Bright-Williams' grievance against the Public Trustee. It is very unfortunate for the lady that her patrimony has dwindled, but, in considering the question of the moral obligations of the Kenya Government in the matter, we feel that it would be necessary to know the history of the farms in which her money was invested, their condition when the mortgages were advanced, whether

FURTHER ACTION.

whether

whether and what enquiries the Public  
Trustee made, and if he obtained an  
independent valuation, and, if so, what  
the independent valuer had to say.

Perhaps you would be good enough to  
arrange for these details to be included  
in your reply to the despatch.

Yours sincerely,

The remarks made by the solicitors  
are also of general interest as showing the  
view of Kenya taken by some people, and  
may be of use in arguing.

Yours sincerely,

(Signed) J. E. W. FLOOD

POWER TO INVEST TRUST FUNDS ON MORTGAGE**BAHAMAS** (Trustees Act Cap. 80 Revised Edition, 1929)

5. (1) A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest and shall be deemed to have always had power to invest -

(a) on mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent.

8. (1) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

**NOTE:** These sections follow the wording of the corresponding sections of the Imperial Trustee Act, 1893 (56-57 Vic. Cap. 53)

**BARBADOS**

Under Section 21 of the Trustees Act (No. 25 of 1891) a trustee may invest in any stocks etc. for the time being authorised by the laws of England..... or in or upon real security in this Island.

**BERMUDA**

150

BERMUDA

Trustees may invest funds "in mortgages of real estate in these Islands" (Trustee Act, 1876 section 54)

BRITISH GUIANA

The Imperial Trustee Act, 1895 was applied by section 13 of the Civil Law of British Guiana Ordinance (Cap.7 Revised Edition, 1930) - for provisions see Bahamas above.

BRITISH HONDURAS

Investment of trust funds may be made in any securities in which trustees may invest funds by virtue of the Trustee Act, 1895 (Trustee Ordinance, Cap.191 Revised Edition, 1924 section 2(2))

CEYLON

Section 20 of the Trusts Ordinance (No.9 of 1917) authorises investment in various securities including (g) any other security authorised as a trust investment by the law of England for the time being (other than real or heritable securities) and (f) "On a first mortgage of immovable property situated in Ceylon or the United Kingdom. Provided that the property is not a leasehold for a term of years, and that the value of the property exceeds by one-third or if consisting wholly or mainly of buildings, exceeds by one-half the mortgage moneys".

FEDERATED MALAY STATES

Trust funds may be invested inter alia:-

- (c) in or upon titles to immovable property in the Federated Malay States or the Colony, such titles being freehold titles or grants in perpetuity or leases (other than mining leases) for a term whereof sixty years at least is unexpired at the time of such investment, provided that the land to which any such title relates shall be situate within the limits of a Sanitary Board area in the Federated Malay States or of a municipality in the Colony, and that there be erected on such land houses or other buildings, the gross rental whereof, together with the land appurtenant thereto, is at the same time of such investment not less than seven per centum of the purchase price of such land, in the case of a purchase, or of the value of such land, as ascertained under the provisions of Section 9 (1) (a), in the case of a charge or mortgage. (Trustee Enactment Cap.61 Revised Edition, 1955 section 4(c))

Section 9(1) (a)

FEDERATED MALAY STATES (contd)

Section 9(1)(a) of the Enactment is in similar terms to section 8(1) of the Imperial Trustee Act, 1893 or section 8(1) of the Bahamas Act supra.

FIJI

Section 7(1) of the Trustee Ordinance, 1915 (No.8 of 1915) provides that -

7.(1) A trustee having power to invest in real securities unless expressly forbidden by the instrument creating the trust may invest and shall be deemed to have always had power to invest -

- (a) on mortgage of property in the United Kingdom held for an unexpired term of not less than two hundred years and not subject to a reservation of rent greater than a shilling a year or to any right of redemption or to any condition for re-entry except for non-payment of rent; and
- (b) on any charge or upon mortgage of any charge made under an Act of the Imperial Parliament entitled the Improvement of Land Act 1864; and
- (c) on mortgage of freehold property in this Colony or in the Commonwealth of Australia or in the Dominion of New Zealand.

GIBRALTAR

Section 6(1)(a) and (b) are similar to Section 7(1)(a) and (b) of the Fiji Ordinance. There is no provision corresponding with section 7(c) of that law.

GRENADA

A trustee may, under section 3(b) of the Trustee Ordinance (Cap.231 Revised Edition, 1934) invest trust funds "in real securities in this Colony and on first mortgages thereon".

HONG KONG

Under section 4(c) of the Trustee Ordinance 1934 (No.18 of 1934) a trustee may invest trust funds -

- (c) on mortgage of property in the Colony held under Crown Lease for an unexpired term of not less than fifty years including the term, if any, for which such Crown lease can be renewed without premium at the option of the lessee.

JAMAICA

JAMAICA

Section 5 of the Trustee Law, 1896 (No. 24 of 1896) corresponds with section 5(1) (a) of the Bahamas Act supra. There is no other provision with regard to the investment of trust funds on mortgage.

KENYA

Section 7(1) of the Trustee Ordinance, 1929 (No. 28 of 1929) provides that -

7.(1) A trustee having power to invest in freehold securities may invest and shall be deemed always to have had power to invest on mortgage of property held for an unexpired term of not less than forty years, and not subject to a reservation of rent greater than four per centum of the unimproved value thereof, or to any right of redemption or to any condition for re-entry, except for non-payment of rent.

LEEWARD ISLANDS

No power apparently is invested in Trustees to invest trust funds on mortgage - vide section 25 of the Trustees and Mortgages Act (Cap. 153 Revised Edition, 1927)

NORTHERN RHODESIA

The Imperial Trustee Act, 1893 is in force in the territory vide section 27(2) of the Northern Rhodesia Order in Council, 1924.

ST. VINCENT

Section 3(b) of the Trustee Ordinance (Cap. 101 Revised Edition, 1926) provides that a trustee may invest trust funds "On real securities in this Colony and in first mortgages thereon".

Section 6(1) of the Ordinance corresponds with section 8(1) of the Bahamas Act.

STRAITS SETTLEMENTS

STRAITS SETTLEMENTS

While section 4(c) authorises trustees to invest funds at their disposal upon freehold or certain leasehold securities in the Colony there appears to be no definite provision as regards advancing money on mortgage, although it seems clear from other parts of the ordinance that they have such power.

TRINIDAD AND TOBAGO

The relevant provisions of the Trustees Ordinance (Cap.50 Revised Edition 1925) are similar to those of St.Vincent supra.

154

Jh

PUBLIC TRUSTEE IN COLONIES, ETC.

(Investment of Trust Funds)

BRITISH GUIANA

There is no actual provision in the Public Trustee Ordinance (Cap.245 Revised Edition, 1930) with regard to the investment of trust funds and no provision for making rules as in section 26(d) of the Kenya Public Trustee Ordinance. Section 8 of the Ordinance however provides that

8. The Public Trustee may, by that name or any other sufficient description, be appointed by will or by order of the Court guardian, or committee, or receiver, of the property of any infant or other person under disability, in the same manner as if he were a private person and in those cases he shall have the same powers as if he were a private guardian, or committee, or receiver.

CEYLON

Section 45(1)(h) of the Public Trustee Ordinance, 1917 (No.11 of 1917) provides that the Governor in Executive Council shall make rules with regard to the investment of trust funds.

Section 32 of the Public Trustee's Rules (6th March 1933) provides that when trust funds in the hands of the Public Trustee exceed Rs.500 they shall be invested. No Rules however are laid down with regard to the method of investment.

Section 22 of the Ordinance however provides that the Public Trustee shall be appointed.....by the same person or court, as if he were a private trustee.

CYPRUS

The Official Trustees Law, 1912, has no provision with regard to the investment of trust funds.

FEDERATED MALAY STATES

Section 10(1) of the Public Trustee Enactment (Cap.62 Revised Edition 1935) provides that "Subject as hereinafter provided all capital moneys available for investment which shall be in the hands of the Public Trustee on the 1st day of January, 1934, or which shall thereafter come into the hands shall form one Common Fund and shall be invested in any investments permitted by law for the investment of trust funds.

FEDERATED MALAY STATES (contd)



Section 13 of the Enactment establishes the Public Trustee Investment Board and section 14 lays down that no investments shall be purchased or sold without the sanction of the Board.

FIJI

Rule 9(b) of the Public Trustee Rules provides that the Public Trustee may invest trust funds -

"in mortgage on real property within the Colony or the Commonwealth of Australia or the Dominion of New Zealand, provided that the sum so invested does not exceed two-thirds in value the estimated purchase price of the real property offered as security".

NIGERIA

There is no reference either in the Public Trustee Ordinance 1928 (No. 22 of 1928) or Rules made under it to the investment of trust funds which the Public Trustee may lawfully make. Section 5 of the Ordinance however provides for the appointment of the Public Trustee as an ordinary trustee, but so far no Trustee Ordinance has yet been passed.

PALESTINE

There is no reference either in the Public Trustee of Charities Ordinance, 1925 (No. 25 of 1925) or in the Rules under it to the investment of trust funds, although the Ordinance authorised the making of such Rules.

STRAITS SETTLEMENTS

The Public Trustee Ordinance No. 147 Revised Edition, 1926 as amended by Ordinance No. 16 of 1934 is similar to the corresponding Federated Malay States Enactment.

TANGANYIKA TERRITORY

Under Rule 4(c) of the Rules made under the Public Trustee Ordinance (No. 2 of 1930) the Public Trustee may invest funds -

"subject to the terms of the trust instrument, if any, by first mortgage on immovable property, in the Territory up to an amount not exceeding three-fifths of the value thereof".

