

38223

38223

C O 533 / 483
KENYA

PART 1

PART 1

RESIDENT NATIVE LABOURERS LEGISLATION

Previous	1935	LORD DUFFERIN	22/6
		SECRETARY OF STATE	
		R 297	28/6
		R 309	6/7
		Mr Pashin	9/7
		Mr Flood	
Subsequent		R 297	16/7
		R 309	16/7
		Mr Pashin	11/8
		Mr Flood	
PART 2		R 297	6/5
		Mr Pashin	13
		Mr Flood	14
		R 98	
		R 302	
		Si. Cottonley	14
		Mr Pashin	14/5
		R 297	20/5
		R 309	20/5
		R 297	24/5
		R 80	27/5
		R 298	
		297	
		Si. C. Cottonley	15/6
		Mr J. Cottonley	19/6
		SAS	

1. For P.O. by Major Milner, see no. 1 on P.O. file
2. P.O. by Mr. Creech Jones, see No. 2 on P.O. file

1. MR. CREECH JONES (S/O TO S.O.F.S.) 28.4.37
 Requests copy of Bill designed to regulate conditions of residence of African labourers on European farms.

DESTROYED

STATUTE
East African Dept.

Will you please supply me with a copy of the Bill mentioned in the enclosed letter from Mr. Creech Jones, M.P., for Mr. Ormsby Gore to send to his correspondent.

E.B.B.

27/4/37

4. To Mr. Creech Jones, M.P. (S/O)..... (3 ansd.)... 4.5.37
5. EXTRACT FROM KENYA GAZETTE No. 12 OF 16.3.37.
 (BILL TO REGULATE RESIDENCE OF LABOURERS ON FARMS)

Having heard that this Bill had been published in the Gazette (it had not been received when Mr. Creech Jones' letter was answered on the 28th of April), Prof. Macmillan called last week to see if he could have a copy of the Author's Report. In accordance with the reply given to Mr. Creech Jones, I told Mr. Macmillan that ~~as a matter of~~ it was not proposed to publish the Report.

Prof. Macmillan still thinks that the policy behind this Bill is mistaken & I rather gathered that he was preparing to try & arrange for some more

you - Parliament about it.

But as on the last occasion when he called (4.15 minutes of 22/1/37 or -/35) he seemed to be singularly misinformed as to how the system operates in Kenya. When I challenged one or other of his statements, it generally emerged that he was speaking of what used to happen in South Africa. For example he was quite unaware that in Kenya, even under the old Order, the employer was under an obligation to provide employment ^{to each worker} at a wage of not less than 150 days a year.

I have marked in red the amendments which have been made in the Bill, prior to publication. They have not amended the original Bill to meet the points made in No 2 on -/35 in regard to clauses 4 & 5(7), or the point in para 14 of the Dep.

We shall no doubt receive in due course the Gov's explanation on these points & in various places where were raised in that Dep.

In the meantime, Mr S. J. P.

may perhaps wish to see Mr Creech Jones. I have had the Gazette of 16th March, containing this Bill, but have not seen received (I had him a copy)

J. J. P. 13/5

It must be remembered that the Bill is published as a draft and they may wish, and very probably do wish, to consider the Secretary of State's suggestions further with a view to bringing them up when it comes before the Council. I notice that in Section 4(1) the word "continuous" has been re-inserted. It was in the original draft and was deleted from the Bill as prepared by the Attorney General and submitted to us. It has now crept back again which looks rather as if they had simply decided to publish the Bill only putting in "resident labour" for "squatter".

It is quite common practice in Kenya to publish a Bill, especially one like this which affects a good many in the unofficial community, give it some time to sink into the people's minds and make various amendments when it comes before Council. No doubt they will do so with this one. Draft herewith to Mr. Creech Jones.

J. J. P.

W. L. Creech Jones

Secretary of State

Copy of 5 requests for file

Recd: 3
Rout: 4, 6.

6. L. Creech Jones (M.C.S.) 18th May 37

The 12 copies of Report of Committee on Working of
Resident Native Labourers Ordinance, 1925.

(Spares to Library)

This is a reprint of the Report
enclosed in No 1 on 38228/35.

The words deleted in ink in
that report, pages 10 & 14,
appear in this Report but not
in the Bill as published

put by. C.K. with
20/5/37
at on

8 Mr. Creedy Jones 26/5/37

Submits reasons on the provisions of
the Bill & on the policy to which it is
intended to give effect.

9 S of S - minute - 26/5/37

Mr. Creedy Jones called, and as the
Secretary of State had suggested, saw a copy of
the report on 26th October. I think he
was particularly interested in the fact that the
Bill as published in the Gazette should be
in part a departure from the present
Native Labourers Ordinance that he still
did not like the whole policy of the thing.
He has been in touch with Professor Macmillan
of course, and will no doubt go on writing.
I don't know whether, after the debate in the
House on the 2nd of June, the Secretary of
State will want to return a full and elaborate
reply to the letter of the 26th of May, but I
submit the draft of one which can be cut down
as may be required.

14.6.1937

I kept this to revise the draft, so
as to bring the early part more closely parallel to
the Morris Carter recommendations, and I have also
dealt with a point which the S. of S. mentioned to
us after a talk with Lord Francis Scott - that
many settlers have no desire to turn away their
R.N. Labourers. The S. of S. then considered that
in such cases the man must have some form of tenure
on the estate: this needs developing in correspondence
with the Governor.

Mr. Flood agrees to my revision.

(Intd.) A.C.B.

13.6.37.

(Intd.) J.C.M.

19.6.

20/5/37

To Creedy Jones (8/Nov) 25.6.37

11. Creedy Jones (5/10 to S of S) -
Re: (10) will counsel of state be kept to work again in the course of a
day or two.

To Sir R. Procter, Popham (4/8/10, 11)
Lord Francis Scott (10.9.10, 11)

17 July 37

DESTROYED UNDER STATUTE

14. Professor Macmillan (L/6 to the Post) 24/6/37
Transmits, with Comments, notes on
Kenya settlement problems which he
has drawn up after conversation with
Lord Francis Scott.

15. Prof. Macmillan L/6 — 27/6/37

16. Professor Macmillan (L/6 to the Post) 27/7/37
Comments on need for special inquiry
on labour problems, including the
position of agricultural labour.

17. A. CREECH JONES (S/O TO S.O.F.S.).....23.7.37.
Refers to certain points in the Ordinance which, in
his judgment C.O. letter of 25th June (No.10) tends to
ignore or minimise.

18. Extract from Gazette No 30 dated 6.7.37.

19

I had prepared my note (No. 19) on
M: Creech-Jones letter (No. 17) before
the revised Bill (No 18) was noticed in
the Gazette.

M: Grossmith & I have been through
the Bill & have marked the places
where it differs from the earlier version (No. 8).
Although certain of the provisions of the
Bill have been revised, there have
not been any important changes;
& so far as I can see, they have not
done anything to meet the points
mentioned at my minute of 13/5,
& we have still not received a reply
to No 2 on 1/35.

In No 17 (wh. was presumably also
drafted by Prof. Macmillan) M: Creech-Jones

Covers much of the ground covered by
Prof. Macmillan in No 14, & so that
about No 19 will serve as a commentary
on both.

In so far as this is not the case,
the views of Prof. Macmillan, in lastly
of the kind to be dealt with $\frac{1}{2}$ briefly,
& I assume that comments are not
required.

So far as the subject matter
immediately at issue is concerned,
the main points in 14, 16 & 17 are
(a) that the introduction of this amending
& consolidating legislation
make an occasion for the reconsideration
of the principles on wh. it is based, &
(b) that this reconsideration shd. take
the form of a comprehensive enquiry,
on a comparative basis, into the
principles of the employment of
agricultural labour, & of peasant
proprietorship, in E. Africa as a whole.
and it is suggested that the result of
such an enquiry wd. be the wider
adoption of the "Masaland system".

As however, I have pointed
out in para 7(b) of No 19, ^{with}
the present Gov. of Masaland, & his
predecessors are satisfied with the Masaland
system, wh. they consider operates

a bar to development, & moreover
is likely, in the near future, to
give rise to difficulties; ~~and~~
~~proposals~~ & proposals
have been submitted for yet
another revision of his system.
Whether these proposals have not
been acceptable to the Co.; but
it will be seen, from the Calder's
minutes of 6/8 on 44001/37 Mysaland,
that they have been shelved
pending the report of Sir R. Bell.

However we can clearly not
enter into all this with Prof. Macmillan.

So far as Kenya is concerned,
the essential considerations seem to
be: (a) that his legislation arises
out of the recommendations of the
Doris Carter Commission & are
part & parcel of those recommendations
wh. are designed to secure a "final
& comprehensive settlement of the
many & various problems relating to
the occupation of land by natives
in Kenya, & have been accepted
as such by the Govt. of Kenya & by H.A.F. &
(b) that to start experimenting (as
is suggested) with a system of
native landowners in the European
Highlands, wd. mean a
complete reversal of the policy of
reserving the Highlands for European

occupation, whatever may happen in
the distant future, any such reversion
of the European Highlands wd.,
at the present time, be quite
unpracticable on political grounds.

I think that really this is
the short answer to Prof. Macmillan
& Mr. Cross-Jones; & that therefore there
cannot be any question at the
present time of reconsidering the
principles on wh. his legislation is
based.

J.P. Park
15/8

RESIDENT NATIVE LABOURERS BILL

Notes on points raised on Mr. Creech Jones' letter of 23rd July, 1937.

38225/37 Kenya

1. This raises the fundamental question whether the principles on which this Bill is based are to be regarded as open to further reconsideration. The Bill itself is based on recent recommendations of those principles, i.e. by the Kenya Native Commission and by the Local Native Committee, whose recommendations have been accepted by the Government of Kenya by the Secretary of State.

In his letter of the 14th of July (1937) the Secretary of State has told the Governor that he would be glad if some arrangement could be devised whereby natives who have been resident on European farms for so long that they have ceased to have any connection with their reserves, should suffer hardship by being disturbed, could be given some security of tenure. Apart from this there will be the question of his being able to work on his own land, that is to say, the question of the status of natives on reserves. Section 12

tenure. The Government are not prepared to consider any arrangement which would give such natives a right to work on the land of the European farmer. This is a matter which will be dealt with in the Bill.

2. The Bill does not fix the contract as to whether it is to be labour and not otherwise. If one grants the fundamental principle that the contract is to be labour and not otherwise.

3. A copy of the recommendations of the Kenya Native Commission is annexed. Section 12 is in default with § XII.

The position is that these recommendations were sent

sent out to Colonies in ...
but not for comment. This was to ...
 the ground an unnecessary number of ...
 ed already been ...
 Colonial Governments of the ...
 a labour conference and the general conclusion ...
 was that they could not go much further ...
 abolishing them for the time being. ...
 prepared to go rather further than Kenya, but even
 there it was considered that a considerable number of
 these penal sanctions must remain for ...
 time to come. It was agreed that further ...
 the other East African Dependencies should await the
 experience of the operation of the proposed ...
 Tanganyika Territory legislation. The Ordinance
 has however not yet been enacted.

The whole ...
 next time ...
 "Grey Report" ...
 tions of ...
 the Colonies for their observations.
 of the Secretary of State ...
 considered ...

It is ...
 considerations of ...
 present be ...
 subjudice. ...
 the Resident Native Labourers ...
 conflict with whatever the Secretary of State ...
 decide when he has the views of ...
 Governments before him (? early next year) ...
 they

x new Clauses 2 & 27
 (V. No. 18).
 I find that I have omitted
 to mention that these
 provisions peacefully reproduce
 the corresponding provisions
 in the Employment of Natives
 Ordinance, 1923, which stands in force
 with those provisions.
 J.P.

they can be amended. We can hardly go into all that, at this stage, on this Bill. ~~CONFIDENTIAL~~

4. Two points.

(a) The native reserves extended as proposed by the Morris Carter Commission are not regarded as the Maximum of native land accommodation.

In paras. 136 and 137, the Commission explained that their recommendations for the expansion of the Reserves was designed to allow for the increase of population for two generations, after which Government would have to consider, in the light of experience gained, whether further extension of "C" areas were necessary, or whether the time had come to allow a free market in land in "C" & "D" areas.

(b) It is certainly no part of the theory, on which the Bill is based, that it is desirable to create a class of detribalised natives whose labour can be hired. On the contrary it is hoped that the Bill will tend to prevent so many natives from losing contact with their own lands in the Reserves.

5. Two points.

(a) It has to be admitted that the uprooting of native people from their holdings creates considerable discontent (cf. the natives of Tigon); and this will of course apply to any of the existing squatters who may have been allowed to settle and to regard their accommodation land as "holdings". So far as the present generation of labourers is concerned, the fact that, in some cases, their disturbance will involve hardship is recognised, (vide. note on point (1) above). But once the Bill has been passed and becomes operative, it will tend in the future to avoid the creation of the circumstances which may give rise to such hardship, as

the labourers will know that they are not tenants. This is already true of large numbers of them.

(b) A system of small holdings is not the ideal system for the natives; but to start experimenting with such a system in the undeveloped parts of the Highlands would mean the reopening of the whole question of the reservation of the area for European occupation (cf. note on point (1) above). The fact that much of the alienated land in the Highlands is still undeveloped and shows signs of remaining so is a standing provocation to the natives who regard the white Highlands policy as an unreasonable obstacle to the proper utilisation of the land by the settlement thereon of natives who could set about its cultivation. If the Highlands do not fill up with Europeans, this question will no doubt have to be faced sooner or later. But it is too early yet to assume that the present situation will continue indefinitely; and an attempt at this juncture to diminish the area available for ultimate development by Europeans, by letting it off in small holdings for natives, would not be practical politics.

6. The remedy for the state of affairs disclosed in the passage quoted is an increase in the labour inspectorate. At their meeting the other day the Colonial Labour Committee decided to recommend that a further circular despatch should be sent out, urging Colonial Governments to see that their labour inspectorates are adequate for the purposes of supervising not only industrial employment, but also

agricultural employment. As regards Kenya in particular, it was proposed to suggest the resuscitation of the post of Chief Labour Inspector. There may well be a case for a further expansion of the inspectorate.

7. (a) The analogy of the gardener and his cottage still stands as an illustration of the situation which already exists on many European farms in Kenya, and which the Bill is designed to create as a general rule. The fact that it is not applicable to many of the present "squatters" is not really an argument against the principles of the Bill. But it is an argument for doing something to lift to the hardships involved in uprooting families which have been permitted to take root on plots which they have come to regard as "holdings" (cf. note on p. 11 above).

(b) The preceding analogy is the source of talk with Professor MacMillan (v. my minute of 11/11/36) and again on the second para. of the Secretary of State's letter of 11/11/36. It is rejected on the ground that the natives are not recognised as being the holders of the land, whereas in Kenya the vast majority of natives who have simply come to the shores of the lake in order to get work.

It will however be seen from the 1936 papers (see for example the judgement quoted in the printed enclosure to No. 1 on 2356/36, and especially the para. at the bottom of page 1 and the top of page 2 of that print, - which I have now read for the

RESIDENT NATIVE LABOURERS BILL

58225/37 Kenya

Notes on points raised on Mr. Creech Jones' letter of 23rd July, 1937.

1. This raises the fundamental question whether the principles on which this Bill is based are to be regarded as open to further reconsideration. The Bill itself is based on a recent reconsideration of those principles, i.e. by the Morris Carter Commission, and by the Local Kenya Committee, whose recommendations have been accepted by the Government of Kenya and by the Secretary of State.

In his letter of the 14th of July (No. 12) the Secretary of State has told the Governor that he would be glad if some arrangement could be devised whereby natives who have been resident on European farms for so long that they have ceased to have any connection with their reserves, and who would suffer hardship by being disturbed, could be given some security of tenure. Apart from this there can hardly be any question of going back on the fundamental principle that, in general, the basis of the employment of natives on European farms should be labour and not tenancy. To go back on this would be tantamount to reversing the policy of the reservation of the Highlands for European occupation. Even if it were desirable, this would not be practical politics.

2. The 270 days is a maximum, and is not unreasonable, if one grants the fundamental point that the basis of the contract is to be labour and not tenancy.

3. A copy of the recommendations of the Native Labour Committee is annexed. Penal Sanctions is dealt with 3. XII.

The position is that these recommendations were

sent out to Colonies in a circular dated 1.11.35 but not for comment. This was to avoid turning over the ground an unnecessary number of times. There had already been correspondence with the East African Colonial Governments on the subject of Penal Sanctions in labour Ordinances and the general conclusion then was that they could not go much further in the way of abolishing them for the time being. Tanganyika was prepared to go rather further than Kenya, but even there it was considered that a considerable number of these penal sanctions must remain for a considerable time to come. It was agreed that further progress in the other East African Dependencies should await the experience of the operation of the proposed amending Tanganyika Territory legislation. The Ordinance has however not yet been enacted.

The whole question will be debated at Geneva next June and, in preparation for that, the I.L.O. "Grey Report" (which will incorporate the recommendations of the Committee of Experts) will be sent out to the Colonies for their observations, and the policy of the Secretary of State will be determined after considering those observations.

In other words, the question whether the recommendations of the I.L.O. Committee can at present be applied in African Colonies, is at present subjudice. If, in due course Clauses 35 and 36 of the Resident Native Labourers Bill are found to be in conflict with whatever the Secretary of State may decide when he has the views of all the African Governments before him (? early next year), then they

x new Clauses 26 & 27 (V. No. 18). I find that I have omitted to mention that these clauses practically reproduce the corresponding provisions in the Employment of Natives Bill, 1935, & will stand a fall with those provisions.
J.P.

they can be amended. We can hardly go into all that, at this stage, on this Bill. ~~1944-1945/1947~~

4. Two points.

(a) The native reserves extended as proposed by the Morris Carter Commission are not regarded as the Maximum of native land accommodation.

In paras. 1466 and 1472 the Commission explained that their recommendations for the expansion of the Reserves was designed to allow for the increase of population for two generations, after which Government would have to consider, in the light of experience gained, whether further extension of "C" areas was necessary, or whether the time had come to allow a free market in land in "C" & "D" areas.

(b) It is certainly no part of the theory, on which the Bill is based, that it is desirable to create a class of detribalised natives whose labour can be hired. On the contrary it is hoped that the Bill will tend to prevent so many natives from losing contact with their own lands in the Reserves.

5. Two points.

(a) It has to be admitted that the uprooting of native people from their holdings creates considerable discontent (cf. the natives of Tigon); and this will of course apply to any of the existing squatters who may have been allowed to settle and to regard their accommodation land as "holdings". So far as the present generation of labourers is concerned, the fact that, in some cases, their disturbance will involve hardship is recognised, (vide. note on point (1) above). But once the Bill has been passed and becomes operative, it will tend in the future to avoid the creation of the circumstances which may give rise to such hardship, as

10

the labourers will know that they are labourers and not tenants. This is already true of large numbers of them.

(b) A system of peasant tenure may or may not be the ideal system for Kenya natives; but to start experimenting with such a system in the undeveloped parts of the Highlands would mean the reopening of the whole question of the reservation of that area for European occupation (cf. note on point (1) above). The fact that much of the alienated land in the Highlands is still undeveloped and shows signs of remaining so is a standing provocation to well-meaning people who regard the white Highlands policy as an unreasonable obstacle to the proper utilisation of the land by the settlement thereon of natives who could set about its cultivation. If the Highlands do not fill up with Europeans, this question will no doubt have to be faced sooner or later. But it is too early yet to assume that the present situation will continue indefinitely; and an attempt at this juncture to diminish the area available for ultimate development by Europeans, by letting it off in small holdings for natives, would not be practical politics.

6. The remedy for the state of affairs disclosed in the passage quoted is an increase in the labour inspectorate. At their meeting the other day the Colonial Labour Committee decided to recommend that a further circular despatch should be sent out urging Colonial Governments to see that their labour inspectorates are adequate for the purposes of supervising not only industrial employment, but also

agricultural employment. As regards Kenya in particular, it was proposed to suggest the resuscitation of the post of Chief Labour Inspector. There may well be a case for a further expansion of the inspectorate.

7. (a) The analogy of the gardener and his cottage still stands as an illustration of the situation which already exists on many European farms in Kenya, and which the Bill is designed to create as a general rule. The fact that it is not applicable to many of the present "squatters" is not really an argument against the principles of the Bill. But it is an argument for doing something to mitigate the hardships involved in uprooting families which have been permitted to take root on plots which they have come to regard as "holdings" (cf. note on point (1) above).

(b) The Nyasaland analogy. In the course of my talk with Professor Macmillan (v. my minute of 22.1.37 on -/36), and again in the second para. of the Secretary of State's letter of the 25th of June to Mr. Creech-Jones (No.10), the Nyasaland analogy was rejected on the ground that the natives there are recognised as being the inhabitants of the various areas affected, and therefore as having rights in the land, whereas in Kenya the vast majority are natives who have simply come to the European area in order to get work.

It will however be seen from the Nyasaland papers (see for example the judgement quoted in para. 2 of the printed enclosure to No.1 on 25368/34, and especially the para. at the bottom of page 1 and the top of page 2 of that print, - which I have now read for the

first time), even in 1903, the original native "right holders" on the private lands in Nyasaland had been swamped by immigrant natives who had poured in from Portuguese territory and elsewhere. In the 1928 settlement of the problem in Nyasaland, no distinction was drawn between the natives who had pre-existing rights in the land and those who had come in to work from outside (v. paras. 10 & 11 of the print).

In these circumstances the reason given for the non-existence of an analogy between the Kenya Highlands and Nyasaland is not valid. But this does not mean the denial of an analogy was invalid. The real distinction between the cases of the Shire and the Kenya Highlands seems to lie in the fact that when the former were alienated, the pre-existence of native villages or "plantations" was recognised, and they were not to be disturbed or removed without the consent of Government, and successive influxes of natives were tolerated ~~to such an extent that it was generally~~ to such an extent that it was generally agreed in 1928 that to differentiate between them and the original inhabitants would be unsatisfactory. The Kenya Highlands on the other hand were practically empty, and the policy has consistently been to reserve the whole area for ultimate white settlement, so that it has never been the intention to allow "squatters" to acquire any security of tenure. In the meantime, of course there has been a whole history of successive compromises in Nyasaland, which have further tended to vitiate any comparisons with Kenya.

The "Nyasaland system", as it now exists, which

Professor

Professor MacMillan and Mr. Creech Jones would like adopted in Kenya is described in para. 8 of the print in No.1 on 25368/34. What, of course, neither of these gentlemen know is that neither the late nor the present Governor of Nyasaland are satisfied with the system, which (they think) ^{operates as a bar to development,} ~~is moreover likely to give rise to considerable complications, and have submitted proposals for yet another "final" settlement of the problem.~~ ^(that they)

Hitherto these proposals have been resisted by the Secretary of State, but it will be seen from 14001/37 that the whole matter is to be discussed with SIR W. Kittermaster.

This in itself is a sufficient reason, apart from everything else, for not at this stage attempting to compromise the Kenya difficulties on the lines of the Nyasaland compromise of 1928.

6. The question of suggesting to Colonial Governments that they should consider using their powers under their Minimum Wage Ordinances was discussed at a recent meeting of the Colonial Labour Committee. So far as this question arises in Kenya, it could of course be done under Ordinance XXII of 1932, without any specific provision in the Resident Native Labourers Ordinance. Satisfaction under the Minimum Wages Ordinance depends on the initiative of the Governor on its appearing to him that the wages in any occupation or locality are unreasonably low.

In Malaya, on the other hand there are Government Boards who are charged with the duty to fix minimum wages for Indian labourers periodically. Whether anything of the kind would be feasible or desirable in Kenya, in relation to resident native labourers is a

14

matter for consideration by the Kenya Government. But prima facie there is no apparent reason why this particular form of employment in Kenya should be singled out for the experiment. In fact, seeing that resident native labourers have their plots of land to eke out their wages, there would be a less need for such machinery in their case than in the case of (say) hire labourers.

9. Inspection. There is no need for specific provision in the Ordinance, as adequate arrangements could be made without it - given the necessary staff. As to this see note on point (c) above.

J. J. Pascoe

4/8/37

GOVERNMENT NOTICE No. 546

HIS Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER-BEALL,
Acting Clerk to the Legislative Council.

A Bill to Regulate the Residence of Labourers on Farms

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

1. This Ordinance may be cited as the Resident Labourers Ordinance, 1937. Short title.

2. This Ordinance or any part thereof shall apply to such districts or areas, and from such date or dates, as the Governor in Council may, from time to time, by proclamation in the Gazette, appoint. Application of Ordinance.

3. In this Ordinance "attesting officer" means a person appointed as such by the Governor in Council under the provisions of section 32 of this Ordinance. Interpretation.

"cattle" means any bull, cow, steer, heifer or calf or any other animal which the Governor may, by order, declare to be cattle for the purposes of this Ordinance;

"family" means the wife or wives and the unmarried children, if any, of a native or Somali,

"farm" means any area of land (other than an area of land situated in a municipality, township or trading centre which is held under a title, or a licence, the terms of which preclude either expressly or impliedly such area of land from being used for agricultural purposes) and shall include any area of land set apart by the Government of the Colony for the purpose of experimental farming:

Provided that if, under section 2 of this Ordinance, the Governor in Council by proclamation applies the provisions of this Ordinance to the Protectorate of Kenya or any district thereof, or any area therein, this definition shall, so far as the Protectorate, district or area, as the case may be, is concerned,

New

be deemed to include only such land as may be held under a Certificate of Title granted under the Land Titles Ordinance and is specified in such proclamation;

Cap. 143.

"forest area" means any area declared, under section 3 of the Forest Ordinance, to be a forest area;

Cap. 149.

"local authority" means a municipality established under the Local Government (Municipalities) Ordinance, 1928, a district council established under the Local Government (District Councils) Ordinance, 1928, in respect of the respective areas of jurisdiction so conferred upon them, and, where there is no municipality or district council, means the district commissioner;

No. 19 of 1928.

No. 21 of 1928.

"mission" means any mission recognized as such by the Governor;

"occupier" means the owner or lessee or any other person having a legal right to occupy a farm, a forest area, unalienated Crown land or Railway land, and includes any manager or agent (other than a native or a Somali, except with the approval of a district officer), of such occupier, and in respect of forest areas and Railway land, includes the Conservator of Forests and the General Manager of the Kenya and Uganda Railways and Harbours respectively;

"Railway land" means any land under the control of which vests in the High Commissioner for Transport;

"resident labourer" means a native or a Somali who has entered into a contract under section 5 of this Ordinance or under the Resident Native-Labourers Ordinance, 1925;

No. 5 of 1925.

"stock" includes cattle, sheep, goats, and such other animals or birds as the Governor may, by order, declare to be stock for the purposes of this Ordinance.

When natives or Somalis may reside on a farm.

4. (1) No native or Somali shall reside on or remain for a longer continuous period than forty-eight hours on any farm or in any forest area, or on any unalienated Crown land, or on any Railway land, unless he—

(a) is the occupier thereof or a member of the family of the occupier thereof; or

(b) has duly entered into a contract, still unexpired, under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925; or

No. 5 of 1925.

(c) is in actual employment on such farm, forest area, unalienated Crown land or Railway land, in pursuance of a contract made under the provisions of any law for the time being in force in the Colony relating to the employment of servants, or is a member of the family of a native or Somali so employed; or

(d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and is closely related to a family lawfully residing on such farm, and who has obtained written permission from a magistrate or attesting officer by endorsement on a resident labourer's contract or otherwise; or

(e) is the holder of a permit in writing in that behalf given to him by the occupier and, in the case of a permit authorizing residence for a period of more than fourteen days, is also the holder of a permit from the district commissioner.

Provided that the provisions of this sub-section shall not apply to a native residing by right in the Lembus and Mt. Elgon forest areas.

(2) Any person who contravenes the provisions of this section shall be liable, on conviction, to a fine not exceeding ten pounds, and in default of payment to imprisonment for a period not exceeding two months.

5. (1) When a native or Somali has entered into a contract, as in this section provided, the members of his family may also reside on the farm, forest area, unalienated Crown land or Railway land, as the case may be.

Contract of service to work on a farm.

(2) A contract under this section shall be in writing, shall be executed by the occupier and by the native or Somali and by all the male members of native's or Somali's family over the apparent age of sixteen years, shall be attested by a magistrate or by an attesting officer, shall be in the form of the agreement set out in the First Schedule to this Ordinance, subject to such variations, not inconsistent with the provisions of this Ordinance, as the magistrate or attesting officer may approve, and shall provide—

(a) for a term of not less than one year and not exceeding five years, notwithstanding anything to the contrary contained in any law for the time being in force in the Colony relating to the employment of servants,

July 6, 1937

- (b) for the renewal or variation of the contract, by endorsement by the parties thereto, with the approval of a magistrate or attesting officer;
- (c) for the native or Somali and any male member of his family resident on the farm who is of the apparent age of sixteen years or over, and who is not working under any law for the time being in force in the Colony relating to the employment of servants, to work for the occupier for not less than 180 days at the election of the occupier in any one year during the term of such contract, and for the occupier to provide employment and to pay wages to each such person for the number of days specified in the contract;
- (d) for the occupier to give notice in writing to every male member of such family who, during the continuance of the contract, may attain the age of sixteen years, to the effect that, on the expiration of three months from the date of receiving such notice such male member will be required either (i) to enter into a contract under this Ordinance with the occupier; or (ii) to enter, under any law for the time being in force in the Colony relating to the employment of servants, into a contract with the occupier or some other employer in the vicinity; but that if such male member enters into any such contract with some other employer he shall cease to reside on the occupier's farm except with the permission of the occupier; or (iii) to cease to reside on the occupier's farm;
- (e) for the female members of the family who are willing and able to work to serve the occupier if he offers suitable work at a reasonable rate of wages;
- (f) for the supply by the occupier of building material for the family's huts;
- (g) for the use by the family of land for cultivation and, when agreed upon, for grazing;
- (h) for the kinds of crops which the native or Somali or his family may not grow on the farm;
- (i) for the number of stock which the native or Somali may graze on the farm;

July 6, 1937

- (j) for the rates of pay and other consideration to be paid or given to the native or Somali and any member of his family for the period of actual employment;
- (k) for the termination of the contract by not less than three months' notice on either side: Provided that the term of residence on a farm shall in no case be less than one year except with the approval of a magistrate;
- (l) in the event of termination of the contract in accordance with the last preceding paragraph, for the removal by the family of crops cultivated by such family or for payment by the occupier of compensation in lieu thereof: Provided that no crop shall be planted after notice of termination has been given by either party;
- (m) in the case of missions, for the regular attendance of the children of the family at school for the purpose of education within the meaning of section 21 of this Ordinance.
- (3) Any contract under this section may, with the consent of the parties thereto, relate to any number of farms provided that such farms are in the same ownership or occupation and a magistrate certifies that he is satisfied that proper control can be exercised over the resident labourers resident on such farms as are not in the personal occupation of a European.
- (4) The original of every contract made under this section shall be filed in the office of the district commissioner of the district in which the parties reside and one copy of the contract shall be handed to the occupier and one copy to the head of the contracting resident labourer's family.
- (5) A magistrate or attesting officer may refuse to attest any contract which does not provide for a fair remuneration in money, having regard to the local rates of wages, or any contract which, in his opinion, is likely to lead to a breach of the provisions of this Ordinance.
- (6) A magistrate or attesting officer may, in his discretion, refuse to attest any contract entered into by a native or Somali whom he considers to be an undesirable.
- (7) A magistrate may for any good and sufficient reason order the removal of a native or Somali, or of a resident labourer, and/or his stock from any farm, forest area, Railway

land or unalienated Crown land; and such magistrate may after inquiry assess the costs of such removal and determine by whom such costs shall be paid.

(8) (a) A magistrate or attesting officer may, when he deems it necessary before attesting any contract under this section, require the occupier to give security for the payment of the wages of the native or Somali with whom the contract is to be made.

(b) Such security may be given by a bond in the form set out in the Second Schedule to this Ordinance, or to the like effect, with one or more sureties approved by the magistrate or attesting officer.

(9) When notice of termination of a contract has been given by either party thereto the occupier shall forthwith notify the district commissioner accordingly.

(10) On a change of occupancy of a farm the contract shall be deemed to have been assigned to the new occupier and to be a contract between the new occupier and the resident labourer.

6. (1) No occupier shall enter in a contract under this Ordinance with a native or Somali who is residing within the jurisdiction of an official headman unless such occupier has received the permission in writing of the district commissioner of the district in which the native or Somali is so residing.

(2) No magistrate or attesting officer shall attest any contract under this Ordinance between an occupier and any such native or Somali unless such permission in writing is produced and shown to him by the person submitting the contract for attestation.

(3) Any occupier who contravenes the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and shall, on conviction, be liable, in addition to the penalties prescribed in section 29 of this Ordinance, to pay the expenses of returning the native or Somali together with his family and stock, if any, to the district in which such native or Somali was residing.

7. No occupier shall allow any native or Somali to reside on a farm in contravention of the provisions of this Ordinance.