TRINIDAD

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TRINIDAD

Rule 14 of the Public Trustee Rules, 1930 made under the Public Trustee Ordinance, 1930 (No. 21 of 1930) provides as follows:-

14. The Public Trustee may invest or retain invested money belonging to any trust or estate and coming to his hands in any mode of investment expressly or impliedly authorised by the trust instrument or (if there is no trust instrument) authorised by law for the investment of trust funds, and may, if authorised by the trust instrument or otherwise by law, retain any investment existing at the date of the commencement of the trust. Provided that he shall not invest in or hold any investment in such manner as to expose him to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

ZANZIBAR PROTECTORATE

Rule 7(c) of the Rules made under the Public Trustee Decree (Cap. 16 Revised Edition, 1934) provides that the Public Trustee may invest trust funds in "any investment in the mortgage of immovable property in the Zanzibar Protectorate up to three-fifths of the then value thereof after due enquiry".

---

G. O.

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Mr. Grossmith 7.5.36

38132/46/36 Kenya

Mr. ~~Parkin~~  
Mr. ~~Duncan~~  
Mr. ~~Flood~~ 9/5/36

AIR MAIL

Sir C. Parkinson

Downing Street.

Sir G. Tomlinson

Sir C. Duttonley

Sir J. Shuckburgh



Permt. U.S. of S.

Party U.S. of S.

Secretary of State

Sir,

DRAFT.

KENYA.

NO. 312

GOVERNOR.

Fr. Messrs. Wotton &  
Young. 29.4.36.  
(*Spec. of 2 drafts available.*)

2 drafts..

**FURTHER ACTION.**  
*Review to me*  
*J*

I have etc. to transmit to you a copy of a letter addressed to the Prime Minister by Messrs. Wotton and Young, ~~now above~~ regarding the administration by the Public Trustee in Kenya of the property inherited by a Miss Bright-Williams on the death of her father in Kenya in 1928.

2. It will be seen that Messrs Wotton and Young do not impute or allege any impropriety on the part of the Public Trustee, but that their complaint is directed chiefly at the <sup>towards</sup> ~~the~~ <sup>provision</sup> ~~terms~~ of the Public Trustee Ordinance.

3. I shall be obliged if you will furnish me with your general

observations

observations in this matter, and particularly with regard to the suggestion that Miss Bright-Williams's <sup>loss</sup> fortune should in some way or another be made good to her on compassionate grounds.

3. Apart from the position of

<sup>this lady's</sup> Miss Bright-Williams' property, the letter

from Messrs. Wotton and Young <sup>raises a matter of public</sup> interest

~~in that it contains observations on the~~

proposed measures for the relief of

agricultural indebtedness. I shall be

~~glad to receive your comments on these~~

~~observations on these two matters.~~

I have, etc.

*The opinions expressed by the firm are, I think, worthy of serious consideration and you will no doubt furnish me with*

*These*

*in regard (a) to the propriety ~~of~~ of permitting the investment of trust funds in land of which the value may be subject to violent fluctuations, & (b) to the position of mortgagees (& in particular trustees, including the Public Trustee) in relation to the ~~Settlement~~*

(Signed) J. H. THOMAS

Kenya 38259/136

(38132.)

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(R) (A)

10, Whitehall Street,  
London, E.C. 4.

1st May, 1936.

Dear Tom,

I think the enclosed is for the Colonial Office. I have sent an acknowledgment to Messrs. Wotton and Young saying that their letter will receive attention in the appropriate quarter.

Yours sincerely,

G. S. Dennett  
G. S. Dennett

T. W. Davies Esq.,  
Colonial Office.

2 Pairs mail to Kenya (2)  
Encl. Quere (3)

~~28th April 1936~~  
159  
WOTTON & YOUNG  
SOLICITORS  
FRANK WOTTON  
JAMES YOUNG  
10, BROADWAY, LONDON, E.C. 4  
TELEPHONE 379

28, Cavendish Street  
Ramsgate, Kent

P.S.  
M. Walker

29th April, 1936

100  
(Copy in L.D. required)

HW/ME

Sir,

We enclose herewith a summary in duplicate of a matter which concerns our client, Miss Bright-Williams, resident in England, whose case appears to us to call for the sympathy of the Government and practical assistance. It is, we think, one of the hardest cases we have ever come across, and we trust that after reading the enclosed the Government of this country will find that it is possible in some way to bring about an amelioration of our client's financial position.

As stated in the enclosed summary, we make no allegation of improper conduct against the Public Trustee, but the very fact that it is possible for a person under age, without having any control by herself or her advisers over the events, to be put to the loss of practically her whole fortune amounting to seven or eight thousand pounds, when that fortune is in the hands of a Colonial Government Department, is a matter which is appalling to contemplate, and even if nothing can be done to assist our client, (we believe, however, that the Government of England will not allow this

~~159~~  
159  
WOTTON & YOUNG  
SOLICITORS

159  
28, Cannon Street  
RAMSGATE, HANTS.  
TELEPHONE 224 & 270

28 Cannon Street  
Ramsgate, Hants.

29th April, 1936

P.S.  
Mr. Baker  
J.C.  
(- please see b.D  
& required)

SW/MS  
Sir,

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~~100/100~~  
159  
WOTTON & YOUNG  
SOLICITORS  
15, MARK WOTTON,  
LARGE ROBERT YOUNG  
TELEPHONE: RAMSGATE 370

28, Cavendish Street,  
Ramsgate Kent

29th April, 1936

HW/ME

Sir,

*PS*  
*Mitigation*  
*LOC*  
*(Copy in b.D. if required)*

We enclose herewith a summary in duplicate of a matter which concerns our client, Miss Bright-Williams, resident in England, whose case appears to us to call for the sympathy of the Government and practical assistance. It is, we think, one of the hardest cases we have ever come across, and we trust that after reading the enclosed the Government of this country will find that it is possible in some way to bring about an amelioration of our client's financial position.

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20th April, 1936

contd :

blot to remain), we suggest that steps should be taken so that the same thing cannot legally happen in the future to others.

We are, Sir,

Your obedient Servants,

*Wotton & Young*

Encs. 2  
Rt. Hon. Stanley Baldwin, M.P.,  
Prime Minister,  
House of Commons,  
Westminster,  
London, S.W.1

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1 Miss Bright-Williams's father died in Kenya, and under an Order of the Kenya Court dated 20th December 1928 Miss Bright-Williams's share of the estate was passed into the hands of the Kenya Public Trustee. This amount was £7,600 odd, or, in Kenya money, Shs. 156,000.

2 The Public Trustee of Kenya has power to invest in all the usual investments available to trustees under English law, comprising some thirty or forty Government and Colonial Government securities, including one or more Kenya Government securities. He also has power, under Kenya Ordinances, (which are as if were local Acts of Parliament approved, we believe, by the Colonial Office), to invest on mortgage of irremovable property up to one half of the value thereof as estimated after due enquiry, and the Kenya Ordinances appear to fully protect the Public Trustee in respect of any losses etc. due to bona fide errors of judgment. We are not imputing or alleging any impropriety on the part of the Public Trustee.

3 It appears to us that the Colonial law which obtains in this Colony, and also, we believe, in other Colonies, which enables a Trustee to advance trust money upon mortgage of land after a valuation, is adapted from English law, as a great many of the Colonial Ordinances respecting other matters are, but we submit that this adaption is wrong in principle and should be altered. There is no comparison between land in England, of which generally speaking the value is more or less stable, and the millions of acres of land available in Africa. In our opinion the right of Trustees in Colonies to advance trust funds on land should be hedged about with more protection for the persons to whom the money belongs; for instance, land

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comprising a substantial building in the middle of the town of Kenya would possibly be one thing which might be permitted, but even farm land with good farm buildings within easy reach of the railway by road should not be permitted, so long as there is known to be any practical difficulty (such as local feeling) in exercising a mortgagee's rights of sale, even should a close watch be kept on its value and a stipulation that the money lent should be spent on specific improvements be imposed, (neither of which appears to have been the case here). In the case of the larger mortgage of £5,500, the Public Trustee informs us that £800 of the amount advanced was used for payment of arrears of ground rent and survey fees and £2,200 was used to pay off an existing mortgage. It looks as if the Borrower were not very sound, although of the two he appears to have been the better. Also there is apparently no reason why in the case of a Trustee, such as the Public Trustee having numerous funds in his hands, he should not split up each fund into quite small amounts.

4. In this case the Public Trustee split the amount in two only, namely, £5,500 and £2,000, and advanced the £2,000, together with some other trust moneys in his hands, on a mortgage of a farm now long since abandoned. He also invested £5,500 on the mortgage of another farm, and both the amounts are irrecoverable, although reduced interest is being paid on the latter mortgage. The original interest in both cases was seven per cent., and this might be noted as indicative of the value of the security.

5. We are informed by a party other than the Public Trustee and believe that, in any case no buyers would be found in the Colony for mortgaged property put up for sale by mortgagees, apart from the question of value. The Public Trustee cannot

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find a transferee of the larger mortgage although the farmer in that case is still carrying on - in the other case the farm has long since been abandoned - but neither does the Public Trustee attempt to sell the property, although in his letter to us of 27th November 1934 he says, in reply to our question, as to the present value of the farm, that it is estimated at £10,000. The mortgage is only £5,500, so this bears out our information as to the impracticability of a sale.

6. The trade figures, so far as one can ascertain, of the Colony, especially in regard to domestic exports, which include farm produce, appear to have risen from approximately nothing in 1910 to their peak in 1925. There was a fall between 1925 and 1927, and there was little recovery in 1928. The mortgages were made respectively in March and June 1929. The Public Trustee would have been able to obtain the Government's statistics, and in our opinion had no right to suppose that the boom could be regarded as anything else but a boom, especially as ten or twelve years before the farm lands in question were probably bush land and entirely valueless. In fact, there is so much land available in Kenya to-day that the land per se without the farmer who is working it is still practically valueless, we believe. The Public Trustee denies that he was influenced in any way by the Government to appropriate moneys in his hands to these mortgages which contributed to the advancement of the Colony, but on the other hand it is obvious that he might have been unconsciously influenced, being a member of a colonial community and which would possibly have little chance of obtaining mortgage money from the home market. In this connexion, we venture to point out that we have noticed recently in the "Times" newspaper an advertisement by some private agent asking for money for investment on

mortgage of farm lands in Kenya, and we were somewhat astonished.

7 Moreover, the Public Trustee declines to give us statistics of the money in his hands for investment during the years 1926, 1927 and 1928 and the proportions of the amount which were invested on mortgages of farm land and the proportions of the amount which were otherwise invested in the more usual type of trustee securities, such as Government loans. There are, however, we believe, other cases than that of our Client, and a substantial amount of money must be involved.

8 We have applied to the Government of the Colony through the Governor and have fully summarised this case for him but the Government of the Colony declines to suggest any remedy or to take any steps.

9 At the time these investments were made by the Public Trustee Miss Bright-Williams was under age, and, as we have mentioned, had no option in the matter. She has since attained twenty one, and the Public Trustee offered to transfer the mortgages to her as soon as she was twenty one. He was no doubt anxious to get rid of them. We advised Miss Bright-Williams to refuse to take over the mortgages, and we wrote to the Public Trustee on her behalf that she wished for her capital. The mortgages, therefore, are still being administered by the Public Trustee.

10 The Public Trustee is a body corporate in whom the Public are invited to put their trust, and although in this case he is protected by legal barriers from action which in any case our Client has no money to further, we consider that the Public Trustee made an investment which trustees in England properly advised would have hesitated over. Even in England,

where the value of farm lands has been stable for years, an investment of trust money would not easily be made without providing for conditions as to how the money was to be used, so as to increase the value of the security, and without subsequent surveys, we think, as well as having great regard to the financial standing of the borrower.

There is something more to the idea of a Public Trustee than there is to the bare legal idea of a private trustee. As in the case of the Public Trustees in England, a body corporate in which the public have the utmost confidence, so in the cases of Colonial Public Trustees that public confidence should at all costs be maintained. The public without technical knowledge of the law undoubtedly consider that a Public Trustee is a Government guaranteed institution, that he can never run away with the money, and in this they are right, but by the same process of thought they undoubtedly think that the security of their capital is also guaranteed and it would not occur to them that this public institution could make an investment of their money in anything but the soundest possible security, or if the money were lost that the Government would not replace it. We consider that this case, and others like it which undoubtedly exist, will reflect adversely upon the status of these colonial Government institutions, and to a certain extent even upon the very large Public Trustee's Department in England in the minds of the public. In our opinion the feeling which exists that any sort of Public Trustee, whether in the Colonies or in England, not only has the weight of the Government behind him but also the weight and experience of the Government in the exercise of his powers of investment, is one which it would be a pity to destroy. In any case, we humbly suggest that this poor young lady's money, which is, we believe, her sole

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fortune, should in some way or other be made good to her upon compassionate grounds. The Colonial Government in question is undoubtedly indirectly controlled to some extent by the Home Government, and we feel that this astonishing loss, compulsorily thrown upon a child under twenty one, should not be allowed to remain without something being done to remedy it quite promptly. We have confidence that the Government of this country will not allow it to so remain unremedied.

12 We must add that we believe the Colonial Government in question has set up an Agricultural Indebtedness Committee. We enclose herewith the interim report of this Committee which we have obtained, and it will be seen from page 2 that a large number of witnesses were seen, most of whom were probably farmers. From a perusal of this book, it appears that this Committee is recommending that the farmers should be further assisted by further loans to be made by the Land Bank and that the rights of existing lenders on mortgage are to be postponed by a stay order for a period up to five years in order to facilitate further advances by the Land Bank on the security of farms. In other words, if the Government on the spot, as might appear possible, accedes to this suggestion, our Client's legal rights, for what they are worth, are to be taken away, and quite possibly this will end in their being entirely cancelled in the long run. It may be true, as the report says, that our Client's legal rights are of no value as regards the principal or capital, for no farmer, we understand, is likely to buy a property put up for sale by the mortgagees, even if it were worth the money required to discharge the mortgage principal. But if that is the position, no money should have been advanced on mortgage.

13 It seems from this interim report that the people

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on the spot undoubtedly contemplate in their minds that a return to better times is inevitable, and by better times they are thinking of the times and prices which obtained in 1927 and 1928, whereas we think that the correct business view to take is that there is no visible ground which enables us to contemplate a return to those prices within any practical period, that whilst one may hope one cannot <sup>calculate</sup> calculate, and that, therefore, the financial position must be dealt with upon the basis that no very great improvement is going to come about within the next five or ten years. One must also contemplate that there may be disturbing factors, and that so far from there being an improvement in the future there may even be a worsening. Upon this basis, we think that the attempt to deal with existing mortgages in the way in which this interim report deals with them is basically wrong. At any rate, as regards investments made by the Public Trustee, we think money advanced on mortgage by him should be excepted from any such scheme unless the assistance to farmers to be financed by the Government of the Colony is in such form as to reimburse the persons who have put their trust in the Public Trustee.

14. In other words, we think that the Government should finance the farmers, and that private lenders and Trustees should not be legally compelled to finance the farmers by the postponement of their rights.

15. The procedure indicated on pages 19 and 20 of the interim report seems to us to contemplate a postponement of the mortgagee's remedies in order to enable Government funds to be advanced to the farmers. We do not think that the Government should consent, and that if Government funds are used at all, they should be used to pay off the mortgagees before anything else is done, and so assist the farmers in that way.



16. The impression we have got of these proposals is that the farmers want more money, which they hope to get from the Government (Land Bank), that it would not satisfy them to only have the existing mortgages paid off by the Government (even though, as might in our opinion happen, the Government were willing to accept a much reduced rate of interest), and they therefore conceive this plan of putting the original lenders in the position of second mortgagees for five years (and perhaps much longer) so that they can offer the Government a first mortgagee's rights and security. Equitably we think the Government should take only second mortgagee's place and the security subject to the first mortgages, unless of course the Government has such confidence in the future that it will take over the first mortgages as well as make a further advance of cash to meet the present emergency. If the Government has no such confidence in the future, then it has no moral rights, we submit, to postpone the first mortgagees' rights to its own rights as second mortgagee.

17. We would say that we have confidence that this plea of ours on behalf of our impoverished Client will receive the careful consideration which is in justice due to it by the Government of this country, in whose principles we are proud to have confidence.

18. In case it should be thought that the proper remedy of our Client is to take proceedings against the Public Trustee, we would point out that even if she had several hundred pounds to spare, which we believe she has not, she would probably not win her case, after taking it through, as she would most likely have to, the Lower Court of Kenya, the Court of Appeal in Kenya and the Privy Council in England. We think she would take the

view that it would be throwing good money after bad.

Section 24 (6) of the Public Trustees Ordinance of 1925 of the Colony and Protectorate of Kenya provides in general that the Public Trustee shall not be liable for any act done by him bona fide in the supposed or intended performance of his duties, unless it shall be shown that such act was done not only illegally but wilfully or with gross negligence.



COLONY AND PROTECTORATE OF KENYA

**Interim Report of the Agricultural  
Indebtedness Committee**

Price 1/-

PRINTED BY THE GOVERNMENT PRINTERS  
1933

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Interim Report of the Agricultural  
Indebtedness Committee

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## Interim Report of the Agricultural Indebtedness Committee

YOUR EXCELLENCY,

### TERMS OF REFERENCE

We have the honour to submit the following interim report on the terms of reference entrusted to us in September, 1935. (Government Notice No. 662 published in the Official Gazette of 2nd October, 1935), which read as follows:—

"To explore the possibilities of lightening the burden of agricultural indebtedness."

### PERSONNEL

2. The personnel of the Committee is as follows:—

The Attorney General (the Hon. W. Harragin, K.C.)  
(Chairman).

The Treasurer (the Hon. G. Walsh, C.B.E.):

W. Evans, Esq.

J. Nordlinger, Esq.

J. Campbell, Esq.

W. C. Hunter, Esq.

with T. L. Hatley, Esq., the Assistant Secretary, Land and Agricultural Bank of Kenya, as Secretary.

### MEETINGS

3. The first meeting of the Committee was held on the 19th September, 1935. Thereafter the Committee sat on one day during September, five in October, two in November, and four in December.

### ATTENDANCE

4. The attendances of members of the Committee at meetings were as follows:—

|                      |       |       |       |    |
|----------------------|-------|-------|-------|----|
| The Attorney General | ...   | ...   | ...   | 13 |
| The Treasurer        | ..... | ..... | ..... | 18 |
| W. Evans, Esq.       | ...   | ...   | ...   | 19 |
| J. Nordlinger, Esq.  | ...   | ...   | ...   | 18 |
| J. Campbell, Esq.    | ..... | ..... | ..... | 18 |
| W. C. Hunter, Esq.   | ..... | ..... | ..... | 18 |

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The Treasurer ..... 18

W. Evans, Esq. ... .. 18

J. Nordlinger, Esq. ... .. 18

J. Campbell, Esq. ... .. 18

W. O. Hunter, Esq. ... .. 18

#### WITNESSES.

5. Evidence was heard by the Committee from the following persons:

Archer, G. Kenneth  
Ashford, Major  
Boedakor, H. S.  
Caldwell, P. J. H.  
Gailly, Major  
Griffiths, Col. G. C.  
Grogan, Major E. S.  
Hamilton, G. A. H.  
Hamilton, H. B.  
Harvey, The Hon. Conway  
Hudson, G.  
Hunter, G.  
Keatings, Dr.  
Kirtou, Major W.

Kirtou, Capt. W.  
Knapman, Major L.  
Kopperud, B.  
Martin, J. R.  
Milligan, Major J. W.  
Morrison, G. R.  
Robson, W. J.  
Schwartz, Capt. E.  
Tannahill, A. C.  
Taylor, Major C. M.  
Wolfe, G.  
Wollen, R. S.  
White, H. D.