8. (1) When a native or Somali has entered into a contract of service under the provisions of section 5 of this Ordinance, or where a resident labourer who has been given a certificate under section 11 of this Ordinance and recommences

Permission of district commissioner is necessary in certain cases before contract is entered into or attested.

When natives or Somalis may not reside on farms.

Resident labourers' contracts to be endorsed on registration certificate.

work under his contract, it shall be the duty of the occupier forthwith to endorse in blue or blue-black ink upon such native's or Somali's registration certificate, in the column respectively provided therefor, the following particulars—

- (a) the name of the employer and district in which the native or Somali is employed;
- (b) the nature of the native's or Somali's employment, preceded by a capital letter R, to denote that he is a resident labourer;
- (c) the date of commencement of the contract;
- (d) the rate of wages in cash; and
- (e) whether or not rations are provided,

and to comply with the provisions of section 9 of the Native Registration Ordinance.

(2) Every male native or Somali who is a party to a contract made under the provisions of the Resident Native Labourers Ordinance, 1925, shall, within one month after the date of the application of this Ordinance to the area in which he is residing under such contract, produce his registration certificate to the occupier. Cap. 127. No. 5 of 1925.

Such occupier shall thereupon make an endorsement upon the registration certificate as is required by sub-section (1) of this section and shall forthwith render a return to the Chief Registrar of Natives, as required under section 9 of the Native Registration Ordinance, showing the registration numbers and the names of every registered native or Somali resident upon his farm. Cap. 127.

(4) Any person who fails to comply with the provisions of this section shall be deemed to have committed a breach of the provisions of this Ordinance.

9. (1) On the termination of a contract entered into under the provisions of section 5 of this Ordinance or of a contract to which the provisions of sub-section (2) of section 8 of this Ordinance applies, or where the occupier has given a certificate under the provisions of section 11 of this Ordinance, the occupier shall endorse in blue or blue-black ink the date of such termination, or the date on which such certificate is given, as the case may require, in the column provided in the resident labourer's registration certificate for the date of discharge. Termination of contract to be endorsed on registration certificate.

(2) It shall be the duty of the resident labourer, on the termination of any such contract, or upon receipt of the certificate given under the provisions of section 11 of this Ordinance, to request the occupier to make such endorsement, but failure on the part of the resident labourer to make the request shall not relieve the occupier of the responsibility for making such endorsement.

(3) In the event of the occupier refusing or omitting to make such endorsement, the resident labourer shall forthwith report to the district commissioner in whose office the contract is filed; and such district commissioner may, if he is satisfied from the information at his disposal that the endorsement has been omitted through ignorance or mistake or wilfully by the occupier and through no fault of the resident labourer, after inquiry complete in blue or blue-black ink such endorsement on the registration certificate affixing such date for the date of discharge as may appear to him to be consistent with the circumstances.

(4) Any person who fails to comply with the provisions of this section shall be deemed to have committed a breach of the provisions of this Ordinance.

10. Any occupier entering into a contract with a native or Somali under section 5 of this Ordinance shall be deemed to have engaged such native or Somali within the meaning of the Native Registration Ordinance, and sections 9, 10, 17, 18 and 20 of the Native Registration Ordinance, and such Rules made under the said Ordinance as the Governor in Council may by notice prescribe, shall apply to such occupier and native or Somali as if the contract were an agreement within the meaning of the said Ordinance.

11. When a resident labourer has, within any period of twelve months, completed the number of days' work specified in such contract, the occupier shall, if so required by such resident labourer deliver to him a certificate to that effect in the form set out in the Third Schedule to this Ordinance, specifying the date on which the resident labourer's obligation to work under such contract recommences.

12. Any occupier shall be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding two months or to both such fine and such imprisonment, if he fails in any one year to provide employment for not less than the number of days specified in the contract for each person for

Application of certain provisions of Native Registration Ordinance Cap. 127.

Resident labourers' certificates.

Occupier to provide employment contracted for

whom, under the terms of any contract made under this Ordinance or under the Resident Native Labourers Ordinance, 1925, he is under an obligation to provide such employment: Provided that notwithstanding the terms of any such contract, a Provincial Commissioner shall have power, for any good and sufficient reason, to reduce the minimum number of days work required from resident labourers in any area within his province. No. 5 of 1925.

13. Any magistrate or any person duly authorized in writing in that behalf by a magistrate, or any police officer of or above the rank of assistant sub-inspector, or a justice of the peace may demand from any occupier the production of any contract entered into by such occupier under the provisions of section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, and such occupier shall forthwith produce such contract. Contract to be produced. No. 5 of 1925.

14. Every occupier shall keep records sufficient to show the date of the contract of each resident labourer, the number of days on which such resident labourer has worked and the wages paid. Record of resident labourers.

15. An occupier shall provide every resident labourer with a labour ticket, in such form as may be prescribed, showing the number of days worked by every such resident labourer. Such labour ticket may be retained by the resident labourer, if he so desires, but shall be surrendered by him to the occupier on payment to him of his wages by the occupier. Labour tickets.

16. (1) Every occupier shall keep an up-to-date register of all cattle eligible for branding, and of such other stock in respect of which a register may be required to be kept by an order made under the provisions of section 22 of this Ordinance, kept on his farm and owned by natives or Somalis lawfully residing thereon. Register of resident labourers' stock.

(2) Such register shall be in the form set out in the Fifth Schedule to this Ordinance.

17. (1) No native or Somali, other than an occupier or a member of the family of such occupier, shall graze any stock on any farm unless— Resident labourers' stock on farms

(a) he is lawfully residing on such farm under the provisions of paragraphs (b), (d) or (e) of sub-section (1) of section 4 of this Ordinance; and

(b) such stock is his own personal property; and

- (c) if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, he has received the written consent of the occupier and the written approval of the district commissioner or the attesting officer for keeping such stock on the farm; and
- (d) every head of cattle over the age of six months kept by such native or Somali on the farm is legibly branded by the occupier at his own expense with his brand together with the letter "S". *(written in red)*
- (2) (a) The written consent of the occupier and the written approval of a magistrate or attesting officer required by paragraph (c) of sub-section (1) of this section shall specify the number of stock which such native or Somali may keep on the farm.
- (b) In arriving at such number the occupier and the magistrate or attesting officer shall have regard—
- (i) to any order, made under the provisions of section 22 of this Ordinance, in force in the area in which the farm is situated; and
- (ii) to the reasonable needs of the native or Somali and of the members of his family residing with him.
- (3) Any native or Somali—
- (a) who keeps upon a farm any stock which is not his own personal property; or
- (b) who, if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, keeps upon a farm any stock in respect of which he has not received the written consent of the occupier and the written approval of a magistrate or attesting officer; or
- (c) who keeps on a farm any stock in excess of the number which he is authorized to keep in pursuance of such written consent of the occupier and such approval of the district commissioner or an attesting officer; or
- (d) who keeps on a farm any head of cattle which is not branded, in accordance with the provisions of this section,

shall be guilty of an offence against this Ordinance.

(4) The provisions of sub-sections (2) and (3) of this section relating to the number of stock which a native or a Somali may lawfully keep upon a farm shall not apply to

the stock of a native or Somali who before the commencement of this Ordinance has entered into a contract, which is still unexpired, under section 5 of the Resident Native Labourers Ordinance, 1925, and who, under the provisions of sub-section (1) of this section, lawfully has such stock on the farm: Provided that every such native or Somali shall, within three months after the date of the application of this Ordinance to the area in which he is residing, furnish a record to the occupier who shall forward a return to a magistrate or attesting officer specifying the number of each kind of stock which such native or Somali is keeping on such farm.

No. 5 of 1925.

(5) In assessing the number of cattle, sheep and goats kept on a farm no account shall be taken of stock under the age of six months.

(6) No occupier shall, after the expiration of a period of six months from the date of the application of this Ordinance to the area in which such occupier's farm is situate, brand any head of cattle kept on his farm by a native or Somali lawfully residing thereon if such head of cattle is already branded with any recent registered brand denoting ownership and until such cattle have been re-branded as provided for in sub-section (10) of this section.

(7) It shall be the duty of an occupier to maintain his brand on every head of cattle in a legible condition.

(8) Any occupier who commits a breach of sub-sections (6) or (7) of this section or who suffers any stock to be kept on his farm in contravention of the provisions of this Ordinance shall be guilty of an offence.

(9) (a) Nothing in this section contained shall be construed as entitling any person to move or to compel the movement of stock in contravention of any restrictions in force under any law for the time being in force in the Colony relating to the diseases of animals.

(b) If, at the time of the termination of any contract made under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, or of any agreement or engagement between an occupier and a native or a Somali under the law for the time being in force in the Colony relating to the employment of servants, any such restrictions are in force prohibiting the movement of stock from such farm, such stock shall remain on the farm without charge, and the owner of such stock may also remain on such farm until such restrictions are removed or unless other arrangements are made for

No. 5 of 1925.

July 6, 1937

the care or disposal of such stock to the satisfaction of the parties and of a magistrate; and in any such case any such contract shall be deemed to remain in force until such restrictions are removed or until such other arrangements are made, as the case may be.

(10) (a) No cattle over the age of six months owned by a native or a Somali and kept on a farm in accordance with the provisions of this Ordinance shall be removed from a farm unless the owner has first produced them to the occupier who shall, at his own expense, cause such cattle to be re-branded with his own brand reversed.

(b) Any owner of cattle who moves or permits to be moved from a farm any such cattle which have not been so re-branded, and any occupier who on request refuses or fails so to re-brand any cattle, shall be guilty of an offence.

(11) Where the owner of any stock has committed a breach of the provisions of this section, or where a person in possession of any stock has, with the connivance and consent of the owner of the stock, committed a breach of the provisions of this section, a magistrate may, in addition to imposing any other penalty provided in this Ordinance, order that the stock in respect of which the offence has been committed be confiscated.

(12) All stock kept on a farm by a native or a Somali shall be deemed for all purposes to be the personal property of such native or Somali, until the contrary be proved.

Registers to be produced.

18. (1) A magistrate, or a veterinary officer authorized in writing by the Director of Veterinary Services, or a police officer of or above the rank of assistant sub-inspector, or any person duly authorized by a magistrate in that behalf may—

- (a) enter upon a farm and demand from the occupier the production of any register or records which are required to be kept under the provisions of this Ordinance;
 - (b) take all reasonable and proper steps to satisfy himself as to the correctness of any particulars entered therein; and
 - (c) demand from such occupier an explanation of any apparent discrepancies therein.
- (2) Any occupier who knowingly makes a false entry in any register or records or refuses to produce any register or records or to furnish any explanation when lawfully called

July 6, 1937

upon to do so, or who shall knowingly furnish a false explanation, shall be guilty of an offence.

19. A magistrate may by notice served upon the occupier or, if the occupier has no address in the Colony or if such address is unknown, by notice published in the Gazette, require the occupier of a farm which is not in his opinion, under such occupation as to ensure the observance of the provisions of this Ordinance, to remove any native or Somali, found residing on such farm, within twenty-eight days from the date of the service of such notice or from the date of the publication of the notice in the Gazette, as the case may be; and if such native or Somali is not so removed then a magistrate, or such other person as he may authorize in that behalf, shall remove such native or Somali and send him to a native reserve or to such other place as the magistrate may determine: Provided that, when the magistrate is satisfied that such native or Somali is employed by the occupier of such farm on another farm in the same occupation or ownership under a contract of service or under a resident labourer's contract, he shall allow such native or Somali to remain on such farm.

Removal of natives or Somalis from undeveloped farms.

1 write "although residing on a farm not being developed" omitted

20. (1) (a) No payment in money or in kind shall be demanded or taken from any native or Somali for the right to reside on or to cultivate any land or to graze any stock, or for the use of salt-ticks, fuel or water on any farm.

Prohibition against payments by natives or Somalis.

(b) No occupier shall enter into a contract with a native or Somali lawfully residing on his farm whereby the occupier shares any profit derived by such native or Somali from his cultivation or from the increase or produce of his stock on the farm of such occupier.

(2) Manure or fertilizers produced on a farm by a resident labourer's stock shall be the property of the resident labourer during the period of his contract: Provided that, if such manure or fertilizer is not reasonably required for the purposes of the resident labourer's cultivation on such farm, the occupier may use such manure or fertilizers for the purpose of his own cultivation free of cost other than the cost of transporting the manure or fertilizers from one place on the farm to another.

(3) Nothing in this section contained shall be deemed to render illegal the purchase by an occupier at a reasonable price of the stock of a resident labourer or the produce of a resident labourer's stock or cultivation.

Natives or
Somalis
employed on
mission lands.

21. Natives or Somalis employed on farms in the occupation of missions and engaged in receiving or imparting industrial or technical instruction with or without literary or theological instruction or training for not less than one hundred and eighty days in each year shall be exempt from the provisions of section 4 of this Ordinance if such instruction or training is under proper and responsible control to the satisfaction of a magistrate.

Local option.
Power to make
orders.

22. (1) Subject to the provisions of section 2 and of section 23 of this Ordinance a local authority may, in respect of any farm or group of farms within the area of its jurisdiction, by order published in the Gazette and in a newspaper circulating within such area—

- (a) prohibit the engagement of resident labourers on any farm, or group of farms;
- (b) limit the number of resident labourers to be engaged on any farm or group of farms;
- (c) prohibit the keeping of stock by natives or Somalis on any farm, either generally or in respect of any specified kind of stock, or limit the numbers of any specified kind of stock which may be kept on a farm by a resident labourer, or prescribe the conditions under which native or Somali stock shall be kept;
- (d) prescribe the number of days in a year on which a resident labourer shall work and for which he shall receive wages: Provided that such number of days shall in no case be less than one hundred and eighty, and provided further that no resident labourer shall be required to work for more than two hundred and seventy days in any year unless he so desires.

(2) In making any order as aforesaid the local authority shall have regard—

- (a) to the wishes of the occupiers of farms within the area of its jurisdiction, so far as such wishes can be reasonably and conveniently ascertained;
- (b) to the reasonable labour requirements of farms; and
- (c) to the reasonable needs of resident labourers on such farms.

(3) When such an order has been made it shall be the duty of the occupier of a farm to which such order applies, within one month after the date of the publication of the order in the Gazette in accordance with the provisions of sub-section (7) of section 23 of this Ordinance, to give notice of termination

of such contracts as may be necessary to make the said order effective, and failure to give such notice shall be an offence against the provisions of this Ordinance.

(4) The Governor in Council if he is satisfied that, contrary to the wishes of the majority of the occupiers in any areas so far as such wishes can reasonably and conveniently be ascertained, a local authority has neglected or refused to make any order as aforesaid or that circumstances obtaining in any area are such that an order under this section should be made, may call upon such local authority to make such order as in the circumstances may be just and expedient, and, if the local authority within a reasonable time after being so called upon refuses or neglects to make an order, the Governor in Council may in respect of the area of jurisdiction of such local authority or any part thereof by order exercise any of the powers conferred upon a local authority by sub-section (1) of this section.

22

23. (1) No order shall be made or amended by a local authority unless and until a copy of such proposed order or amending order has been deposited at the office of the local authority for inspection by any person at all reasonable times, and unless and until a notice, setting forth the general purport of the proposed order and stating that a copy thereof is open to inspection, shall have been published in the Gazette and in some newspaper circulating in the district and exhibited in a conspicuous place at or near the public entrance to the local authority's offices fourteen days prior to the meeting of the local authority to be held for the purpose of making such order or such amending order.

Orders by
local
authorities,
how to be
made.

(2) Any objection to any such order shall be lodged with the clerk to the local authority within thirteen days after the date of the publication of the notice as aforesaid.

(3) After any order has been made or amended by a local authority such order or amending order shall be submitted to the Commissioner for Local Government through the Provincial Commissioner for the approval of the Standing Committee, together with—

Submission of
orders for
approval of
Standing
Committee.

- (a) a copy of the minutes of the meeting of the local authority at which the order or amending order was adopted;
- (b) a certificate by the clerk to the authority that the provisions of sub-section (1) of this section have been complied with; and

July 6, 1937

(c) copies of any objections against the adoption of the order which may have been lodged in writing with the clerk, or, if no objections have been lodged, a statement to that effect.

(4) When the standing committee has approved of any order, with or without amendment, such order shall be published in the Gazette.

(5) Any person aggrieved by such order may within one month from the date of publication under sub-section (4) of this section submit to the Governor in Council a written objection to the order.

(6) As soon as possible after the expiration of a period of one month from the date of publication of the order under sub-section (4) of this section, the Governor in Council shall, after considering such written objections, if any, as may have been made under the last preceding sub-section, confirm, vary or reject such order.

(7) If the Governor in Council confirms, with or without amendment, any such order he shall cause the order to be so certified by the clerk to the Executive Council who shall then cause the order to be published in the Gazette, and as and from the date of such publication such order shall have the full force of law in the area to which it relates.