#### MEMORANDA.

6. Memoranda from the following persons and bodies were received and considered:

Abbey, Col. D. W.  
Bargman, H. F.  
Beesley, S. N.  
Brown, Q. H.  
Cavendish Bentinck, The Hon. F.  
Copeman, Col. M. B. G.  
Elmer, L. A.  
Figgie, E. K.  
Lillywhite, The Hon. W. G.  
Lipscomb, J.  
Long, (Darell)  
Micklejohn, I. H.  
Mitchell, R. J.  
Morgan, R. R. W.  
Newton, B. M.  
Pullen, J. F.  
Scarborough, J.  
Shaw, W. A.  
Singh, Hakam

Taylor, H.  
Thornton, S.  
Viner, E.  
White, H. D.  
Wright, C. A.  
Wynne, J. M.  
Coffee Board of Kenya  
Indian Association, Eldoret  
Kipkaron Farmers' Association  
Koru Farmers' Association  
Lalikipia Farmers' Association  
Makinyu District Farmers' Assoc.  
Kisumu Indian Farmers' Assoc.  
North Kenya Settlers' Assoc.  
Narivo Farmers' Association  
St. Austin's Catholic Mission  
Songhor Farmers' Association  
Thika Farmers' Association  
Trans Nzoia Farmers' Association  
Wheat Advisory Board

An invitation to submit memoranda or give evidence was extended to all farmers' and district associations, both European and Indian. Only two Indian associations replied, one in terms which brought forward no relevant matters for consideration. One prominent Indian submitted a case for consideration which fell outside the terms of reference of the Committee. This matter was referred to the Standing Board of Economic Development, in whose province the matter lay.

#### ACKNOWLEDGMENTS.

7. We take this opportunity of acknowledging our indebtedness to those who submitted memoranda or gave evidence before us.

We desire also to record our indebtedness to the able and valuable memoranda submitted by the Coffee Board of Kenya, extracts from which are given elsewhere in this report.

#### HISTORICAL.

8. During the early stages of the Committee's deliberations it was represented that a real danger existed of deserving farmers having implements and stock, necessary to a continuance of farming operations, sold up under distraint by unsecured creditors.

With the object of extending the protection from attachment afforded by existing legislation, the Committee urged the introduction of an amendment to the Civil Procedure Ordinance, 1924, to protect such live stock and implements of husbandry as may be necessary to enable a farmer to earn his livelihood; up to a value of £500, and agricultural produce up to a value of £25.

A draft amending Ordinance on these lines was published in the Official Gazette of 5th November, 1935 (Government Notice No. 751), and was duly passed into law on the 29th November, 1935 (Ordinance No. 39 of 1935).

#### ARGUMENT.

9. From the minutes recording evidence offered the Committee and the discussions thereon, endeavour has been made in this report to produce a reasoned argument leading up to and justifying the conclusions and recommendations contained in the final paragraphs.

The argument is set forth under the following heads:

- (a) Long term finance.
- (b) Kenya and primary products.
- (c) Meteorological.
- (d) Markets.
- (e) Value of experience.
- (f) Preservation of non-native activities.
- (g) Importance of European maize industry.
- (h) Importance of coffee industry.
- (i) Desirability of extending dairying and mixed farming.
- (j) The present position of agricultural indebtedness.
- (k) Causes of present position.
- (l) Ill effect on farming operations.
- (m) Prices of various commodities.

(n) Attitude of mortgagees.

(o) Assistance to agriculture in other dominions and colonies.

(p) Wheat, tea, sugar, and sisal. No evidence of immediate assistance required.

(q) Assistance recommended only to approved farmers.

(r) Necessity for immediate relief.

(s) A middle class.

(t) Recommendations.

### LONG TERM FINANCE

10. It must be understood that the recommendations contained in para. 29 *et seq.* of this report are not related to any issue of Government bonds or to the provision of long term finance, but are confined to the relief of only urgent and approved cases, due regard being given to the necessity for avoiding as far as possible such disturbance of existing conditions as would interfere with legitimate mortgage business between private borrowers and investors.

We examined at length a proposal for a bond issue to liquidate mortgage debts, but consider that we cannot express an opinion on or recommend a scheme which to the best of our knowledge has no parallel in other dependencies, without an assurance that such scheme or modification thereof would meet with the approval of the Secretary of State.

We recommend therefore that the draft proposal be submitted to the Secretary of State for examination by financial experts, and, if the scheme is considered feasible by public opinion, we shall then make recommendations for its particular application to the needs of this Colony.

Since this report was drafted we have received a detailed statement from the Secretary Colonists' Vigilance Committee, giving summarized particulars of the outcome of a questionnaire issued to all farmers on the question of their urgent indebtedness. We propose to forward this memorandum, together with the original questionnaire and covering letter, and an elaborated memorandum on the Government Bond proposal, to Government for despatch to the Secretary of State at the earliest convenient opportunity.

### KENYA AND PRIMARY PRODUCTS.

11. The conclusions reached by the Committee start from the conviction that this Colony is in a very favourable position to compete, given equal terms, with other countries in placing

certain primary products on the world's markets. For example, the following tables show the average yield per acre in Kenya of maize and wheat as compared with other countries:

#### MAIZE

YIELD PER ACRE OVER THE PAST THREE YEARS

|              |      |               |
|--------------|------|---------------|
| Kenya        | 7-14 | bags per acre |
| Argentina    | 7-35 | " "           |
| South Africa | 2-82 | " "           |
| S. Rhodesia  | 4-63 | " "           |
| U.S.A.       | 6-21 | " "           |

Over the period 1924-25 to 1934-35, which includes seasons when locusts destroyed a large proportion of the crop, the yield per acre in Kenya averaged 6.74 bags.

#### WHEAT

|             |         |      |               |
|-------------|---------|------|---------------|
| Kenya       | 1921-34 | 2-77 | bags per acre |
| Argentina   | 1921-30 | 3-6  | " "           |
| U.S.A.      | 1921-30 | 4-2  | " "           |
| S. Rhodesia | 1925-30 | 2-4  | " "           |
| S. Africa   | 1921-30 | 2-7  | " "           |

The yield per acre of wheat in Kenya for the years 1929-30 to 1933-34 was as follows:

|         |      |               |
|---------|------|---------------|
| 1929-30 | 4-64 | bags per acre |
| 1930-31 | 2-82 | " "           |
| 1931-32 | 3-01 | " "           |
| 1932-33 | 2-11 | " "           |
| 1933-34 | 4-10 | " "           |

We are indebted to the Agricultural Economist and to figures from *Bromhill's Statistics* kindly supplied by Colonel Griffiths, for the above information.

#### RAINFALL.

12. We are indebted to the British East African Meteorological Service for the following statistics for the years 1930-1934, giving the rainfall in the principal maize, wheat and coffee growing areas and stock and dairying districts:—



| Station                         | AVARELLE-RAINFALL |         | ANWILLE-RAINFALL |       |       |       |       |       |                |
|---------------------------------|-------------------|---------|------------------|-------|-------|-------|-------|-------|----------------|
|                                 | Altitude          | Period  | Inches           | 1930  | 1931  | 1932  | 1933  | 1934  | 1935 to August |
| <b>MAIZE AND WHEAT AREAS</b>    |                   |         |                  |       |       |       |       |       |                |
| KITALE                          | 5,700             | 1929-34 | 46.94            | 51.20 | 56.14 | 44.30 | 59.37 | 58.20 | 33.20          |
| SAMATTA                         | 5,750             | 1931-34 | 41.10            | 54.72 | 40.47 | 58.16 | 54.30 | 59.98 | 30.20          |
| CHEBUNGONI                      | 5,024             | 1906-34 | 41.53            | 58.18 | 42.07 | 49.86 | 38.51 | 33.84 | 23.00          |
| NKURURU                         | 5,200             | 1916-34 | 39.80            | 59.90 | 37.17 | 41.00 | 37.04 | 31.51 | 23.00          |
| ESU                             | 5,350             | 1922-34 | 38.81            | 44.71 | 44.91 | 41.00 | 49.44 | 59.53 | 30.23          |
| KENONG                          | 5,350             | 1922-34 | 38.81            | 44.71 | 44.91 | 41.00 | 49.44 | 59.53 | 30.23          |
| KAMUYA MORO                     | 5,000             | 1931-34 | 34.33            | 49.63 | 30.19 | 37.71 | 44.82 | 44.63 | 19.14          |
| HONY'S BRIDGE                   | 5,000             | 1931-34 | 40.00            | 52.15 | 54.72 | 44.15 | 38.54 | 37.09 | 27.43          |
| SOLAI                           | 5,000             | 1918-34 | 40.72            | 52.15 | 51.64 | 44.81 | 33.53 | 32.37 | 27.43          |
| KITALE (Headq. Office)          | 5,225             | 1920-34 | 44.15            | 52.12 | 50.45 | 44.80 | 35.47 | 32.53 | 27.43          |
| <b>Coffee Areas</b>             |                   |         |                  |       |       |       |       |       |                |
| SOKORANI                        | 5,500             | 1917-34 | 35.11            | 50.84 | 50.20 | 50.18 | 46.97 | 48.03 | 38.98          |
| TUNDU                           | 5,150             | 1917-34 | 48.45            | 58.76 | 50.20 | 50.18 | 46.97 | 48.03 | 38.98          |
| TUNDU (Davy's Sabah)            | 5,000             | 1917-34 | 36.35            | 53.01 | 45.10 | 44.58 | 38.11 | 34.50 | 24.50          |
| KIABU (D.L.)                    | 5,700             | 1901-34 | 40.75            | 56.28 | 48.77 | 41.28 | 38.45 | 34.50 | 24.50          |
| TUNDU (Gedembwani)              | 5,400             | 1920-34 | 37.95            | 59.18 | 38.19 | 37.43 | 28.45 | 26.59 | 16.22          |
| Karuru (Vet. Laboratory)        | 5,203             | 1916-34 | 40.26            | 60.08 | 47.00 | 46.48 | 35.80 | 35.80 | 21.32          |
| Karuru (School)                 | 5,000             | 1916-34 | 41.58            | 72.02 | 71.85 | 65.33 | 59.08 | 55.40 | 27.45          |
| Karuru (Vet. Office)            | 5,000             | 1916-34 | 38.16            | 45.11 | 45.11 | 34.50 | 34.50 | 35.75 | 22.16          |
| MARUYU (Davy's)                 | 5,000             | 1928-34 | 33.16            | 55.31 | 45.11 | 34.50 | 34.50 | 35.75 | 22.16          |
| FONS' TERRACE                   | 5,500             | 1916-34 | 46.22            | 65.20 | 60.53 | 50.94 | 31.33 | 19.45 | 19.45          |
| NAMONI (Railway)                | 5,400             | 1916-34 | 35.07            | 51.80 | 59.16 | 40.83 | 30.59 | 27.45 | 19.45          |
| KAMOR                           | 5,350             | 1917-34 | 73.89            | 84.44 | 77.11 | 60.93 | 65.39 | 67.90 | 44.72          |
| <b>SPICE AND DRAINING AREAS</b> |                   |         |                  |       |       |       |       |       |                |
| TUNDU (D.L.)                    | 5,150             | 1931-34 | 37.11            | 57.10 | 55.43 | 41.08 | 30.53 | 30.50 | 26.88          |
| REPARU                          | 5,050             | 1931-34 | 27.51            | 57.10 | 55.43 | 41.08 | 30.53 | 30.50 | 26.88          |
| NARE-MORO                       | 5,000             | 1918-34 | 25.22            | 34.20 | 33.97 | 21.63 | 20.71 | 17.28 | 17.28          |
| GIDALI                          | 5,000             | 1921-34 | 25.23            | 40.23 | 37.08 | 23.53 | 20.01 | 18.70 | 14.97          |
| MATANGI (Njahan) (Rimauyo)      | 5,500             | 1918-34 | 46.18            | 57.57 | 47.90 | 47.02 | 34.01 | 31.70 | 27.83          |