(8) For the purposes of this section the expression "standing committee" means—

(a) in the case of an order made by a local authority which is a municipality, the Standing Departmental Committee for Local Government established under the Local Government (Municipalities) Ordinance, 1928;

(b) in the case of an order made by any other local authority, the Standing Departmental Committee for Rural Areas established under the Local Government (District Councils) Ordinance, 1928.

24. The Governor in Council may make orders of a similar nature to those which a local authority is empowered to make under section 22 of this Ordinance in respect of forest areas, unalienated Crown land or Railway land, and, in making such order, shall have regard—

(a) to the reasonable labour requirements of the Kenya and Uganda Railways and Harbours or of any department of Government concerned;

(b) to the reasonable needs of such natives and Somalis; and

Governor in Council to confirm or vary order.

No. 19 of 1928.

No. 21 of 1928.

Governor in Council shall make orders regarding Forest, Railway or unalienated Crown lands.

July 6, 1937

(c) to the terms of any order made under section 22 of this Ordinance in force in any area adjacent to such forest area, unalienated Crown land or Railway land.

25. (1) Proceedings in respect of any offences against the provisions of section 4, 7, 13, 14, 15, 16, 17, 18 and 20 of this Ordinance may be instituted by the Police or by any person authorized in writing by a magistrate.

Institution of proceedings for offences.

(2) A magistrate may, in his discretion—

(a) rescind any contract made under this Ordinance where it has been proved to his satisfaction that there has been a breach of the terms thereof, or, on the application of either party to the contract, when the other party has been convicted of a criminal offence against him or of a criminal offence involving serious moral turpitude; and

(b) cancel any permit given by an occupier in contravention of the provisions of this Ordinance.

Provided that in any such case the native or Somali shall retain his rights over growing crops unless the occupier elects to give him reasonable compensation therefor. In the event of any dispute as to the amount of compensation payable the magistrate shall determine the amount thereof.

(3) Compensation payable under this section may be paid to the magistrate by an occupier, but if proceedings have been instituted by the occupier for damages against the native or Somali, the magistrate shall not pay out the compensation to the native or Somali until the liability of the native or Somali to pay damages has been determined; and if the native or Somali is found to be liable to damages, such damages may be set off against the amount paid to the magistrate by the occupier.

26. A resident labourer shall on conviction be liable to a fine of one hundred shillings or in default of payment to imprisonment for any term not exceeding one month—

Penalties for offences committed by resident labourers.

(1) if he, after having entered into an agreement under this Ordinance, fails or refuses without lawful cause to enter upon his duties on the farm at the stipulated time;

(2) if he, without lawful cause, absents himself from the place proper and appointed for the performance of his work on any day when the occupier may lawfully require him to work;

- (3) if he, during any time when he is lawfully required to work, is intoxicated and thus unfit to perform his work;
- (4) if he neglects or refuses to perform any work which it was his duty to have performed, or if he carelessly or improperly performs any work which from its nature it was his duty under his agreement to have performed carefully and properly;
- (5) if he, without leave and for his own purposes, makes use of any horse, vehicle or other property belonging to the occupier;
- (6) if he uses any abusive or insulting language or is guilty of insulting behaviour to the occupier or to any person lawfully placed by the occupier in authority over him, calculated to provoke a breach of the peace;
- (7) if he refuses to obey any command of the occupier, or of any person lawfully placed by the occupier in authority over him, which command it was his duty to obey;
- (8) if he grows upon the farm any crop which by his contract he is prohibited from growing;
- (9) if he, after the termination of his contract and subject to the provisions of paragraph (k) of sub-section (2) of section 5 and sub-section (9) of section 17 of this Ordinance, fails within a reasonable and specified time to leave the farm and to remove his family and stock therefrom.

27. A resident labourer shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for any term not exceeding two months—

- (1) if he wilfully or by wilful breach of duty or through drunkenness does any act tending to the immediate loss, damage or serious risk of any property placed by any other person in his charge for delivery to or on account of his occupier;
- (2) if, by wilful breach of duty or by neglect of duty or through drunkenness, he refuses or omits to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by the occupier in his charge, or placed by any other

Penalties for
more serious
offences
committed by
resident
labourer

person in his charge for delivery to or on account of his occupier;

- (3) if, being employed as a herdsman—
- (a) he fails to report to the occupier the death or loss of any animal placed in his charge at the earliest opportunity after he has discovered, or at the earliest opportunity after he should in the ordinary course of duty have discovered, such death or loss;
- (b) he fails, after having received an order from the occupier to preserve for the use or inspection of the occupier any part or parts of an animal which such resident labourer alleges to have died, to preserve such part or parts and is unable to prove to the satisfaction of the court the death of the animal which he alleges to have died;
- (c) he alleges the loss of any animal placed in his charge and it is proved by the occupier to the satisfaction of the court that such animal could not, in the circumstances of the case, have become irrevocably lost without the act or default of the resident labourer;
- (4) if, being employed in any capacity other than that of a herdsman, he alleges the loss of any property placed in his charge by or for the occupier and it is proved by the occupier to the satisfaction of the court that the property in question could not have been lost without the act or default of the resident labourer.

28. (1) An occupier shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for a term not exceeding two months if he is convicted of any of the following acts or omissions, that is to say—

- (a) if he fails to pay, on demand, the wages due to a resident labourer;
- (b) if, before or after the expiration of the contract, upon demand made and without lawful cause, he refuses to deliver or to permit to be taken away any property belonging to a resident labourer lawfully remaining or being upon such occupier's land;
- (c) if he fails knowingly or on demand to provide his resident labourers with proper medicines during ill-

Penalties for
offences
committed by
occupier

27

ness and also, if procurable, medical attendance during serious illness: Provided that an employer's liability for medical attendance during illness shall not extend beyond a period of thirty days.

Discretionary powers of magistrates.

(2) Upon any complaint brought before a court under the provisions of this Ordinance the magistrate may, in addition to any jurisdiction he might have exercised if this Ordinance had not been enacted, exercise all or any of the following powers:—

To adjust and set off claims.

(a) He may adjust and set off one against the other all such claims on the part either of the occupier or of the resident labourer arising out of, or incidental to, the relation between them as the magistrate may find to be subsisting, whether such claims are liquidated or unliquidated, and whether such claims are for wages, damages or otherwise; and he may direct the payment of such sum as he finds due by one party to the other party.

To direct fulfilment of the contract.

(b) He may direct fulfilment of the contract, and, in case where he might award damages for any breach of contract, he may, in lieu either of the whole of the damages which would otherwise have been awarded or some part of the damages, direct the party committing such breach to find security to the satisfaction of the magistrate for the due performance of so much of the contract as remains unperformed; and if the party neglects or refuses to find security, he may commit him to prison until he finds it, but the term of imprisonment shall not exceed three months.

To rescind the contract and apportion wages, etc.

(c) He may rescind the contract upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages or other sums due, as he thinks fit.

(d) When no amount of compensation or damages can be assessed, or when pecuniary compensation will not in the opinion of the magistrate meet the circumstances of the case, he may, in addition to rescinding the contract and discharging the parties therefrom, impose a fine on either party of a sum not exceeding twenty pounds or in default of payment to imprisonment for a term not exceeding one month.

42

28

29

30

31

32

33

29. Any person who is guilty of an offence against this Ordinance or who commits or knowingly permits a breach of the provisions of this Ordinance or any Rules made thereunder for which no specific penalty is provided shall be liable, on conviction, to a fine not exceeding one hundred pounds, or to a term of imprisonment for a term not exceeding two months, or to both such fine and such imprisonment.

General penalty

30. In any complaint under this Ordinance the process of the court for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that, if at the trial the complaint shall appear to the magistrate to be frivolous or vexatious, the party complaining shall be liable to pay a fine not exceeding ten pounds and to defray the cost of the process and of the witnesses in the case, and in default of payment of such fine and costs, shall be liable to imprisonment for any period not exceeding one month. Such fine and costs may be imposed upon the occasion of such trial and without any fresh action or proceeding for the recovery thereof.

Costs.

31. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

Rules

32. The Governor in Council may appoint any fit and proper person to be an attesting officer for the purposes of this Ordinance.

Appointment of attesting officers

33. Notwithstanding anything to the contrary contained in any law for the time being in force in the Colony, the attestation of any contract entered into under the provisions of this Ordinance shall be exempt from all stamp duty and any attestation fee prescribed by any Rules of Court.

No stamp duty shall be chargeable for the attestation of any contract.

34. The Resident Native Labourers Ordinance, 1925, is hereby repealed.

Repeal No. 5 of 1937

FIRST SCHEDULE

Memorandum of Agreement made this day of 19..... by and between (1) of (2) (hereinafter referred to as "the occupier") and (3) registered number of (4) (hereinafter referred to as "the resident labourer"), whereby it is agreed:—

1. That this agreement shall have effect from the day of 19..... and shall be for a term of years ending on the day of 19..... unless lawfully determined earlier.
2. That the resident labourer, together with his wife or wives and children shall reside and may graze stock on such part only of the occupier's farm at (2) as the occupier may direct during the period of this agreement.
3. That during the period of this agreement the resident labourer and every male member of his family who is of the apparent age of sixteen years or over and is resident on the occupier's farm, and who is not working under any law for the time being in force in the Colony relating to the employment of servants, shall each work for the occupier at such times as the occupier may direct, for not less than (3) days at the election of the occupier in each period of twelve months, and that the occupier shall provide employment for the resident labourer and for such male members of his family for such number of days. The occupier shall give notice in writing to every male member of such family who during the continuance of the contract may attain the age of sixteen years that on the expiration of three months from the date of receiving such notice he will be required either to enter into a contract under the Resident Labourers Ordinance, 1937, with the occupier, or under any law for the time being in force in the Colony relating to the employment of servants with the occupier or some other employer in the vicinity, or to cease to reside on the occupier's farm.
4. That the time during which the resident labourer is required to work for the occupier shall be so arranged as to allow the resident labourer reasonable time to sow, cultivate and reap his own food crops.
5. That the occupier agrees to pay to the resident labourer, and to the male members of the resident labourer's family of and above the age of sixteen years employed by the occupier, wages at the rate of not less than for every (4) and (5)
6. That the occupier shall provide good and sufficient building material for the erection of huts for the accommodation of the resident labourer and his family.

7. That the occupier shall provide the resident labourer with sufficient and suitable land for the cultivation of food crops for himself and his family, and for grazing the following numbers of stock, namely (6) provided that the resident labourer shall not plant or cultivate any of the following crops, namely or allow them to be planted or cultivated under his control, and that he shall not cultivate land other than that allocated to him by the occupier.

8. That with the consent of a magistrate or an attesting officer this agreement may be terminated by either the occupier or the resident labourer giving to the other three calendar months' notice, provided that the resident labourer shall suffer no prejudice in regard to the care and reaping of his crops or in regard to the removal of his family or stock and provided that the occupier may demand the fulfilment by the resident labourer of any conditions of this agreement to which the resident labourer may be liable in respect of his obligation to work.

9. On the expiration or termination of this agreement from whatever cause, the resident labourer shall be entitled to remove all his movable property from the farm, but shall not remove any buildings. In respect of buildings or other immovable property the resident labourer shall be entitled to any reasonable compensation for materials contributed by him.

*10. That the resident labourer shall cause his children to attend regularly at the school provided by the occupier on the said land.

†(Any other conditions).

As witness the hand of the parties hereto:
Witness to the signature of the occupier.

Witness to the signature or mark of the resident labourer.

SCHEDULE

I/We being member(s) of the family of.....
(the resident labourer) do hereby agree to abide by the terms of
the agreement dated..... between him and.....
..... (the occupier)

Signature(s) or Mark(s)	Registered No.	Nature of Service.	Remuneration.

I hereby certify that the contents of this agreement have
been read and explained by me to the resident labourers the
signatories to this agreement, and that they appear to have
executed this agreement with a full knowledge of its contents.

The..... day of..... 19.....

.....
Magistrate or Attesting Officer

- (1) Full name of occupier.
- (2) Address.
- (3) Full name of native or Somali as given on Registration Certificate.
- (4) Insert name of native's or Somali's district, location and chief.
- (5) Insert name and/or Land Office number of farm.
- (6) Not to be less than 180 days, but may be more if agreed.
- (7) Day, month or thirty-day card worked.
- (8) Insert conditions as to rations or other considerations if agreed upon or strike out if inapplicable.
- (9) Number of each kind of stock to be specified.

* This clause to be inserted only in the case of missions or farms on which schools to the satisfaction of the magistrate are provided; otherwise to be struck out.

† Any other conditions agreed to by the parties which do not contravene the provisions of this or any other Ordinance. Such conditions, if any, shall be numbered consecutively.

SECOND SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937
Form of Bond under section 5 (8)

Be it known unto all men by these presents that we
(⁽¹⁾)..... are jointly and severally bound
unto (⁽²⁾)..... and to any one or more
of them in the sum of (⁽³⁾)..... to be paid to
the said (⁽⁴⁾)..... their and each of their
heirs, executors, administrators, and assigns. For which pay-
ment well and truly to be made as liquidated damages and not
as a penalty, we bind ourselves jointly and severally; and our
heirs, executors and administrators, and every one of them
firmly by these presents.

Sealed with our seals, dated this..... day of
..... 19.....

The condition of the above written obligation is such that
if (⁽⁵⁾)..... (hereinafter called
"the occupier") the employer of the said (⁽⁶⁾)
(hereinafter called "the resident labourer") do pay to each of
the resident labourers performing their part of the agreement
after-mentioned the several sums of money set opposite to their
respective names in the schedule to an agreement made and
entered into between the occupier and the resident labourer at
..... on the..... day of..... 19..... and
attested by (⁽⁷⁾)..... in regular
(⁽⁸⁾)..... payments to be calculated from the
..... day of..... 19..... and to execute,
carry out and perform his part of the said agreement in all
respects, then this obligation to be void, otherwise to be in
full force and virtue.

Signed, sealed and delivered in the presence of:—

(To be signed and sealed by each of the obligants
and attested, if practicable, by the officer attesting the
relative agreement).

- (1) Insert names and description of occupier and one or more sureties resident within the jurisdiction.
- (2) Name and description of the resident labourer.
- (3) Insert sum, not less than half the total amounts (less any advances), due by the contract.
- (4) Repeat names of resident labourer.
- (5) Name of occupier.
- (6) Name or names of resident labourers.
- (7) Official name of officer before whom agreement is signed.
- (8) Weekly or monthly, etc., as the case may be.

Simplified

THIRD SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937
Resident Labourer's Certificate
(Under section 11)

I hereby certify that.....
has during the period of twelve months commencing on the.....
day of.....19..... completed
the..... days' work stipulated in this
contract. His obligation to work under the terms of this
contract commences again on the..... day of
.....19.....

Signature of Occupier and date

FOURTH SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937
Permit granted under the Provisions of section 4 (1) (e) to
Reside on Alienated Lands

Bearer..... s/o.....
Native Registration Certificate No.

Somali
is hereby permitted to reside on.....
for..... (days), i.e. from.....
(to).....
Date.....

Signature of Occupier

All permits to reside on any land for a period exceed-
ing fourteen days must be countersigned by the District
Commissioner in charge of the area in which such land
is situated.
Approved.

District Commissioner

Date..... District

FIFTH SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937
Register of Cattle and Stock (section 16)

Name of Farm.....
Occupier's Name.....
Registration No. and Name of Native or Somali.....
No. of Contract.....
Date and Duration of Contract.....
Occupier's Registered Brand.....

NUMBER OF STOCK ALLOWED ON CONTRACT

Cattle..... head. Sheep and Goats..... head.

Date	Number of Cattle		Number of Sheep & Goats	Remarks
	Branded	Unbranded		

N.B.—Separate pages must be kept in respect of each native who has stock on the farm.

OBJECTS AND REASONS

This Bill is designed to give effect to the recommendations contained in the Report of the Committee appointed to review the Resident Native Labourers Ordinance, 1925, and to report what amendments were necessary for its improvement.

2. With the exception of a few minor amendments relating to penalties, certain amendments made in the light of criticisms received since the Bill was published, and a few changes in terminology the Bill follows the Draft Bill appended to the above-mentioned Report.

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

R297

July 23rd, 1937.

E

Rt. Hon. W.G. Ormsby Gore, M.P.
Colonial Office,
S.W.I.

Dear Mr. Ormsby Gore,

May I return to your letter of June 25th on the subject of the Resident Native Labourers Ordinance in Kenya? I should like to take up your points one by one, but this would involve me in a very long letter. I want now to refer only to a few of the points in the Ordinance which, in my judgment, your reply tends to ignore or minimise.

- 1). The Ordinance is an extension to other land and an extension of the practice from 180 to 270 days. It gives new powers to local authorities. It cannot be regarded therefore, as a consolidation measure merely. In any case, amendment implies change and the opportunity of reconsideration of principles.
- 2). The Ordinance marks another stage in the complete servitude of the native male population on these European lands - a servitude extended to 270 days which precludes the natives from reasonable cultivation and development of his plot and which still further weakens his security on the land he may be allowed to cultivate. What is the reason for this extension of labour servitude to 270 days?
- 3). The continuance of penal sanctions in the Ordinance suggested ought to be abandoned. In any case the Ordinance ought not to be worse than the views expressed by the Committee of Experts on Native Labour attached to the I.L.O. (See Meeting of May 1934). As resident labourers have a definite stake in their place of employment, the provision of severe penal sanctions for offences, is unnecessary for efficient employment and dangerous in the case of inefficient. It is suggested

Section 13 of the Principal Ordinance which it is proposed to amend:—

13. Every person holding a trading licence under this Ordinance shall keep such books as will enable a licensing officer to ascertain the nature of the trade carried on and the value of the goods on hand at any one time.

Section 17 of the Principal Ordinance which it is proposed to replace:—

17. Every licence holder, keeping a store, office or other place of business under his licence shall exhibit at such place a signboard or name-plate bearing in legible English characters the name under which he carries on the business as shown on his licence.

Books to be kept.

Signboards to be exhibited.

that Sections 25 and 26 of the Ordinance should not be included and that offences should be dealt with under Section 27 (2) which enables the magistrate to adjust or set off claims, to direct the fulfilment of the contract, to rescind the contract, and only in the last resort, to inflict penal punishment. At present these provisions form part of a section which deals with penalties for offences committed by the occupier. It is presumed, however, that in any event it is not intended that the discretionary powers of magistrates should be limited to cases brought against the employer.

4). The theory seems to be that the Reserves are the maximum of native land accommodation, that you can go on crowding natives into them, and that it is desirable to create a class of wandering natives who have left their tribal life a land behind them and who can be hired on the farms and in the towns but who can never by squatting or any other way secure permanence of tenure.

5). The uprooting of native people from their holdings creates considerable discontent. The present "C" areas are too inaccessible to develop and will become neglected Reserves. It is the farms of absentee landlords or uncultured farms which should be used for experiment in real native tenure and therefore, I see no reason why native tenancy (not necessarily ownership) for Highlands Africa should not be encouraged.

6). The contention that the rights of the labourers are well known and are observed in letter and in spirit by employers while possibly generally true is hardly borne out by the following passage in the 1935 Report of the Labour Section of the Native Affairs Department:

"There is without doubt a great deal of squatter farming being practised throughout the Colony. It was found on inspection that in some cases the squatter or resident Native labourer did not receive any pay, and if he did, the payment was made in kind, and it has

31

3

been proved that the Native squatter is always loath to make a complaint, because he is well aware that if he does he will receive notice, and be ordered by his master to leave the farm within six months, and lose not only his grazing for his cattle but, in many cases, his very home. This state of affairs will continue until such time as every farm is inspected by a Labour Officer. This is the one and only preventive measure that is likely to be effective. Resident Native Labourers' wages are even lower than in previous years, and the average wage was Sh.5 per month and no food. This needs no comment. During the year, on one inspection, contracts were seen that provided for no payment in money at all - food being the only remuneration provided during the six months' work".

7). I think on a moment's reflection your analogy about the gardener and his cottage on an English estate breaks down. I still think the analogy in respect to Nyasaland is worth more attention in your office, and I would most respectfully urge again more attention being given to the possibilities of Labour Tenancy on the Farms, with some reasonable security of tenure. Regulations in respect to Stock holding, and soil erosion are important matters which I agree must be dealt with but apart from labour servitude.

8). It is submitted that as the terms of the present Ordinance and of the Bill, together with the form of contract, provide for a close limitation of the maximum privileges of Natives, it should be possible to provide for a closer definition of their minimum privileges during service.

A Minimum Wage Ordinance has been on the Statute Book of Kenya since 1932, although the machinery provided under the Ordinance has not yet, I believe been used. It is suggested that the Resident Labourers' Bill should provide for the fixing of the minimum cash remuneration of resident Labourers by proclamations under the Minimum Wage Ordinance.

It is suggested that the contract form should specify

the amount of land provided for the cultivation of foodstuffs and that the attesting officer should be required to satisfy himself that the land is sufficient and suitable.

(q) - In addition, proper inspection is also required and the Ordinance makes no provision.

I am,

Yours faithfully,

Arceuth

Member for Shipley.

by Secretary of State 13/7/37

Edinburgh
Pears 16
High Wycombe
Bucks.
12.7.37

RC E

The Right Hon: W. Ormsby-Gore MP
His Secretary of State for the Colonies

Dear Ormsby-Gore,

I am so chary of trespassing on your time & kindness that I refrained from asking for comments, even at a later time, on the notes I sent you on my talk with Lord Francis Scott. So you will forgive a word more?

It was good news, this morning, that Nyasaland is to have an inquiry. Only the other day I was suggesting to Lady Pim that she would have to release Sir Alan at least once more, to apply his widely acquired experience to the most interesting wrong of them all. Now alas! Nyasaland is to have its inquiry etc to itself, by a man whose high financial qualifications will not enable him to apply the experience of neighbouring African colonies - even if the 3rd par. of the terms of reference could be expanded to include the labour problem.

This gives some point to what Creech Jones tells me! - that in propos of the Kenya Resident's Labourers Ordinance, the Colonial Office deprecates or altogether repudiates arguments based on 'analogy'. As I know of no one else with even my nodding acquaintance with conditions in four countries covered - S. Africa, S. Rhodesia, Kenya & Nyasaland itself - I must take it on

Secretary of State 13/7/37 =

Elmhurst
Penn 16
High Wycombe
Bucks.
12.7.37

RK E

The Right Hon: W. Ormsby Gore M.P.
His Secretary of State for the Colonies

Dear Ormsby Gore,

I am so chary of trespassing on your time & kindness that I refrained from asking for comments, even at a later time, on the notes I sent you on my talk with Lord Francis Scott. So you will forgive a word more?

It was good news, this morning, that Nyasaland is to have an inquiry. Only the other day I was suggesting to Lady Pim that she would have to release Sir Alan at least once more, to apply his widely acquired experience to the most interesting wrong of them all. Now alas! Nyasaland is to have its inquiry etc to itself, by a man whose ~~high~~ practical qualifications will not enable him to apply the experience of neighbouring African colonies - even if the 3rd par. of the terms of reference could be expanded to include the labour problem.

This gives some point to what Creech Jones tells me! - that a propos of the Kenya Resident's labourers Ordinance, the Colonial Office deprecates or altogether repudiates arguments based on 'analogy'. As I know of no one else with even my nodding acquaintance with conditions in four countries covered - S. Africa, S. Rhodesia, Kenya & Nyasaland itself - I must take it on

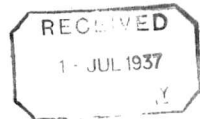
myself to protest that there may be 'misapprehension' in the Colonial Office itself: - (reminding you incidentally that I am by no means opposed to White Settlement, & that I have always been a champion of 'Poor Whites'). There can surely be no finality in the Kenya debate until it is made quite clear that Kenya is following the best possible models & experience? - which can only be by such investigation on "co-operative" lines as that question has never yet had.

As, since comparisons are so obviously ruled out in the new Nyasaland Inquiry, may it be taken that a separate or special inquiry will be instituted on the labour problem, including (very) particularly the position of agricultural labourers? which you will, I think, agree is (shall we say?) "unsatisfactory" in more than one of the four countries I have mentioned - and undoubtedly better, I venture to add, in Nyasaland than in any of the others.

Yours sincerely

W. Macmillan

Confidential



Elmhurst
Penn
Hickory
Bucks

14

29. 11. 37

The Rt Hon. W. Ormsby-Gore MP
H.M. Secretary of State for the Colonies

Dear Ormsby-Gore,

After you were (not enough to see me the other day it occurred to me it might be useful to approach Lord Francis Scott, so I wrote to him friendly, and a very friendly reply & a long talk last week. I think we looked for common ground, rather than merely debated, & even if there was not as much as might be ^{that is a good deal} I have ventured to put down some impressions - and of course a report of a private talk! - but a restatement of my own argument, with such ^{points as} I seemed to catch of principles of further progress. ^(particularly I find the colonial suggestion)

It is roughly done, & roughly edited, I hope it may serve any purpose. I dash it off upon you as 'note capital by Palestine?' and of course of further examination is any use I am at your service any time - or that of your Kenya Dept.

Yours sincerely

W. Macmillan

Confidential

NOTES suggested by

Conversation with Lord Francis Scott on Problems of Kenya:

1. Comments of Settlement:

Settlers as represented by their leader are astonishingly on the defensive, as if fighting against all comers for their life - against critics, against a hostile Colonial Office! against Africans. I was able to say that, only the day before, I had returned a MSS. submitted by an African to a publisher, with the criticism that the writer made the issue Black vs White - here it is ^{in the too much like} ~~definitely~~ White vs Black. I suggested that the common enemy of White and Black is really physical nature in Africa - the colossal difficulty of developing Africa on any terms. I also made it clear that I appreciate the positive achievements of White Settlers and that they have done what Africans could not, - getting in first with the point that the distressed areas of Nyasaland are actually those which have no European community and no alienated land. But even ~~the~~ from the point of view of their own interests Settler policy in general seems to me to follow no plan but rule of thumb - ~~with~~ pyrethrum is one of the latest bright new ideas to be "tried out" - the only guiding principle is still rather pathetically that if only you "get the right type of man", he will make good. It is clearly part of Settler theory that Settlers "of the right type" are British rather than Boer: therefore more enlightened, agriculturally and politically!

Lord Francis readily concurred in a suggestion that time has

come for a ^{thorough} ~~theory~~ economic survey of ^{actual} ~~the~~ experience ⁱⁿ ~~at~~
Settlement - e.g. as to the most efficient size of holding under different conditions.

2. The capital history of past ventures - including degree of dependence on banks, traders etc.

3. The possibility of communal settlements rather than highly individual experiments by middle or small-scale 'farmers.'

I would suggest that the Native Policy now being followed depends entirely on the assumption that the best policy for Settlement is that hitherto followed - and that such a comprehensive investigation should precede any further experiments in ~~the old~~ Native Policy.

2. South Africa
& Boer Theory
& Practice:

The strong points and merits of Boer Settlers, and even of Boer tradition, are not appreciated. In particular ~~the~~ Boer practice, while it denied native rights and discouraged native education, - was leisurely and left natives a good deal of freedom in occupation of all the land they needed. "Squatters" were free to sell and buy, if not to come and go, as they pleased and were reasonably contented. The acute phase of the South African "native problem" dates from the Land Act of 1913, of which the serious feature was not so much the restrictions on land purchase, as the pressure on and disturbance of the "squatters" who were half ^{and more of} the total Native population of the Transvaal and of Natal, and actually fourteen-fifteenths in the Orange Free State - obviously, therefore, not adequately employed

4' of U.S. 19 of 1916 (Belmont Land Grant).

In the Cape the 'Reserves' formed home bases from which Africans were free to move out as they pleased: yet they were neglected, starved of expenditure and railways, and had their soil utterly ruined. The economic condition of the ^{Cape} ~~the~~ Natives was ^{generally} ~~at least inferior to~~ ~~much worse than~~ that of ^{perhaps most} squatters on Boer farms. The Union now proposes to drive the majority of its Natives into such restricted Reserves, which experience everywhere shows will be left to themselves and neglected, - to limit free egress - to bar native economic activity "except in these ^{own} areas" - and at the same time to restrict political rights of citizenship and self-expression which alone kept the Cape natives contented and loyal in spite of economic stress. This is the model being followed in Kenya (and also in Southern Rhodesia).

3. Theory
of Reserves:
modern
style.

An unnoticed drift has brought about a wholly new and unfortunate alignment on the place of 'Reserves' in the economic scheme. In a developed country clear-cut 'segregation' is impossible. 'Reserves' came into being as a recognition that, in free competition with economically stronger Europeans, Natives would be squeezed out and lose any hold on any land. They must therefore have a minimum secured to them - but in theory and a little in practice all the rest of the country was formerly open to the "operations and speculations" of any Africans with capacity for such.

Colonial office policy, and sometimes pressure, insisted on this minimum. The Colonial Office was actually responsible for securing some minimum of 'Reserves' even in the old Transvaal

Republic. It has insisted, not without opposition, on a similar provision in Kenya and elsewhere. Now European Settlers are saying in effect, 'You asked for Native Reserves. Let the Africans stay and develop there "on their own lines"'. In this they are aided by official considerations of convenience in administration, and also by theoretical emphasis on the importance of checking "detrimentalization" and preserving tribal institutions. Thus the old minimum has become a maximum.

4. 'Segregation'

Perhaps to their credit the ^{or many} Settlers, following the tradition of Lord Delamere, profess to dislike rigid segregation and the principle of Reserves. They would say they have had it forced on them but will now avail themselves of the principle to claim a Reserve of their own. The reality is that Africa is underpopulated, and the future depends both on securing greater efficiency from what labour there is, and in some degree on its redistribution to the most favourable centres of economic activity. This last is the real significance of much of the "migration" - it is the fashion to deplore. ^{very recent, short-sighted, not long} It is a ^{very recent, short-sighted, not long} intolerable innovation to insist that in the best and most highly developed parts of all, Africans shall be restricted to unskilled labour, or to 'labour tenancy' which, as the Kenya Land Report insists, is not 'tenancy' at all.

5. 'Squatters':

The ^{whole} problem, ^{As in detail} ~~is~~ that of "squatters", seems to be approached always with an eye to immediate considerations of practice and expediency,

to particular cases, particular estates or farms even: with little attempt to consider ultimate consequences.

(i) Lord Francis Scott strengthened my impression that the dimensions of the problem have been only very roughly measured. The "150,000 persons" (Cmd. 4556 S1498) is the roughest estimate. Lord Francis protested that this number was but a small fraction of the three million Natives, I would reply that as the majority of the squatters are Kikuyu the likely disturbance is to be measured by its effect on the half million or so in the Kikuyu Reserve of whom these are quite a large percentage. Even the Kenya Land Commission dealt with "squattling" only as an incident of the land problem (cf. also S1976. "In considering rights of Natives to land in European Highlands it is perhaps necessary to mention labour tenants"! S1496 assumes the equity of treating White and Black Reserves on the same terms, whereas the white "reserves" are necessarily the scene of maximum economic opportunity for all. There clearly is room or need for fuller investigation.

(ii) As in South Africa, great stress is laid on the desirability of clearing out undesirable agglomerations of people e.g. on undeveloped or unoccupied European owned farms. This naturally has backing from administrative officials who find it easier to deal with tribal units. If however these gatherings of Natives are not tribal they cannot be made such by a stroke of the pen. It ought to be the axiom of administration that people should be

kept in order wherever they are settled. If anyone is to be rooted out (I don't say he should be) it is the absentee owner rather than the people on his land. Why not modified "C" areas on such land, allowing not perhaps possession, but real tenancy?

(iii)

South African and Rhodesian experience, which I at least have tried to study in this connection, is proof of the generally unsettling effect of disturbance caused by just such cavalier "moving" of such people. In both these countries it is largely responsible together with the poor prospects for labour tenancy for the drift to the towns; and therefore for Pass Laws, Sedition Acts, and much else. Kenya is following closely the disastrous South African precedent, with equally little appreciation of the widely felt effects of such local pressure.

(iv)

The Land Commission urges the desirability of "fluidity" in the Native Reserves. It is not obvious why rigidity should be recommended for the White Reserve - or what improvement is to be expected of people with no security or permanence. The only effect of present policy must be increased pressure on the soil of the Reserves. Development of the Reserves is always vaguely promised in the future. It is really no easier for Natives than for Europeans to begin useful development in remote "C" areas. They will only add to the extent of land likely to be ruined as so many Reserves everywhere have already been.

(V)

Alternatives to ^{the} Resident Native Labour Laws have not been fully considered. Lord Francis welcomed the suggestion that undeveloped North Nyasa is economically hard hit and worse off than the alienated Shire Highlands. He had doubtfully even heard of the Nyasa Tenant system. This I am convinced should be investigated before allowing further evictions by a new Kenya Resident Labour Ordinance - with its unsettlement, of unknown degree.