**MARKETS.**

13. The geographical position of Kenya opens to it the markets of South Africa and East Africa, India and the Far East, which offer an outlet capable of extension and supplementary to the markets in Europe, America and Canada, in which Kenya enterprise has already secured its principal footing for such commodities as Kenya can produce in competition with other sources of supply.

**VALUE OF EXPERIENCE.**

14. We do not consider it necessary to stress the importance to the Colony of an economically sound European Agricultural Industry, or the value to the Colony of farmers who have gained experience of the varying conditions and special difficulties of the country.

A number of European farmers in Kenya came to the country without previous agricultural experience. Their knowledge of methods, control of diseases and pests, preservation and improvement of soil fertility and general local farming conditions has been gained at considerable cost, but now represents an asset which the Colony cannot afford to lose. The full beneficial results of this will be more apparent when favourable climatic conditions return and the world's markets recover.

**PRESERVATION OF NON-NATIVE ACTIVITIES.**

15. We concur in the view underlying practically the whole of the evidence received that the economic progress and prosperity of the Colony, the consolidation of Kenya's position within the Empire, and the healthy development of the native along progressive lines towards a higher civilization, can be furthered best by active prosecution of the dual policy; that is, the parallel development of non-native in conjunction with and complementary to native activities.

This is in accordance with the policy of the Imperial Government.

**IMPORTANCE OF EUROPEAN MAIZE INDUSTRY.**

16. We are also satisfied of the importance to Kenya and neighbouring territories of the European maize industry. We agree with the view of the Economic Development Committee that the preservation of the present organization and structure of the maize industry justifies a national effort to assist it and safeguard its interests (vide Economic Development Committee Report, para. 613), and with the further opinion of the same Committee that "Maize must be regarded as an essential

crop. Its production in Kenya is one of the Colony's greatest safeguards against famine, for it is now a staple food of most of the native population and, apart from famine considerations, it is required in large quantities as a basic factor in other local industries. We regard the maize industry as of vital importance to the economic welfare of the Colony." (Ibid. para. 172.) Native-grown maize is not sufficient to meet local requirements and, in times of famine, European-grown maize has to be imported into the Reserves. Uganda and Tanganyika would also rely on Kenya maize to supplement internal shortage, and if European maize production proved inadequate the only alternative would be, as has been done in the past, to import from abroad at great expense.

As the result of the efforts of European growers, Kenya maize K 2 is now definitely established in the world's markets and commands a premium over Argentine maize, and the average production per acre in Kenya compares favourably with other maize-growing countries as is shown in an earlier paragraph.

#### IMPORTANCE OF COFFEE INDUSTRY.

17. According to the Report of the Economic Development Committee (para. 155 *et seq.*), the average value of coffee exported over the past three years has been given at 47 per cent of the total exports of the Colony. For the year 1932 the figure was 61.7 per cent of the total.

The coffee industry as a whole gives employment equivalent to the full-time services of 50,000 natives.

There are 929 coffee growers, representing 43 per cent of the total number of occupiers of agricultural holdings, and, in addition to the large number of owners managing their own farms, the industry gives employment to 883 Europeans.

The Agricultural Census Report for 1934 gives the total acreage of planted coffee as 102,298 acres, of which only 65,649 acres are fully mature. 14,046 acres are still under three years old, and 23,540 acres are between three and six years old.

Data obtained from the Coffee Board of Kenya show that the capital invested in 418 coffee estates is approximately £1,500,000.

Kenya coffee has established a high reputation for quality on the London market, and despite the setback caused by abnormal conditions prevailing over the past three years there is no occasion to suppose that in due course this reputation

should not be enhanced when normal conditions return. In general it provides the best demonstration and advertisement of the Colony's suitability and scope for European enterprise. It constitutes a serious attempt to exploit one of the best of the Colony's natural assets, and we are of opinion that its vigorous development is in the best interests of Kenya and the Empire.

#### MIXED FARMING.

18. Maize must be regarded as a 'pioneer' crop, essential to the development of the territory. In other countries similarly situated, maize production has formed the stepping-stone to wards more diversified farming, and in our opinion the time has arrived for farmers now growing maize or wheat only, to be encouraged and assisted to change over to mixed farming.

The majority of cereal-growing areas are suitable for mixed farms, and not only do such farms lend themselves to cattle, pigs, poultry and dairy produce, but such extension of the farmer's activities would enable him more fully to utilize the area of his holding and would assist in maintaining soil fertility. Many witnesses have stressed the advisability of such a change-over and its advantages over the present wide spread reliance on cereal crops alone.

#### THE PRESENT POSITION OF AGRICULTURAL INDEBTEDNESS.

19. Apart from the scaling down of debts which may be effected through Conciliation Boards, we have not recommended the institution of any machinery which will directly lighten the burden of agricultural indebtedness, for the reasons given in para. 10, nor have we had an opportunity of ascertaining the actual total burden of debt. In the absence of any details covering loans by companies or individuals, a proper assessment of the actual indebtedness of agriculture is impossible, but the following figures may give some indication of the position. In the Report of the Economic Development Committee (para. 125) a figure of £3,116,000 is given as representing loans and advances to agriculture outstanding in the books of the Kenya banks at the end of 1932. At the end of 1934 loans to the extent of £472,415 had been made by the Land Bank, and advances outstanding in the books of the Agricultural Advances Board at the end of 1934 amounted to £104,759.

So far as the position of the coffee industry is concerned the memorandum of the Coffee Board of Kenya deals with returns as at 30th June, 1934, from coffee estates producing 87.6 per cent of the total Kenya crop, and indicates that on these estates the total indebtedness in respect of mortgages,

bank overdrafts and other loans secured on the land or upon security other than crops or chattels mortgage is £1,912,116, the annual interest charge being £83,043.

The total indebtedness in respect of shortfalls on advances made against crops by merchant firms is shown as £71,803, the annual interest charge calculated at 6 per cent amounting to £4,308.

Seasonal indebtedness, secured on crops or by chattels mortgage, excluding shortfalls, is estimated to amount to £178,912 as at 31st December 1934. The annual interest charge, calculated at 6 per cent plus interest on advances against unsold crops amounts to £13,930.

The total interest charges to be met by the coffee industry each year is summarized as follows:—

|                     |         |
|---------------------|---------|
| On mortgages, etc.  | £83,043 |
| On shortfalls       | 4,308   |
| On seasonal finance | 12,920  |

£99,271

The Coffee Board emphasize that while the above figures present a general picture of the indebtedness of the industry, they are largely averages, and are far removed from the actualities of a great number of individual cases, and that any measures to alleviate the position can only be taken after individual consideration of individual cases. We are of the opinion that the position at the present time must be materially more serious as the result of the climatic conditions and the still further fall in world prices during the last eighteen months.

The picture of agricultural indebtedness provided by the foregoing extracts from evidence is of very limited service to us, inasmuch as it fails to give any indication of how the figures might be allocated as between indebtedness and oppressive indebtedness.

#### CAUSES OF PRESENT POSITION.

20. The present position of agricultural indebtedness can be attributed to the prolonged period of adverse agricultural conditions occasioned by the incidence of locusts and drought, which caused great damage from 1929 to 1933 on European-owned farms and in native areas, and to the low prices realized for primary products on the world's markets.

In 1929-30 the prices of primary products fell after a long period of prosperity. In the preceding years farms had been purchased at prices which, in some cases, have proved to be too high, commitments were entered into on the basis of the high prices then being realized for coffee, maize and other farm products, and total costs of production (management, implements, labour, etc.) were on a generous scale which could only be justified, if at all, by the prices then being realized for crops.

The collapse in the world's markets found a very large proportion of producers with no reserves to fall back on and with commitments which, on the reduced returns obtainable from the sale of farm produce, were too high in relation to the resources of their farms.

The coffee industry was and to some extent still is at the development stage, profits earned during the period of high prices having been returned to the land by bringing further areas under development and providing permanent factories, buildings, etc. Large areas of coffee only came into full bearing after the collapse in prices had occurred.