Out of debate on these lines I saw one glimmer of possible hope. Lord Francis minimized the actual disturbance of occupiers likely to result. I entirely agree ~~that~~ that few farmers or settlers are on anything but the best of terms with their own squatters. But neither he nor anyone else can tell how many evictions there might be - and the point is rather that Natives also argue from particular individual cases, and any further disturbance must increase discontent, and that general unsettlement which has already gravely hindered progress.

I think however it might meet the case to allow a certain fluidity - to leave a clear opening for ~~some~~ real tenants, perhaps on the Nyasa land model. It would be availed of probably only by a small number. But it must be clear and definite. Lord Francis I think admitted the point that what squatters valued on old-time Boer farms was a large measure of freedom. The

line of approach might be, as I suggested to him, to make it possible for such Africans as can to secure effective access to and full use of land, even in the Highlands - use, if it is secure and effective, being more important to Africans than theoretical rights of ownership.

William Miller

C. O.

3.O. for the Secretary of State's signature.

Mr. Grossmith. 6/7.

Mr. Paskin. 977

Mr. Flood. 107

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley. 127

~~Sir J. Shackburgh~~

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Amuel (22)

DOWNING STREET.
12th July, 1937.

Confidential.

See. Brooke-Popham,

I enclose, for your information, a copy of correspondence with Mr. Creech Jones,

M.P. regarding the Bill to regulate the ^{Native} Resident ~~Labourers~~ on Farms in Kenya.

DRAFT.

AIR CHIEF MARSHAL

SIR ROBERT BROOKE-POPHAM,

G.C.V.O., K.C.B., A.F.C.

C.M.G., D.S.O.,

In conversation here Lord Francis Scott mentioned that (as, of course, we were already aware) many settlers have no desire to turn away their resident native labourers. This, of course, applies more particularly to the planters. While this fact lessens the immediate difficulties of settling the masses of "squatters" for whom it is necessary at the outset to provide alternative land, so that they can go on the termination of their contracts, it involves a potentiality of hardship, to which I have referred in the seventh paragraph of my letter to Creech Jones, and as to which I am not at

From Mr. Creech Jones
26/5/37. (8)

To " " (10)
25/6/37.

From " " (11)
30/6/37.

FURTHER ACTION.

all happy.

^{resident labourer}
The case of a ~~squatter~~ who has grown old in the service of his employer, and has long ceased to have any connection with his reserve, seems to me to deserve

specially sympathetic consideration. If some

arrangement could be made whereby such ~~squatters~~ ^{persons who have been residents}

could look forward to a form of tenure beyond the ^{for more than a}
^{stated number of}
^{years continuously}

period of their labour contracts, it would go a long

way towards ^{meeting the difficulties of the situation}
~~the solution of the problem.~~

^{many}
I recognise the difficulties. Anything

done on one farm would be bound to have repercussions

on others; and, of course, a subsequent owner of the

same farm might have very different ideas on the

subject. I am afraid that I can offer no suggestions; ^{at this stage}

but I should be much happier in my mind about the

whole ~~squatter~~ question if something could be devised

to give some measure of security to natives whose

employment on a farm has continued for so long that

any other manner of living is bound to involve ~~considerable~~

hardship.

*Yours sincerely,
W. H. Murray*

R 217 11.

June 30th, 1937.

Rt. Hon. W.G. Ormsby Gore, M.P.
Colonial Office, Downing Street,
S.W.1.

RECEIVED
2 - JUL 1937
C.C.

Dear Ormsby Gore,

I am grateful to you for your interesting reply to my letter of May 26th on the subject of the resident Native Labourers' Ordinance in Kenya. I would like to give a little thought to the point you make because there are still a number of questions in the Ordinance on which your reply seems to me to be unsatisfactory. I hope to write to you again in the course of a week or so.

Yours sincerely,

Steuart Jones.

10
Copy to { de Brink - Poplar (12)
(Lord Francis - de Witt (13)

G. O.

And (11) see (17)
38223/37

10

For the Secretary of State's signature.

Mr. Flood. 14/6/

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley. 18-6.

Sir J. Shuckburgh.

+ Permt. U.S. of S. 19/6

Parly. U.S. of S. 22/6

X Secretary of State. WJ 25-6-37

DOWNING STREET.

25th June, 1937.

A. Creech-Jones,

I have not answered your letter of the 26th of May about the Resident Native Labourers' Ordinance in Kenya because I thought you might wish me to defer a reply until you had been able to read my despatch to Kenya. I understand that you have now done so and I hope that, after reading it, you will think that neither the Government nor the Secretary of State is quite so black as painted.

I think that there is, I won't say confusion, but a certain degree of misapprehension as to the exact situation in Kenya. Analogies from other places are not really much in point, since an identical situation hardly exists anywhere else. In particular

Copy to Sir C. Bottomley (12) Lord Francis Bouverie (13)

DRAFT. CONSON.

A. CREECH JONES, ESQ., M.P.

FURTHER ACTION.

See P. 28.9 minute

particular, there is all the difference in the world between the Nyasaland system to which you refer at the end of your letter and the position in Kenya. In Nyasaland, the natives in question are recognised as being the inhabitants of the various areas, and therefore having rights in the land and are not merely natives without any existing right who have come in to work on European farms. In Kenya there are both classes, but the vast majority in the European area belong to the latter class, i.e. people who have not been in that area at all and have no ancestral tribal rights there and have simply come there in order to get work on conditions which suit them.

In this country it is quite common for the owner of an estate to employ a gardener, giving the gardener a cottage and a garden which he can cultivate, as long as he is the gardener, and the difference between the gardener's employment and that of the Kenya resident native labourer is not very great. The real difference is that when the gardener's employment

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

employment comes to an end he has to fend for himself: we contemplate, quite definitely, that the resident native labourer shall have somewhere to go to, if when he leaves his employment as a wage earner. The Morris Carter Commission went fully into this in their report (paras. 1860-1868). Some can, and should if possible, be found land in their tribal reserve: ^{from which they came} for the others, the Commission point out how ^{it should} additional land can be provided. There are two special classes, not I think at all numerous in relation to the total number of resident native labourers. The first is that of the man who have no place in the reserves as they now stand, not because of long service on a farm, but because the land of which they would have had the use is part of the area which was, in all good faith, considered to be vacant and leased

leased to Europeans in the early years
of the century. These cases can be
met under the Commission's proposals for
additional land which I have already
mentioned. The second special class is
that of natives who were on the land when
it was alienated ^{by Govt} and, under the law as it
has stood since 1902, cannot be moved except
by their own consent. In 1915 steps
were taken to ensure that they should in
fact be free. These are really not
resident native labourers at all, but I
have no doubt that there are many cases in
which the distinction has worn very thin.
In these cases, the natives must either
stay or, if they go voluntarily, be
accommodated on the additional land like
the others.

In future cases, I feel, for my
part, that it will be an advantage, both
to the labourers and the farmer, if the
contract of resident labour is not unduly
extended by renewal. It should be
possible

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Perly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

possible for the labourer to retain
his right to use land in the tribal
reserve and to go back to it at the
end of his ^{his} ~~temporary~~ ^{European} ~~services~~ ^{employment}
But you should not suppose
that all European farmers ^{would} want to turn
out their resident native labourers.
Some, I know, are quite willing that
they should remain indefinitely, and
that is the point which gives me the
greatest doubt. I have not yet taken
up the matter with the Governor, but
if you care to argue that it is not
fair to keep a man on till he is too
old to work and then send him to land
on which he would have to make an
entirely new start, I am not ready with
an answer.

So

So much for the question of

"tenure". As regards regulation, it is necessary in Kenya as in any other agricultural ^{colony} country to control what crops the native labourer may grow. If the European farmer is growing a particular kind of crop, he surely has the right to say that the native labourer must not grow a crop which might interfere, by cross fertilisation, with his attempts at producing high quality stuff. There is also the question of spreading plant diseases. Further, the native is, I regret to say, not always honest, and if he is growing the same kind of stuff as the farm owner, the temptation to steal produce and sell it with his own will be very great and the owner would find it hard to say which was which. That leads to ^{+ has led in the past} friction and trouble. For similar reasons it is obviously necessary that the amount of stock shall be agreed upon and limited. It is quite common in other parts of the world to allow a labourer on a farm the right

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Party. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

right to graze free so many cows, sheep,

goats, etc., but no more, and I see

nothing contrary to natural justice in

having a similar limit in Kenya.

The question of infectious disease in milk stock is obviously of great importance.

You say that the bad

features of the old Ordinances are

repeated, but the Bill now produced is

intended as mainly a consolidated re-enacting

measure with added provisions which

have been found desirable in practice.

I do not think that you need be

alarmed lest the Government of Kenya

should not provide proper supervision

and see to it that the native labourer

understands his rights. Indeed, I

understand that those rights are well

known and are observed in the letter

and spirit by the employers who, in

point of fact, value very much the

presence of such native labour, ^{temporary} which

it is in their interest to attract, without which they could not get on if they can.

in the great majority of cases

W. D. ...

Mr. ~~C. Boltanley~~
Mr. Flood

I make little doubt
that his letter was
not drafted by the
M.P. who signs it but
is the work of the Labour
Party's U.G.

This squatter problem
is the inevitable result
of large European
Napier's reserves &
it is one of his reasons

May 26th, 1937.

Rt. Hon. W.G. Ormsby Gore, M.P.
Colonial Office,
Downing Street. S.W.1.

Dear Mr. Ormsby Gore,

I am obliged to you for kindly forwarding to me a copy of the Resident Native Labourers Ordinance. I have not seen a copy of the Report on which the Ordinance is based and I have been able to give only a limited amount of time to the study of the Bill. A number of important questions of principle are involved and I would like to draw your special attention to them. I note that the Bill in its present form does not contain the amendments as suggested by you and I thank you for suggesting I might see your communication to the Government of Kenya on the whole subject. I shall be glad to do this and will arrange a time with your Parliamentary Private Secretary.

The new Bill, while repealing the Ordinance of 1925, accepts the system of labour tenancy and extends it beyond the European farms to unalienated Crown land. I am opposed to any extension of what is a servitude status of native labour based in penal sanctions. The Bill carries a stage further the policy of a white area for it seems designed to deny the native full and secure use of land in such areas, and even if he has the money he cannot secure tenure of his house or even rent a garden. The reduction of more squatters to the "strictly temporary" basis of occupancy of land with labour tenancy status seems to me wrong because, in my judgment, the system saps their independence and freedom. When land is scarce in the Reserves why pursue a policy which unsettles the population of the Crown lands?

The underlying assumption in the new legislation continues to be that the resident labour system is only a temporary expedient and that later the squatters can be forced back to the Reserves. But the difficulty and unpracticability of this was seen by the Morris Carter Commission. The Reserves are already overcrowded and numerous natives drift from them in search of work elsewhere.

*Copies to be taken from
Apleton
Lora
Sect. 11
12
13*

It seems reasonable to suggest that this new legislation should seek to devise some form of tenancy other than labour servitude which will help to lift the tenant to an independent status.

Under these new proposals the bad features of the 1925 Act are repeated - tenants are made "servants", all male members of the family are required to work at least 180 days the choice of which is determined by the employers, payment of rent in money or kind is prohibited so that labour in lieu of rent is compulsory and no security of tenure is given --- in short, the Bill prohibits the renting of land, prevents its full use, discourages improvement and denies the natives any real share in the development of certain of the best areas of the country (often land which is neglected and which will probably go undeveloped for generations to come).

Under the new ordinance (paragraph 18) squatters irrespective of the time they or their families have occupied the land can be evicted either from undeveloped farms and sent to a native reserve or (paragraph 21) from farms where the local authority deems it desirable to limit the number. In the former case the magistrate is charged with a policy to implement and is not concerned with social justice, and in the latter case the local authority while having regard to the "reasonable needs" of resident labourers is not required to have regard to native wishes. Obviously, there are natives in occupation for whom there is no work, i.e. who are tenants, not labourers and these may be either prohibited or tolerated. The landowners are to be allowed discretion to keep these non-labouring "tenants" if it suits their local convenience. The local authority is a white settlers body and is able to impose its will on the area. If the Reserves cannot absorb the evicted natives what is to become of them? In any case, what are the likely social consequences?

Security of tenure is even weakened by reducing the notice of termination of contract from six to three months. There is no safeguard for life-long labourers - even in respect to their house, or their garden and therefore there is no inducement to improve.

The restrictions on them do not encourage them to learn or to use improved methods and the servitude meantime grows worse. If I recollect correctly before 1925 the days of compulsory work numbered 90. They were increased to 180 in 1925. Now they may reach 270. These squatters are for all practical purposes obliged to work for the owner on his own terms --- all males in the family over 16, for 270 days. What time will be available to the native for working his own holding it is difficult to see. This labour is compulsory, subject to penal penalties, (for it cannot be assumed that natives can afford 100/- fines). If he absences himself when the occupier requires him to work, if he uses improper language, if he refuses to obey any command of his employer, if he grows something his employer wants to monopolise, if he carelessly performs his work, he can be imprisoned. It is true he is entitled to 180-270 days' pay but how is an illiterate native able to establish any claim in this respect? It is obvious that the employer will want him at the time his farm needs most attention and in practice that means the labourer is likely to be free from labour out of season when he can earn nothing or profit nothing from his holding or on Sundays or part of Saturdays.

There are other features of the Bill such as the restriction on the crops which the natives may grow. If land is part of their wages surely they should be entitled to bring it into full and beneficial use. There is also the irrelevant issue about the size of stock. These questions of soil extension and overstocking offer no justification for a labour policy. It is imperative that a Bill in this form should be supported by some effective inspectorate concerned with an enforcement of minimum conditions of tenancy and employment, protecting the native against abuses; (Non-payment of wages is one of them and criminal law sanctions are enforceable against the native); and seeing that fair compensation is given in the event of disturbance. But no such provision is made. Moreover, a statutory minimum wage ought to be enforced for it is impossible to leave the determining and fixing of the rate as proposed.

I regret that Kenya is following in this business the distressful policy of the Union of South Africa and Southern Rhodesia. It is a policy which must lead to an extension of repressive legislation against the native. The experience in these territories should have warned us against the consequences of this policy of segregation and labour tenancy. Surely there should be some fuller investigation of other possibilities before the present Ordinance is allowed? In Nyasaland, a provision is made for native tenancy so that the tenant may meet his obligations by payment of rent in cash, by the sale of economic crops at current market prices, or by the supply of labour and there are District Boards which fix the rents, and any rebate in rent obtainable by labour service is precisely defined. One would wish a start of this kind could have been made in this new Ordinance. The aim should be to separate tenure of land from wages, to raise wages of labourers as such, to allow tenancy for a rent in cash or kind, and to stop the agitation of squatters who can pay rent. If it is temporary migrant labourers who are required in the white highlands, then a minimum wage for labourers should be established and a liberal policy in respect to the Reserves pursued. But servitude status for natives supported by penal sanctions ought by now to be outside civilised practice.

I hope you can see your way if you have not done so already, to suggest drastic amendments along the lines I have indicated.

Yours sincerely,

M. B. Jones

Encl. to Kenya 30th of 8.4.37

(Orig. report on 38054/1/37)

7

COLONY AND PROTECTORATE OF KENYA

38223/37



**Report of Committee on the Working
of the Resident Native Labourers
Ordinance, 1925**

2627/2

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

56

Report of Committee on the Working of the Resident Native Labourers Ordinance, 1925

To—

HIS EXCELLENCY BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS
BYRNE, G.C.M.G., K.B.E., C.B.,
*Governor and Commander-in-Chief,
Colony and Protectorate of Kenya.*

Your Excellency,

We, the members of the Committee appointed by Your Excellency to review the working of the Resident Native Labourers' Ordinance No. 5 of 1925, and to report what amendments are necessary for its improvement have the honour to submit the following report.

The following gentlemen signified their acceptance of Your Excellency's nomination:—

The Hon. Attorney General (*Chairman*),

The Hon. Chief Native Commissioner,

C. Kenneth Archer, Esq.,

The Ven. Archdeacon The Hon. G. Burns, O.B.E., M.L.C.

The Hon. Mrs. Grant,

The Hon. H. E. Welby, M.L.C.,

The Hon. Conway Harvey, M.L.C.,

with Dr. V. M. Fisher, Principal Labour Inspector, as Secretary.

Captain F. O'B. Wilson, C.M.G., D.S.O., R.N., who was also invited to serve upon the Committee, was unable to do so and the vacancy thus created was offered to and accepted by Captain Caswell Long. Owing, however, to an accident, that gentleman was not able to attend any of the meetings of the Committee and Mr. S. H. Carlin was nominated in his stead, in May 1934, and attended all meetings thereafter.

The first meeting of this Committee was held in the Chief Native Commissioner's Office on the 18th of September, 1933, since when it has met upon nine further occasions, terminating with the meeting held on the 29th of October, 1934, when the Bill which forms an appendix to this report was finally considered.