The main coffee-producing areas have had the unprecedented experience of three consecutive years of drought, the effect of which is reflected in the low percentage of "A" grade, poor quality, and reduced yields of recent years. The same general conditions applied, although perhaps to a lesser extent, to the agricultural and pastoral industries. Maize and wheat growing areas, suffered from the severe locust infestation of 1930-1933. In some districts losses due to locusts were approximately 20 per cent or more of grain crops, involving a shortage of over 200,000 bags of grain (*vide* Economic Development Committee's Report, para. 380 (a)).

#### III. EFFECT ON FARMING OPERATIONS.

21. The reduced yields, inferior quality and low prices obtainable for produce have had the inevitable result of curtailing expenditure on farming operations, in many cases below the level required for the proper maintenance of the farm, of good husbandry and even of the individual

Farmers have not had the finance necessary to carry out essential manuring and anti-erosion measures, implements have not been replaced and buildings have not been kept in a good state of repair. Such neglect has materially affected the efficiency of farming operations and the soil fertility of cultivated areas.

We also regard as a matter of great and far-reaching benefit the psychological effect of the removal of any condition which constitutes an ever-present menace to the farmer's security of tenure and continuance of operations.

**PRICES OF VARIOUS COMMODITIES.**

22. We are indebted to the Agricultural Economist for the following tables showing the prices realized during the past few years for coffee, maize, butter and sisal:

**COFFEE PRICES.**

Monthly average prices actually realized at the London auction during the last six years were as follows—

| MONTH     | 1920         |              | 1930         |              | 1931         |              | 1932         |              | 1933         |              | 1934         |              | 1935         |              |
|-----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|           | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. |
| January   | 124          | 111          | 70           | 109          | 73           | 69           | 80           | 73           | 69           | 73           | 69           | 80           | 73           | 69           |
| February  | 123          | 101          | 82           | 106          | 67           | 75           | 84           | 78           | 70           | 73           | 69           | 80           | 73           | 69           |
| March     | 122          | 83           | 78           | 103          | 63           | 70           | 73           | 67           | 65           | 67           | 65           | 66           | 65           | 64           |
| April     | 118          | 73           | 73           | 75           | 67           | 70           | 65           | 65           | 65           | 65           | 65           | 65           | 65           | 64           |
| May       | 113          | 59           | 65           | 66           | 58           | 59           | 53           | 57           | 57           | 57           | 57           | 57           | 57           | 57           |
| June      | 90           | 53           | 59           | 58           | 59           | 57           | 57           | 57           | 57           | 57           | 57           | 57           | 57           | 57           |
| July      | 95           | 58           | 55           | 59           | 57           | 57           | 57           | 57           | 57           | 57           | 57           | 57           | 57           | 57           |
| August    | 97           | 60           | 52           | 64           | 56           | 52           | 51           | 51           | 51           | 51           | 51           | 51           | 51           | 51           |
| September | 99           | 73           | 67           | 82           | 57           | 64           | 61           | 61           | 61           | 61           | 61           | 61           | 61           | 61           |
| October   | 92           | 60           | 74           | 75           | 55           | 51           | 51           | 51           | 51           | 51           | 51           | 51           | 51           | 51           |
| November  | 93           | 79           | 80           | 72           | 63           | 58           | 58           | 58           | 58           | 58           | 58           | 58           | 58           | 58           |
| December  | 101          | 78           | 93           | 71           | 58           | 58           | 58           | 58           | 58           | 58           | 58           | 58           | 58           | 58           |
| Year      | 110          | 77           | 74           | 85           | 64           | 62           | 62           | 62           | 62           | 62           | 62           | 62           | 62           | 62           |

**PRICES OF FLATE YELLOW MAIZE IN LONDON (FROM BOARD OF TRADE JOURNAL)**

| MONTH     | 1920            |                 | 1930            |                 | 1931            |                 | 1932            |                 | 1933            |                 | 1934            |                 | 1935            |                 |
|-----------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|           | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. | Sh. per 100 lb. |
| January   | —               | 6.14            | 3.49            | 4.02            | 4.35            | 4.18            | 4.53            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            |
| February  | —               | 5.77            | 3.96            | 4.30            | 4.18            | 3.93            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            | 4.10            |
| March     | —               | 5.57            | 4.26            | 4.48            | 4.13            | 4.30            | 4.51            | 4.51            | 4.51            | 4.51            | 4.51            | 4.51            | 4.51            | 4.51            |
| April     | 8.88            | 0.76            | 4.54            | 4.90            | 3.91            | 4.22            | 4.78            | 4.78            | 4.78            | 4.78            | 4.78            | 4.78            | 4.78            | 4.78            |
| May       | —               | 6.23            | 4.09            | 4.45            | 4.02            | 3.84            | 4.27            | 4.27            | 4.27            | 4.27            | 4.27            | 4.27            | 4.27            | 4.27            |
| June      | —               | 5.59            | 3.93            | 4.03            | 3.77            | 4.04            | 3.78            | 3.78            | 3.78            | 3.78            | 3.78            | 3.78            | 3.78            | 3.78            |
| July      | —               | 6.24            | 3.44            | 4.35            | 3.85            | 4.27            | 3.59            | 3.59            | 3.59            | 3.59            | 3.59            | 3.59            | 3.59            | 3.59            |
| August    | —               | 6.57            | 3.18            | 4.38            | 3.67            | 3.55            | 3.45            | 3.45            | 3.45            | 3.45            | 3.45            | 3.45            | 3.45            | 3.45            |
| September | —               | 5.69            | 3.15            | 4.33            | 3.62            | 3.69            | 3.69            | 3.69            | 3.69            | 3.69            | 3.69            | 3.69            | 3.69            | 3.69            |
| October   | 7.44            | 4.55            | 3.68            | 4.07            | 3.49            | —               | —               | —               | —               | —               | —               | —               | —               | —               |
| November  | 6.07            | 3.84            | 4.21            | 4.06            | 3.90            | 4.49            | —               | —               | —               | —               | —               | —               | —               | —               |
| December  | 6.49            | 4.10            | 3.95            | 4.01            | 4.43            | 4.69            | —               | —               | —               | —               | —               | —               | —               | —               |

**BUTTER—NEW ZEALAND 1st IN LONDON (FROM BOARD OF TRADE JOURNAL)**

| MONTH     | 1930         |              | 1931         |              | 1932         |              | 1933         |              | 1934         |              | 1935         |              |
|-----------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|           | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. | Sh. per Cwt. |
| January   | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| February  | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| March     | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| April     | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| May       | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| June      | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| July      | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| August    | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| September | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| October   | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| November  | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |
| December  | 121          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          | 100          |

**SISAL—F.A. No. 1 IN LONDON, PER TON (AVERAGE, 1925—1930)**

| MONTH     | 1931 |       | 1932  |       | 1933  |       | 1934  |       | 1935  |  |
|-----------|------|-------|-------|-------|-------|-------|-------|-------|-------|--|
|           | £ s. | £ s.  | £ s.  | £ s.  | £ s.  | £ s.  | £ s.  | £ s.  | £ s.  |  |
| March     | 16 7 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 |  |
| June      | 16 7 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 |  |
| September | 16 7 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 | 15 16 |  |
| December  | 17 0 | 16 0  | 16 17 | 16 5  | 16 5  | 16 5  | 16 5  | 16 5  | 16 5  |  |

**ATTITUDE OF MORTGAGEES.**

23. We are satisfied from evidence submitted by mortgagees and mortgagees that the majority of secured creditors have extended a very large measure of consideration to debtors during the period of depression. Rates of interest in many cases have been reduced or interest waived for a period, and few actions for foreclosure have been instituted. While it may be true that there is little reason to fear that a return to more prosperous times would result in a change in this attitude, we endorse the view expressed by the Coffee Board of Kenya that "leniency is too often a matter of day-to-day arrangement. The planter has no security of tenure, and although he may be leniently treated by creditors, his urge is to sacrifice the proper cultivation of his estate rather than run the risk of failing to meet his commitments. A composition arranged for a definite period of time would thus enable the planter to devote all his energies to the proper maintenance of his estate. Such proper maintenance is vital in the interests of creditors as well as debtors."

#### ASSISTANCE TO AGRICULTURE IN OTHER DOMINIONS AND COLONIES.

24. The Committee have had access to records of the various relief measures adopted in the following Dominions and Colonies:—

*New Zealand.*—Mortgagors and Tenants Relief Act, 1933; Rural Intermediate Credit Act, 1927, and Reports, 1930-1933.

*S. Rhodesia.*—Report of Committee of Inquiry into the economic position of the Agricultural Industry, 1934; Farmers' Debt Adjustment Act, 1935.

*South Africa.*—Land Settlement Act, 1931; Farmers' Special Relief Act, 1931; South African Farm Mortgage Interest Act, 1933; Export Subsidies Act, 1931; Dairy Industry Control Act (Amendment), 1932; Farmers' Assistance Act, 1935.

*Alberia.*—Debt Adjustment Board.

*British Columbia.*—Mortgagors and Purchasers' Relief Act, 1932.

*Canada.*—Farmers' Creditors Arrangement Act.

*Manitoba.*—Debt Adjustment Act, 1932.

*New Guinea.*—Mortgagors' Relief Ordinance.

*New South Wales.*—Farmers' Relief Act.

We are also aware of the large measure of assistance, direct and indirect, given in the United Kingdom to producers of agricultural products.

It has been further noted that the amount provided by the Government of the Union of South Africa, plus the excess costs met by consumers, plus the amount of loss on exports (quota), for the protection of agricultural industries amounted for the year 1933 to no less than £7,473,000 (*vide* South African Journal of Economics, September, 1935).

#### WHEAT, TEA, SUGAR AND SISAL.

25. No evidence has been given to this Committee that immediate assistance is required by any of these industries.

#### ASSISTANCE RECOMMENDED ONLY TO APPROVED FARMERS.

26. Our investigations show that while measures of relief are necessary to the agricultural industry generally, there are cases where, owing to the unsuitability of the soil, location of the farm or to lack of experience or ability of the farmer, no assistance can be afforded with any prospect of the ultimate success of the farm or relief of the farmer. We are of the

opinion that any form of assistance should be granted only after adequate enquiries into the financial position and farming ability of the farmer, the history and past production of the farm and the prospects of ultimate recovery.