56

Report of Committee on the Working of the Resident Native Labourers Ordinance, 1925

To—

HIS EXCELLENCY BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS
BYRNE, G.C.M.G., K.B.E., C.B.,

Governor and Commander-in-Chief,

Colony and Protectorate of Kenya.

Your Excellency,

We, the members of the Committee appointed by Your Excellency to review the working of the Resident Native Labourers Ordinance No. 5 of 1925, and to report what amendments are necessary for its improvement have the honour to submit the following report.

The following gentlemen signified their acceptance of Your Excellency's nomination :—

The Hon. Attorney General (*Chairman*),

The Hon. Chief Native Commissioner.

C. Kenneth Archer, Esq.,

The Ven. Archdeacon The Hon. G. Burns, O.B.E., M.L.C.,

The Hon. Mrs. Grant,

The Hon. H. E. Welby, M.L.C.,

The Hon. Conway Harvey, M.L.C.,

with Dr. V. M. Fisher, Principal Labour Inspector, as Secretary.

Captain F. O. B. Wilson, C.M.G., D.S.O., R.N., who was also invited to serve upon the Committee, was unable to do so and the vacancy thus created was offered to and accepted by Captain Caswell Long. Owing, however, to an accident, that gentleman was not able to attend any of the meetings of the Committee and Mr. S. H. Carlin was nominated in his stead, in May 1934, and attended all meetings thereafter.

The first meeting of this Committee was held in the Chief Native Commissioner's Office on the 18th of September, 1933, since when it has met upon nine further occasions, terminating with the meeting held on the 29th of October, 1934, when the Bill which forms an appendix to this report was finally considered.

The history of the progress made by the Committee and of its meetings is as follows :—

Like most subsequent meetings, except the second and last, the first was of two days' duration and extended over the 18th and 19th of September. During that meeting the following business was carried out :—

A.—Considering and deciding the procedure to be followed by the Committee in its deliberations and whether its meetings should be held publicly, or otherwise. It was decided that the meetings should not be held publicly.

B.—Laying down principles as to the desirability of continuing the squatter system, the nature of squatters' contracts, the status of squatters, whether tenants or employees, the limitation of squatters' cattle, the retention or removal of penal sanctions from the Resident Native Labourers' Ordinance; and

C.—The first reading of a Bill drafted by the Attorney General.

The next meeting called for the 3rd of October, had unavoidably to be postponed and it was held on the 11th of October, during which the oral evidence of Major Ashford and Messrs. H. Morton, John Boyes, Delap and Montgomery was heard.

Numerous letters received from the Convention of Associations, various public bodies and the general public were read and considered, and several consequential amendments were incorporated in the draft Bill. The desirability of having the Bill printed and circulated was discussed and it was decided to request Government to sanction its printing and circulation to all Provincial Commissioners, Heads of Departments, to the Press and to members of the Committee, with a view to their consulting representative opinion as to the provisions of the Bill.

The Committee then adjourned *sine die*.

In November, 1933, the printed draft Bill was circulated to the members of the Committee, and to various officials and farmers' and planters' associations, for their comments and criticisms.

In forwarding the Bill for the views of the addressees, Dr. Fisher expressed an opinion that the Committee would probably not meet until early in 1934, and requested that all

comments upon the Bill should be forwarded to him at an early date, to permit of their analysis and circulation before the end of the year. The response to this request was not, however, as rapid as was expected, the bulk of the replies not being received until the middle of February and in some cases not until May.

By the middle of February, Dr. Fisher, the original Secretary, had become ill, and he was invalided out of the Service, leaving the Colony on the 1st of April, 1934.

Mr. G. R. B. Brown, District Officer, was then appointed Secretary in Dr. Fisher's place, but unfortunately within six weeks of his appointment the exigencies of the service necessitated his transfer from Nairobi.

During his tenure of office Mr. Brown tabulated the various sections of the Kenya Land Commission report dealing with the problem of squatters and their cattle and very ably compiled a digest of the comments, criticisms and suggestions received in connection with the proposed Bill.

Practically all farmers' and planters' associations in the Colony submitted their views, also all Provincial Commissioners, Heads of Departments having dealings with squatters, most District Commissioners, Magistrates and Labour Officers.

This digest necessitated the study of 123 communications, as follows :—

Administration	36
Other Government Departments	23
Associations	28
General—Public	36

This compilation was circulated on the 5th of May and communications thereon continued to be received until late June.

On the 16th of May, Mr. A. E. T. Imbert, Chief Registrar of Natives, was appointed Secretary, *vice* Mr. Brown, transferred.

The meetings of the Committee were then resumed and it met on three occasions, each meeting lasting for two days, i.e.—

28th and 29th of May,
5th and 6th of June, and the
25th and 26th of June,

to consider the replies received and, as far as possible, to consolidate the Bill, in accordance with the views expressed.

4
During these three meetings the Committee invited the attendance of the following gentlemen, who expressed their views on those aspects of the squatter problem which particularly concerned the interests they represent—

The Acting General Manager, Kenya and Uganda Railways and Harbours.

The Deputy Director of Agriculture (Animal Division).

The Conservator of Forests.

The Rev. Dr. Arthur, O.B.E.

The resultant amended Bill was circulated to the members of the Committee on the 16th of September.

The draft Bill, together with a further memorandum received from the Conservator of Forests, and various amendments suggested by the Provincial Commissioner, Rift Valley was finally considered at the last meeting of the Committee held on the 29th of October, 1934.

It is evident from the criticisms received that there is a very definite difference of opinion, both non-official and official, as to the desirability or otherwise of having squatters and as to the method of legislating for their employment.

The planters in the main desire to have the squatter and his cattle, i.e. his labour and the manure produced by his cattle. The stock owners generally are opposed to the squatter; they do not need his labour, and fear the illicit movements of his cattle.

In so far as the legal provisions for the regulation of the native resident labour was concerned, there appeared to be a considerable body of opinion in favour of abolishing the Resident Native Labourers Ordinance, 1925, and incorporating *ad hoc* provisions in the Employment of Natives Ordinance. While agreeing that the moment may be inopportune for this amalgamation, it was generally considered desirable by the Committee that all legislation affecting native employment should be ultimately incorporated within a comprehensive Labour Code.

One fact emerged, however, and that was the general desire for local option in matters relating to the employment of squatters, although the Kenya Land Commission in para-

graph 2039 of their report considered that the question of squatter stock "is not one which should be left entirely to local opinion".

In view of this general desire, we recommend the acceptance of the principle of local option in matters relating to the employment or non-employment of squatters in the different farming areas and we have made provision in the Bill to that effect.

We realize that by so doing we are vesting wide powers in local authorities but these bodies now occupy a position of considerable responsibility and are unlikely to abuse such power; while the proposed procedure will ensure the fullest publicity being given to an order of the local authority, and the order will not come into force until it has been approved by Your Excellency in Council.

We desire particularly to stress the fact that, in our opinion, the success of this measure, if it becomes law will depend to a very great extent upon effective inspection and we have therefore provided for some powers of inspection to be vested in inspectors.

It became evident also, during the deliberations of the Committee, that there is a very considerable body of opinion which is anxious to see the provisions of the Ordinance applied very strictly, not only to farmers, but also to all Government Departments owning land or employing squatters. Provision has therefore been made for certain Government Departments to be bound by the Ordinance, in a similar manner to other occupiers.

We have also amended the Conservator of Forests' definition of Forest Areas and have made special provision for the retention of the rights enjoyed by the Kamasia in Lembus Forest and the Elgenyi in the Mt. Elgon Forest.

The Committee is unanimously of the opinion that squatters should be made to work for a period of not less than 180 days per annum, and that, in the event of the occupier not being able to employ his squatters for that minimum period, he should allow them to work on neighbouring farms for the uncompleted portion of the 180 days. Some of the members considered this minimum period of compulsory labour insufficient, and desired it extended to 270 days. Provision has, however, been made for 180 days and power has been vested in the Provincial Commissioner to reduce the number of days' work for any good and sufficient reason.

We have been informed that, owing to a well established form of land tenure operating at the Coast, much of the land is rightfully occupied by natives who are not the owners or the lessees in chief of the land so held, and, in the circumstances, we recommend that the Bill should not be applied to that area.

The chief points of difference between the draft Bill and the Resident Native Labourers' Ordinance, 1925, are as follows:—

1. The Ordinance will only apply to such areas and from such dates as the Governor may appoint.
2. *Definitions.*—Definition of forest area, local authority, attesting officer, and railway land have been added; and the definition of occupier has been extended in consequence of the inclusion of Crown land, railway land and forest areas.
3. Clause 5 (A).—Under the existing law the head of the family is the principal native contracting party: the draft Bill proposes that the actual squatter should be the principal native contracting party.
 - (B).—The maximum period of the contract has been extended from three to five years.
 - (C).—The period of notice of the termination of the contract has been reduced from six months to three months, as it is felt that, in the event of a disagreement between the parties the shorter period would be naturally advantageous to both parties.
 - (D).—The remainder of the section defines more clearly the squatter's duties and privileges.
4. Clauses 7, 8 and 9.—These clauses apply various provisions of the Native Registration Ordinance to occupiers and to squatters, as is done in the case of the Employment of Natives Ordinance.
5. Clause 10.—Provides for the release into the labour market of any squatter who, having performed 180 days' work for the occupier, wishes to work elsewhere and for a certificate to that effect to be given to him.
6. Clause 12.—Provides for the compulsory employment of the squatter for the full period of employment,

with a proviso enabling a Provincial Commissioner to reduce the number of days' work if he considers that course desirable.

7. Clause 15.—Embodies section 10 of the Resident Native Labourers' Ordinance, 1925, but extends its provisions and generally tightens up the regulations for the control of squatters' cattle.
 8. Clause 17 amplifies the provisions of section 9 of the Resident Native Labourers' Ordinance, enlarges the powers of inspection, and increases the number of persons by whom such inspection may lawfully be carried out.
 9. Clause 18 provides machinery for the removal of squatters from areas which are not considered to be under effective control.
 10. Clause 19 reproduces the corresponding section in the existing law and, in addition, provides for the disposal of the manure produced on a farm by a squatter's stock.
 11. Clauses 21 and 22 introduce an entirely new principle in this type of legislation, that of local option.
 12. In Clause 23 the Governor in Council is given powers in respect of forest areas, unalienated Crown land and Railway land, similar to those given to local authorities in Clause 21, in respect of alienated Crown land. This clause was included in the Bill in order to secure conformity in those areas and at the same time to meet the views expressed by the Conservator of Forests and the General Manager of Railways.
 13. Clauses 25, 26, 27 and 28.—These penal clauses have been enlarged owing to the additional duties imposed upon both the occupier and the squatter.
 - Clause 25 deals with minor offences committed by squatters.
 - Clause 26 deals with more serious offences committed by squatters.
 - Clause 27 deals with offences committed by occupiers.
- We have provided varying punishments, based, where possible, upon the punishments provided for in the Employment of Natives Ordinance.

14. Clause 29.—This clause constitutes a departure from the existing law, and is based upon a similar provision in the Employment of Natives Ordinance.

15. Clause 32.—The payment of an attestation fee provided for in the Stamp Ordinance is considered to be onerous in the case of squatters' contracts and provision has therefore been made to exempt all such contracts from the payment of stamp duty.

We wish particularly to emphasize that throughout our deliberations we have borne in mind the recommendations of the Kenya Land Commission dealing with squatters and have endeavoured to follow those recommendations as closely as circumstances have permitted.

In conclusion we would like to place on record our appreciation of the industry and efficiency which has characterised the work of our Secretary, Mr. Imbert.

We have the honour to be,

Your Excellency's Obedient Servants,

ELEANOR L. GRANT

S. H. LA FONTAINE

H. E. WELBY

CONWAY HARVEY

SIDNEY CAULIN

GEORGE BURNS

C. KENNETH ARCHER

Members.

W HARRAGIN, *Chairman.*

A Bill to Regulate the Residence of Native Labourers on Farms

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

1. This Ordinance may be cited as the Resident Short title. Labourers Ordinance, 1935.

2. This Ordinance or any part thereof shall apply to such districts or areas, and from such date or dates, as the Governor in Council may, from time to time, by proclamation in the Gazette, appoint. Application of Ordinance.

3. In this Ordinance—
"attesting officer" means a person appointed as such by the Governor in Council under the provisions of section 31 of this Ordinance;

"cattle" means any bull, cow, steer, heifer or calf or any other animal which the Governor may, by order, declare to be cattle for the purposes of this Ordinance.

"family" means the wife or wives and the unmarried children, if any, of a native or Somali;

"farm" means any area of land (other than an area of land situated in a municipality, township or trading centre) which has been leased or sold by His Majesty or by the Governor and shall include any area of land set apart by the Governor of the Colony for the purpose of experimental farming;

"forest area" means any forest area not situated in and forming part of a native reserve;

"local authority" means a district council established under the Local Government (District Councils) Ordinance, No. 21 of 1928, in respect of the area of jurisdiction so conferred upon it, and, where there is no district council, means the district commissioner acting in consultation with the body known as the district committee where such exists: Interpretation.

"mission" means any mission recognized as such by the Governor;

"occupier" means the owner or lessee or any other person having a legal right to occupy a farm, a forest area, unalienated Crown land or Railway land, and includes any manager or agent of such occupier, and in respect of forest areas, unalienated Crown land and Railway land, includes the Conservator of Forests, the Commissioner of Lands and the General Manager of the Kenya and Uganda Railways and Harbours respectively;

"Railway land" means any land the ownership of which or the control over which vests in the High Commissioner for Transport;

"squatter" means a native or a Somali who has entered into a contract under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925;

"standing committee" means the Standing Departmental Committee established under the Local Government (Municipalities) Ordinance, 1928;

"stock" includes cattle, sheep, goats, and such other animals or birds as the Governor may, by order, declare to be stock for the purposes of this Ordinance.

4. (1) No native or Somali shall reside on or remain for a longer continuous period than forty-eight hours on any farm or in any forest area, or on any unalienated Crown land, or on any Railway land, unless he—

- (a) is the occupier thereof or a member of the family of the occupier thereof; or
- (b) has duly entered into a contract, still unexpired, under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, or
- (c) is in actual employment on such farm, forest area, unalienated Crown land or Railway land, in pursuance of a contract made under the provisions of any law for the time being in force in the Colony relating to master and servant, or is a member of the family of a native or Somali so employed; or
- (d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and is closely related to a family lawfully residing on such farm, and who has obtained written permission from a magistrate or attesting officer by endorsement on a squatter's contract or otherwise; or

When natives or Somalis may reside on a farm.

No. 5 of 1925.

(e) is the holder of a permit, in writing in that behalf given to him by the occupier and, in the case of a permit authorizing residence for a period of more than fourteen days, is also the holder of a permit from the district commissioner;

Provided that the provisions of this sub-section shall not apply to a native residing by right in the Lembus and Mt. Elgon forest areas.

(2) It shall be a sufficient defence for a native or Somali charged with an offence against the provisions of this section to produce a permit issued to him under the provisions of paragraph (e) of sub-section (1) of this section.

5. (1) When a native or Somali has entered into a contract, as in this section provided, the members of his family may also reside on the farm, forest area, unalienated Crown land or Railway land, as the case may be. Contract service work on farm.

(2) A contract under this section shall be in writing, shall be executed by the occupier and by the native or Somali and by all the male members of native's or Somali's family over the apparent age of sixteen years, shall be attested by a magistrate or by an attesting officer, shall be in the form of the agreement set out in the first Schedule to this Ordinance, and shall provide—

- (a) for a term of not less than one year and not exceeding five years, notwithstanding anything to the contrary contained in any law for the time being in force in the Colony relating to master and servant;
- (b) for the renewal or variation of the contract, by endorsement by the parties thereto, with the approval of a magistrate or attesting officer;
- (c) for the native or Somali and any male member of his family resident on the farm who is of the apparent age of sixteen years or over, and who is not working under any law for the time being in force in the Colony relating to master and servant, to work for the occupier for not less than 180 days at the election of the occupier in any one year during the term of such contract, and for the occupier to provide employment and to pay wages to each such person for the number of days specified in the contract;

- (d) for the occupier to give notice in writing to every male member of such family who, during the continuance of the contract, may attain the age of sixteen years, to the effect that, on the expiration of three months from the date of receiving such notice such male member will be required either (i) to enter into a contract under this Ordinance with the occupier; or (ii) to enter, under any law for the time being in force in the Colony relating to master and servant, into a contract with the occupier or some other employer in the vicinity; or (iii) to cease to reside on the occupier's farm;
- (e) for the female members of the family who are willing and able to work to serve the occupier if he offers suitable work at a reasonable rate of wages;
- (f) for the supply by the occupier of building material for the family's huts;
- (g) for the use by the family of land for cultivation and, when agreed upon, for grazing;
- (h) for the kinds of crops which the native or Somali or his family may not grow on the farm;
- (i) for the number of stock which the native or Somali may graze on the farm;
- (j) for the rates of pay and other consideration to be paid or given to the native or Somali and any member of his family for the period of actual employment;
- (k) for the termination of the contract by not less than three months' notice on either side: Provided that the term of residence on a farm shall in no case be less than one year except with the approval of a magistrate;
- (l) in the event of termination of the contract in accordance with the last preceding paragraph, for the removal by the family of crops cultivated by such family or for payment by the occupier of compensation in lieu thereof: Provided that no crop shall be planted after notice of termination has been given by either party;
- (m) in the case of missions, for the regular attendance of the children of the family at school for the purpose of education within the meaning of section 20 of this Ordinance.