#### NECESSITY FOR IMMEDIATE RELIEF.

27. We realize and wish to stress the fact that many farmers will not be able to continue operations unless some measure of relief can be afforded without delay. Apart from the position outlined in paragraph 19 the fact that for a prolonged period farming operations have been conducted at a loss, has left many without any working capital with which to meet labour costs, etc., to plant another crop or to maintain existing areas.

The coffee industry is further affected by the decision of merchant houses to curtail and in some cases to discontinue seasonal and anticipatory advances on which planters have relied in past years.

This decision has completely upset all the calculations of the planters concerned, and although it is reasonable to suppose that the merchant houses may be looked to for a crop advance in July to September, when the crop is sufficiently advanced to admit of an estimate of its tonnage and value, in very few instances have these planters been able to make any financial arrangements for bridging the gap from January to June. The crop already reaped is held by the merchants against the advances made for its production and as the circumstances already detailed have combined to deprive last season's operations of any profit, the planter has no source of income from which to meet the cost of maintenance until the next crop is in sight. The necessity for finding a means to alleviate this position is vital and immediate.

We are satisfied that finance should be made available to approved farmers to enable this gap to be bridged and are of the opinion that such assistance would go a long way towards establishing a sound system of coffee crop finance and would save many worthy and experienced planters from failure.

#### A MIDDLE CLASS.

28. It is anticipated that the majority of applications for financial assistance will come from planters embarrassed by a variety of commitments to secured and unsecured creditors, the total amount of which renders it almost certain that the creditors cannot be satisfied in full from the result of next season's operations. This involves a threat of possible



disaster emanating from action by one of several parties, the mortgagee, the holder of a chattels mortgage, or the unsecured creditor. The recommendations of the Committee embrace an endeavour to meet this position by a scheme involving protection for the participant over a period during which it is hoped he will rehabilitate himself by means of carefully controlled finance.

There is, in addition, another class to be reckoned with, i.e. the planter who, although not actually embarrassed by the threat of possible action by a creditor, relied upon assistance from a merchant house to finance his crop. This assistance being denied him, he has no funds with which to carry on.

It was suggested to us that the proposed conditions surrounding any Government advances, as set out in the concluding paragraphs of this Report, might appear unduly exacting in such a case. After consideration of the point we have decided that no real hardship would be imposed in connection with this class, but, on the contrary, the proposed restrictions and conditions attached to an advance would work for the actual protection and benefit of the borrower, the Government and the mortgagee.

In any case, it is hoped that with further capital made available to the Land Bank and the granting of the widened powers asked for by the Land Bank Board, a considerable number of planters will then be eligible for ordinary Land Bank advances.

**RECOMMENDATIONS**

*Introductory*

29. Agricultural finance falls into two classes—

- (a) *Long Term*, to meet the mortgage position and such other purposes as are defined in the Land Bank Ordinance;
- (b) *Short Term*, to meet seasonal finance and to assist cereal farmers in a change over to mixed farming.

The difficulty with which we are faced is to suggest remedial measures which come within the bounds of practicability and can be recommended to the Imperial Government.

We feel that no action should be recommended which would have the effect of creating a feeling of insecurity among investors and are of the opinion that any settlement between

debtor and creditor should be voluntary. Some witnesses have stated that without compulsion any attempt to arrive at an equitable adjustment of the indebtedness position will be unsuccessful; others were in favour of nothing being done to prejudice the existing rights of secured creditors.

Kenya Colony depends very largely on imported capital for the development of its resources and any step taken which will result in loss of confidence by lenders, however beneficial to the debtor for the moment, must react to the detriment of the agricultural industry as a whole.

*Land Bank Capital*

30. With regard to Long Term finance we have already referred to a scheme based on a bond issue but at this stage we should like to support the recommendations of the Economic Development Committee for an increase of the capital of the Land Bank by £600,000, and the raising of the present maximum of an advance to any one farmer to £5,000, and the maximum amount for the discharge of a prior mortgage to £3,500 (*vide* Economic Development Committee's Report, Chap. VI, para. 466-483).

It is understood that this proposal has been supported by Government and is now receiving consideration by the Secretary of State.

The scheme which has been put before us with regard to the long term adjustment of debts is of such magnitude (though on the face of it of such simplicity) that, without the most careful examination by experts, we consider that at this stage it would be folly to express an opinion either in favour of or against it, particularly as, short of going to the London Market for a loan of several millions, which we are told we would never be able to obtain, we have not yet evolved any other scheme which would take its place.

*Finance for Short Term*

31. We recommend that of the £600,000 referred to in the preceding paragraph, Government should be empowered to direct the Land Bank to set aside a sum not exceeding £200,000 (which amount, with interest, shall be guaranteed by Government to the Land Bank in order to supply funds for the provision of seasonal finance and assistance to cereal farmers in a change over to mixed farming, the procedure for which is set forth in the following pages.

The £200,000 to be set aside is not to be regarded in any sense as a subsidy to any industry; it is to be advanced as a business proposition, at an interest as low as Government considers reasonable, having regard to such factors as the interest payable on the loan, cost of administration, establishment of a reserve fund, etc.

It may be thought that, in considering and reporting on the advisability of inaugurating a scheme of Short Term advances, we are exceeding our task which was to explore the possibilities of lightening the burden of agricultural indebtedness, and, on the strict interpretation of our terms of reference, there might be some substance in the criticism, but we feel that the position is so critical that action must be taken immediately.

It would be fatal for us in leisurely manner to propound some scheme of long term finance which we know would involve long and detailed consideration before it could be brought into operation by Government, when we believe that if action is not taken promptly a considerable number of the farmers of this Colony will be ruined, and it is for this reason that we hasten to forward to Government this interim report.

We trust that by recommending this procedure we shall not be condemned as having failed in our main task, which we are, in fact postponing for reasons given in paragraph 10.

#### *Proposed Machinery.*

83. We recommend that the following steps be taken immediately:—

(1) That a Conciliation Board be appointed to consist of five members one of whom shall be drawn from the Land Bank Board, with one of His Majesty's Judges as Chairman.

(2) That Local Committees be appointed in various districts composed of the District Officer as Chairman and two members of farming and business ability.

(3) That all applications, together with the recommendations of Local Committees be submitted to the Conciliation Board with whom the final decision shall rest.

(4) That definition of the powers of Local Committees and Conciliation Board and regulations governing advances be the subject of an instruction by the Governor in Council.

(5) That the administration of advances approved by the Conciliation Board be in the hands of the Land Bank, which shall be appointed agent for Government in the administration of the scheme. (Where reference is made to the Land Bank in the following pages it is in this capacity as Agent for Government.)

(6) That Land Bank agents in each district report at stated intervals to the Land Bank with a copy to the Local Committee.

#### *Procedure.*

83. Having established these bodies the procedure envisaged by us will be as follows:—

Upon a farmer determining that it is necessary for him to obtain assistance he will apply to the Local Committee stating his requirements and filing a complete list of his indebtedness, which will be open to inspection by any of his creditors.

Upon receipt of this application in due form the Chairman of the Local Committee shall immediately issue what is called a "Stay Order" over the whole property of the applicant, which will have the effect of vesting the property of the applicant temporarily in the Land Bank, but this Stay Order will permit the applicant to make deliveries under any agreement already made and to enter into fresh agreements with the approval of the Land Bank.

The Chairman of the Local Committee may also direct an approved valuer to visit the farm of the applicant, and make a report upon his assets and will in due course call a meeting of the Local Committee. At this meeting the position of the applicant's affairs will be freely discussed and the conditions under which, in the opinion of the Committee, an equitable adjustment of the applicant's position could be arranged (should this be necessary). The whole matter will then be referred to the Conciliation Board.

Every opportunity should be taken to discuss the position with the applicant and his creditors before submitting the matter to the Conciliation Board. The Conciliation Board will then call a meeting which the applicant and his creditors shall have the right to attend in person or by a fully authorized representative, or they may send in their views in writing with the object of arriving at a settlement.

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Should a majority of the creditors refuse to consent to the proposed adjustments or conditions of the settlement the Board will refuse the application in which case the Stay Order will be removed, and the debtor and creditors permitted to follow their usual legal remedies.

When the terms of the proposal or any variation thereof are agreed to by—

- (a) the Conciliation Board,
- (b) all the secured creditors, and
- (c) a majority in number and value of the unsecured creditors,

and whether such agreement involves an adjustment of debts or not, the Chairman of the Conciliation Board will reduce the terms to writing and will file this document (which in many ways will resemble a Deed of Arrangement) in the Registry; which document will be binding on all parties, at the same time extending the Stay Order for a period not exceeding one year unless a longer period has been agreed upon by the creditors. In calculating the majority of creditors required by this section no such unsecured creditor shall be reckoned in number unless his claim be of the value of at least five pounds; holders of second mortgages or chattels mortgages to be considered as secured creditors.

Although the Stay Order (except with the consent of the creditors) will be only issued for one year, we contemplate a renewal of this Stay Order from year to year where there is any shortfall on any advance, but the total period shall not exceed in all more than five years.

Government funds can only be issued when reasonable security is offered and it is for this reason that Stay Orders are necessary under the Scheme before advances can be authorized.

In cases where it is considered necessary that Government Funds are required for the purpose of continuing existing operations the decision of the Conciliation Board should include an instruction specifying the amount which the Land Bank should advance.

#### *Suggested Regulations.*

84. (1) The security and terms for repayment of any advance to be such as are deemed fitting by the Conciliation Board.

(2) All securities to be registered in the name of the Land Bank.

(3) No stamp duty to be payable on any document, instrument or deed issued by or in favour of the Land Bank.

(4) Full particulars of all persons in respect of whose estates Stay Orders have been issued or removed to be notified for public information in the Official Gazette on the issue or removal of the Stay Order.

(5) Accounts of revenue and expenditure to be kept by participants in a form to be prescribed by the Land Bank.

(6) The Secretary or Assistant Secretary of the Land Bank to act as Secretary to the Conciliation Board and clerical services for the work of the Conciliation Board to be supplied by the Land Bank.

#### *Security for Advances.*

85. The next point to consider is the security to be held by the Land Bank.

As we have said previously, the effect of the Stay Order will be to vest the farm in the Land Bank for the period of the Stay Order, but it must be clearly understood that this does not in any way affect the rights of any secured creditor, except that it will postpone his remedies, e.g. the sale or foreclosure of any property movable or otherwise over which he may have a lien.

The security will be on the crops which will be grown and reaped during the time that the Stay Order is in existence and any other security which it will be possible to obtain from the applicant. Thus, if money is advanced to a farmer to enable him to raise a crop of maize and also to start a herd of cattle, the security for the money would be the value of the crop together with a chattels mortgage on the cattle and their progeny, while the proceeds of any milk or milk products sold would also be paid to the Land Bank.

#### *Limit for Advances.*

86. Under the proposed scheme of Short Term advances it is suggested that the maximum advance should be limited as follows:—

Coffee.—£7 per acre of fully bearing coffee, save in exceptional cases.

Maize.—Sh. 30 per acre of planted area.

For cattle, dip and fencing.—£500.

For any other purpose.—At the discretion of the Conciliation Board.

Should the crop be wholly or partially lost through locusts, diseases or other unforeseen calamity, admittedly for that year there would be a loss and the only hope of recovery of advances would be in carrying the farmer for another year.

We fully realize that there is an element of risk attached to such investments, but, having considered all the existing circumstances, we are of the opinion that it is a risk that the country should take.

**THE FARMER.**

37. Having outlined the procedure for and the security of the Land Bank it is necessary to point out the advantages of this project to the farmer. So far we have shown that, by the granting of a Stay Order, he is secure in his farm so long as the order is in force, but, as against that all his property has been vested in the Land Bank. The procedure with regard to him is visualized as follows: As soon as the Conciliation Board have agreed to accept the investment the farmer will ordinarily be appointed as manager of the estate under the supervision of the Land Bank (or their agents) and included in amounts paid to him will be a sum to include a monthly salary, which should represent an amount sufficient to support himself and his family, having regard to all the circumstances of his case. All other money necessary for the production of the crop up to the agreed limit, will be paid to him, (as and when required) by the Land Bank after his vouchers have been duly passed by the Land Bank or its agent in his district. He thus obtains a living, a certain security of tenure and has a better prospect of being able to keep his land so cultivated and manured that he will be able to take advantage of the rise in commodity prices which must, we trust, take place in the near future.

**THE CREDITORS.**

38. The advantage of this scheme to the creditors lies in this fact: Few creditors are in a position to take over and run the farm themselves nor are many in a position to finance the farmer to run it. In view of the present world prices the prospect of an advantageous sale of the farm is almost negligible and their security, as we have shown, is yearly deteriorating through the farmer's financial inability to cultivate his land.

By consenting to a Stay Order and/or an equitable Deed of Arrangement the creditor knows that funds will be provided to cultivate the land and that the farmer will be supervised by the Land Bank agent, thus preserving the value of his

security, and he also knows that if the crop realizes more than the Land Bank advances the surplus will be divided in the usual order of priority which will be laid down in the Ordinance.

39. We trust that the scheme which we are now suggesting will not be dismissed as idealistic, socialistic or impracticable, for we feel sure that it can be worked, that it will be a godsend to many deserving farmers and that the Risk to Government is infinitesimal in comparison with the possibility and probability of good to the country in general.

We realize that many a farmer will be disappointed at our recommendations but it must be understood that we do not represent a philanthropic society and are therefore unable to recommend help to any but those who, in the opinion of the Board, will be able with help to make good. The bad farmer, the good farmer with bad land, the possibly good farmer with good land who is so heavily involved that no arrangement with his creditors can be made, are all beyond our help.

40. The above scheme may appear to our critics cumbersome and perhaps unduly expensive, but it is hoped that in practice with the assistance and co-operation of such bodies as the Kenya Farmers' Association, who have already offered to help the Land Bank in every possible way to implement the smooth working of our endeavour, much time and money will be saved.

41. In conclusion we would like to place on record our appreciation of the industry and ability of our Secretary, and also the great assistance given to us voluntarily by Mr. Thornton, both as Acting Secretary during the temporary absence of Mr. Hately, and also as our special emissary in certain country districts.

- W. HARRAGIN, (Chairman),
- G. WALSH,
- W. EVANS,
- J. NORDLINGER,
- J. CAMPBELL,
- W. C. HUNTER.

33rd December, 1935.

T. L. HATELY, Secretary.

**POSTSCRIPT.**

We desire to place on record our grateful appreciation of the ability and patience with which our Chairman has conducted the deliberations of the Committee. Proceedings have been expedited and our somewhat onerous task has been materially lightened by his unflinching courtesy and experienced guidance.

G. WALSH.  
W. EVANS.  
J. NORDLINGER.  
J. CAMPBELL.  
W. C. HUNTER.

**T. I. HATELY, Secretary.**

**NOTE BY MR. JOHN NORDLINGER.**

I have signed the Majority Report because, in the main I agree with the arguments set forth therein and also with the proposed scheme for short term finance.

There are, however, certain vital points on which my views are not in accord with those expressed in the report, and I beg to set those forth as follows:—

Under the heading "Procedure" the report recommends that all the secured and a majority in number and value of the unsecured creditors must agree before the farmer can be granted any assistance whatsoever, even that of a Stay Order. This is not the case in the New Zealand Act on which to a considerable extent our proposals are based, which reserves the decision as to whether a Stay Order shall be granted or not to the Conciliation Board, and where a Stay Order is granted, it is for a period of five years and not for yearly periods as recommended in our report.

In my opinion if this scheme is to be successful in keeping the deserving farmer on his land it is essential that the same power should be given to our Conciliation Board. As it is at present the recalcitrancy of even one obdurate creditor can prevent the most deserving case from obtaining any assistance under the proposed scheme. Further, even if all his creditors agree to the Stay Order being granted for the period of one year, there is grave reason to fear that an improvement in values is likely to result in his failing to obtain a renewal of their agreement from year to year for that further period which is necessary in order for him to make good the past losses which, it is agreed, have been incurred through circumstances beyond his control.

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It is hardly necessary to point out that under the suggested conditions the good farmer on his well-farmed land who happens to have a small first mortgage compared to the total normal value of his farm is the one likely to have the most difficulty in obtaining this agreement, especially if and when values start rising again.

This is hardly in accordance with the opinion expressed by the Committee (vide paragraph 14) that the experience of the European farmer "represents an asset which the Colony cannot afford to lose".

The Committee also express the opinion (vide paragraph 21) that: "We regard as a matter of great and far reaching benefit the psychological effect of the removal of any condition which constitutes an ever present menace to the farmer's security of tenure and continuance of operations".

In my opinion the scheme as suggested does little or nothing however to remove the serious dangers which threaten the very existence of so many deserving farmers.

That the farmer is entitled to protection by the State is recognized in the Acts of various British possessions as quoted in our report. It should be noted that these Acts in almost every case date back to 1830/1 and the fact that we in Kenya have waited till 1936 to take similar action is undoubtedly one of the causes of the aggravation of the present burden of agricultural indebtedness.

In the New Zealand Act, during the enforced period of the five year Stay Order, the Conciliation Board endeavours at intervals to arrange a voluntary composition with the farmer's creditors in cases where the Board considers this necessary. If unsuccessful a Board of Review has large powers of enforcing a composition at the end of the five-year period. Any such composition is based on the productivity of the farm during the period the Stay Order is in force. The farmer's conduct and efficiency is taken into due consideration by the Board. It is, however, expressly laid down that the amount of his debts is not to be the guiding factor but that the Board is to be guided by the value of the farm and the efficiency of the farmer. On the face of it, this may seem to be unduly hard on the creditors but it must be remembered that the purchasing power of money at the present time is immensely greater than when the money was lent.

I consider that in order to give the farmer a reasonable opportunity of getting on his feet again the Conciliation Board should have the power to enforce a Stay Order for the same

period as in New Zealand, viz. five years, and that they should be granted the same power of enforcing a composition at the end of the period that the Board of Review has under the New Zealand Act, such power only to be used if the purchasing power of money remains abnormally high.

The Government of Kenya has recognized the necessity of exceptional measures in passing the Mortgage Relief Act and I can see no reason whatsoever why the Conciliation Board, which is to be under the chairmanship of one of His Majesty's judges, should not be granted the same powers as are granted to similar bodies under the New Zealand Act.

I consider further that steps for reducing the rate of interest on Agricultural Mortgages, such as have been taken in other British possessions, are essential in Kenya and should be taken at once. Evidence led before the Committee has in most instances emphasized the necessity for this and our late Governor, Sir Edward Grigg, has stated in the Imperial Parliament that it is absolutely essential.

A further most effective method of "lightening the burden of agricultural indebtedness" is a measure of so-called devaluation of the East African currency, i.e. the controlling of the East African shilling at a discount with the sterling shilling instead of, as at present, controlling it at par. This method has been adopted by several of the Dominions including Australia and New Zealand. It has also been adopted almost universally by all the coffee-producing countries.

It is a very severe handicap on our primary producers to have to compete unaided in the world's markets with the produce of these countries. It is to be hoped that the Secretary of State for the Colonies will give his reasons at an early date as to why similar steps should not be taken in the East African Territories.

If there are good reasons against this then I feel that it is essential that the Secretary of State should suggest to the local Government alternative measures to afford equivalent relief.

The accumulated burden of debts, the necessity of the alleviation of which was recognized by Government in the setting up of our Committee, is to some considerable extent due to this handicap.

JOHN NORDLINGER.

23rd December, 1935.

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