(3) Any contract under this section may, with the consent of the parties thereto, relate to a group of farms in the same district or in contiguous districts, provided all the farms in the group are in the same ownership or occupation, and provided a magistrate certifies that he is satisfied that proper control can be exercised over the squatters resident on such farms as are not in the personal occupation of a European.

(4) The original of every contract made under this section shall be filed in the office of the district commissioner in which the parties reside and one copy of the contract shall be handed to the occupier and one copy to the head of the contracting native family.

(5) A magistrate or attesting officer may refuse to attest any contract which does not provide for a fair remuneration in money, having regard to the local rates of wages, or any contract which, in his opinion, is likely to lead to a breach of the provisions of this Ordinance.

(6) A magistrate or attesting officer may, in his discretion, refuse to attest any contract entered into by a native or Somali whom he considers to be an undesirable.

(7) It shall be lawful for any magistrate for any good and sufficient reasons to order the removal of a native or of a squatter, and/or his stock from any farm, forest area, Railway land or unalienated Crown land; it shall further be lawful for such magistrate to assess the costs of such removal and determine by whom such costs shall be paid.

(8) (a) A magistrate or attesting officer may, when he deems it necessary before attesting any contract under this section, require the occupier to give security for the payment of the wages of the squatter with whom the contract is to be made.

(b) Such security may be given by a bond in the form set out in the Second Schedule hereto, or to the like effect, with one or more sureties approved by the magistrate or attesting officer.

(9) When notice of termination of a contract has been given by either party thereto the occupier shall forthwith notify the district commissioner accordingly.

(10) On a change of occupancy of a farm the contract shall be deemed to have been assigned to the new occupier and to be a contract between the new occupier and the squatter.

When natives may not reside on farms.

6. No occupier shall allow any native or Somali to reside on a farm in contravention of the provisions of this Ordinance.

Resident labourers' contracts to be endorsed on registration certificate.

7. (1) When a native has entered into a contract of service under the provisions of section 5 of this Ordinance, it shall be the duty of the occupier forthwith to endorse in black ink upon such native's registration certificate, in the columns respectively provided therefor, the following particulars—

- (a) the name of the employer and district in which the native is employed;
- (b) the nature of the native's employment, preceded by a capital letter S, to denote that he is a squatter;
- (c) the date of the commencement of the contract; and
- (d) the rate of wages in cash.

(2) On the termination of such contract the occupier shall endorse in black ink the date of such termination in the column provided in the squatter's registration certificate for the date of discharge.

(3) It shall be the duty of the squatter, on the termination of the contract, to request the occupier to make such endorsement, but failure on the part of the squatter to make the request shall not relieve the occupier of the responsibility for making such endorsement.

(4) In the event of the occupier refusing or omitting to make such endorsement, the squatter shall forthwith report to the district commissioner in whose office the contract is filed; and such district commissioner may, if he is satisfied from the information at his disposal that the endorsement has been omitted through ignorance or mistake or wilfully by the occupier and through no fault of the squatter, after inquiry complete in black ink such endorsement on the registration certificate affixing such date for the date of discharge as may appear to him to be consistent with the circumstances.

(5) Any occupier who refuses or omits to endorse a registration certificate in accordance with the provisions of this section shall be deemed to have committed a breach of the provisions of this Ordinance.

8. (1) Every male native, other than a Somali, who is a party to a contract made under the provisions of the Resident Native Labourers Ordinance, 1925, shall, within one month after the date of the application of this Ordinance to the area in which he is residing under such contract, produce his registration certificate to the occupier.

(2) Such occupier shall thereupon make an endorsement upon the registration certificate as is required by sub-section (1) of the last preceding section and shall forthwith send a return to the Chief Registrar of Natives, as required under section 9 of the Native Registration Ordinance, showing the registration numbers and the names of every registered native resident upon his farm.

9. Any occupier entering into a contract with a native under section 5 of this Ordinance shall be deemed to have engaged such native within the meaning of the Native Registration Ordinance, and sections 9, 10, 17, 18 and 20 of the Native Registration Ordinance, and such Rules made under the said Ordinance as the Governor in Council may by notice prescribe, shall apply to such occupier and native as if the contract were an agreement within the meaning of the said Ordinance.

10. When a squatter has, within any twelve-monthly period, completed the number of days' work specified in such contract, the occupier shall, if so required by such squatter deliver to him a certificate to that effect in the form set out in the Third Schedule hereto, specifying the date on which the squatter's obligation to work under such contract recommences.

11. Notwithstanding anything contained in sub-section (3) of section 13 of the Native Registration Ordinance it shall not be an offence to employ a person holding a squatter's certificate during the period shown on such certificate as the period in which the squatter is under no obligation to work for the occupier.

12. Any occupier shall be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding two months or to both such fine and such imprisonment, if he fails in any one year to provide employment for less than the number of days specified in the contract for each person for whom, under the terms of any contract made under this Ordinance,

Endorsement of existing contracts. No. 5 of 1925.

Cap. 127.

Application of certain provisions of Native Registration Ordinance. Cap. 127.

Squatter's certificates.

Saving of offence under section 13 of the Native Registration Ordinance. Cap. 127.

Occupier to provide employment contracted for.

No. 5 of 1925. ance or under the Resident Native Labourers Ordinance, 1925, he is under an obligation to provide such employment: Provided that notwithstanding the terms of any such contract, a Provincial Commissioner shall have power, for any good and sufficient reason, to reduce the minimum number of days work required from squatters in any area within his province.

Contract to be produced.

13. Any magistrate, or any person duly authorized in writing in that behalf by a magistrate, or any police officer of or above the rank of assistant sub-inspector, or a justice of the peace may demand from any occupier the production of any contract entered into by such occupier under the provisions of section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, and such occupier shall forthwith produce such contract.

No. 5 of 1925.

Record of resident labourers

14. Every occupier shall keep records sufficient to show the date of the contract of each squatter, the number of days on which such squatter has worked and the wages paid.

Register of resident labourers' stock.

15. (1) Every occupier shall keep an up-to-date register of all cattle eligible for branding, and of such other stock in respect of which a register may be required to be kept by an order made under the provisions of section 21 of this Ordinance, kept on his farm and owned by natives or Somalis lawfully residing thereon.

(2) Such register shall be in the form set out in the Fifth Schedule to this Ordinance.

Resident labourers' stock on farms.

16. (1) No native or Somali other than an occupier or a member of the family of such occupier, shall graze any stock on any farm unless—

(a) he is lawfully residing on such farm under the provisions of paragraphs (b), (c), (d) or (e) of sub-section (1) of section 4 of this Ordinance; and

(b) such stock is his own personal property; and

(c) if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, he has received the written consent of the occupier and the written approval of the district commissioner or the attestation officer for keeping such stock on the farm; and

(d) every head of cattle over the age of six months kept by such native or Somali on the farm is legibly branded by the occupier at his own expense with his brand together with the letter "S" and the farm number allocated to the native or Somali and shown in the register required to be kept under the provisions of section 15 of this Ordinance.

(2) (a) The written consent of the occupier and the written approval of a magistrate or attesting officer required by paragraph (c) of sub-section (1) of this section shall specify the number of stock which such native or Somali may keep on the farm.

(b) In arriving at such number the occupier and the magistrate or attesting officer shall have regard—

(i) to any order made under the provisions of section 21 of this Ordinance in force in the area in which the farm is situated; and

(ii) to the reasonable needs of the native or Somali and of the members of his family residing with him.

(3) Any native or Somali—

(a) who keeps upon a farm any stock which is not his own personal property; or

(b) who, if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, keeps upon a farm any stock in respect of which he has not received the written consent of the occupier and the written approval of a magistrate or attesting officer; or

(c) who keeps on a farm any stock in excess of the number which he is authorized to keep in pursuance of such written consent of the occupier and such approval of the district commissioner or an attesting officer; or

(d) who keeps on a farm any head of cattle which is not branded in accordance with the provisions of this section,

shall be guilty of an offence against this Ordinance.

(4) The provisions of sub-sections (2) and (3) of this section relating to the number of stock which a native or a Somali may lawfully keep upon a farm shall not apply to

the stock of a native or Somali who before the commencement of this Ordinance has entered into a contract, which is still unexpired, under section 5 of the Resident Native Labourers Ordinance, 1925, and who, under the provisions of sub-section (1) of this section, lawfully has such stock on the farm: Provided that every such native or Somali shall, within three months after the date of the application of this Ordinance to the area in which he is residing, furnish a record to the occupier who shall forward a return to a magistrate or attesting officer specifying the number of each kind of stock which such native or Somali is keeping on such farm.

(5) In assessing the number of cattle, sheep and goats kept on a farm no account shall be taken of stock under the age of six months.

(6) No occupier shall, after the expiration of a period of six months from the date of the application of this Ordinance to the area in which such occupier's farm is situate, brand any head of cattle kept on his farm by a native or Somali lawfully residing thereon if such head of cattle is already branded with any recent registered brand denoting ownership unless and until such cattle have been re-branded as provided for in sub-section (10) of this section.

(7) It shall be the duty of an occupier to maintain his brand on every head of cattle in a legible condition.

(8) Any occupier who commits a breach of sub-sections (6) or (7) of this section or who suffers any stock to be kept on his farm in contravention of the provisions of this Ordinance shall be guilty of an offence.

(9) (a) Nothing in this section contained shall be construed as entitling any person to move or to compel the movement of stock in contravention of any restrictions in force under any law for the time being in force in the Colony relating to diseases of animals.

(b) If, at the time of the termination of any contract made under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, or of any agreement or engagement between an occupier and a native or a Somali under the law for the time being in force in the Colony relating to master and servant, any such restrictions are in force prohibiting the movement of stock from such farm, such stock shall remain on the farm without charge, and the owner of

such stock may also remain on such farm until such restrictions are removed or unless other arrangements are made for the care or disposal of such stock to the satisfaction of the parties and of a magistrate; and in any such case any such contract shall be deemed to remain in force until such restrictions are removed or until such other arrangements are made, as the case may be.

(10) (a) No cattle over the age of six months owned by a native or a Somali and kept on a farm in accordance with the provisions of this Ordinance shall be removed from a farm unless the owner has first produced them to the occupier who shall, at his own expense, cause such cattle to be re-branded with his own brand reversed.

(b) Any owner of cattle who moves from a farm any such cattle which have not been so re-branded, and any occupier who on request refuses or fails so to re-brand any cattle, shall be guilty of an offence.

(11) Where the owner of any stock has committed a breach of the provisions of this section, or where a person in possession of any stock has, with the connivance and consent of the owner of the stock, committed a breach of the provisions of this section, a magistrate may, in addition to imposing any other penalty provided in this Ordinance, order that the stock in respect of which the offence has been committed be confiscated.

(12) All stock kept on a farm by a native or a Somali shall be deemed for all purposes to be the personal property of such native or Somali.

17. (1) A magistrate, or a veterinary officer authorized in writing by the Chief Veterinary Officer, or a police officer of or above the rank of assistant sub-inspector, or any person duly authorized by a magistrate in that behalf may—

Registers to be produced.

(a) enter upon a farm and demand from the occupier the production of any register or records which are required to be kept under the provisions of this Ordinance;

(b) take all reasonable and proper steps to satisfy himself as to the correctness of any particulars entered therein; and

(c) demand from such occupier an explanation of any apparent discrepancies therein.

(2) Any occupier who knowingly makes a false entry in any register or records or who refuses to produce any register or records or to furnish any explanation when lawfully called upon to do so, or who shall knowingly furnish a false explanation, shall be guilty of an offence.

Removal of resident labourers from undeveloped farms.

18. A magistrate may by notice served upon the occupier or, if the occupier has no address in the Colony or if such address is unknown, by notice published in the Gazette, require the occupier of a farm, which is not being developed, and which is not, in his opinion, under such occupation as to ensure the observance of the provisions of this Ordinance, to remove any native or Somali, found residing on such farm, within twenty-eight days from the date of the service of such notice or from the date of the publication of the notice in the Gazette, as the case may be; and if such native or Somali is not so removed then a magistrate, or such other person as he may authorize in that behalf, shall remove such native or Somali and send him to a native reserve or to such other place as the magistrate may determine: Provided that, when the magistrate is satisfied that such native or Somali, although residing on a farm that is not being developed, is employed by the occupier of such farm on another farm in the same occupation or ownership under a contract of service or under a resident labourer's contract, he shall allow such native or Somali to remain on such farm.

Prohibition against payment by natives or Somalis.

19. (1) (a) No payment in money or in kind shall be demanded or taken from any native or Somali lawfully residing on a farm for the right to reside on or to cultivate any land or to graze any stock, or for the use of salt-licks, fuel or water on such farm.

(b) No occupier shall enter into a contract with a native or Somali lawfully residing on his farm whereby the occupier shares any profit derived by such native or Somali from his cultivation or from the increase or produce of his stock on the farm of such occupier.

(2) Manure produced on a farm by a squatter's stock shall be the property of the squatter during the period of his contract: Provided that, if such manure is not reasonably required for the purposes of the squatter's cultivation on such farm, the occupier may use such manure for the purpose of his own cultivation free of cost other than the cost of transporting the manure from one place on the farm to another.

(3) Nothing in this section contained shall be deemed to render illegal the purchase by an occupier at a reasonable price of the stock of a squatter or the produce of a squatter's stock or cultivation.

20. Natives or Somalis employed on farms in the occupation of missions and engaged in receiving or imparting industrial or technical instruction with or without literary or theological instruction or training for not less than one hundred and eighty days in each year shall be exempt from the provisions of section 4 of this Ordinance if such instruction or training is under proper and responsible control to the satisfaction of a magistrate.

Natives or Somalis employed on mission lands.

21. (1) Subject to the provisions of section 2 and of section 22 of this Ordinance a local authority may, in respect of any farm or group of farms within the area of its jurisdiction, by order published in the Gazette and in a newspaper circulating within such area—

Local option. Power to make orders.

- (a) prohibit the engagement of squatters on any farm, or group of farms;
 - (b) limit the number of squatters to be engaged on any farm or group of farms;
 - (c) prohibit the keeping of stock by natives or Somalis on any farm, either generally or in respect of any specified kind of stock, or limit the number of any specified kind of stock which may be kept on a farm by squatters, or prescribe the conditions under which native or Somali stock shall be kept;
 - (d) prescribe the number of days in a year on which a squatter shall work and for which he shall receive wages such number of days in no case to be less than one hundred and eighty.
- (2) In making any order as aforesaid the local authority shall have regard—
- (a) to the wishes of the occupiers of farms within the area of its jurisdiction, so far as such wishes can be reasonably and conveniently ascertained;
 - (b) to the reasonable labour requirements of farms; and
 - (c) to the reasonable needs of squatters on such farms.
- (3) When such an order has been made it shall be the duty of the occupier of a farm to which such order applies, within one month after the date of the publication of the order in

the Gazette in accordance with the provisions of sub-section (7) of section 22 of this Ordinance, to give notice of termination of such contracts as may be necessary to make the said order effective, and failure to give such notice shall be an offence against the provisions of this Ordinance.

(4) The Governor in Council if he is satisfied that, contrary to the wishes of the majority of the occupiers in any areas so far as such wishes can reasonably and conveniently be ascertained, a local authority has neglected or refused to make any order as aforesaid or that circumstances obtaining in any area are such that an order under this section should be made, may call upon such local authority to make such order as in the circumstances may be just and expedient, and, if the local authority within a reasonable time after being so called upon refuses or neglects to make an order, the Governor in Council may in respect of the area of jurisdiction of such local authority or any part thereof by order exercise any of the powers conferred upon a local authority by sub-section (1) of this section.

22. (1) No order shall be made or amended by a local authority unless and until a copy of such proposed order or amending order has been deposited at the office of the local authority for inspection by any person at all reasonable times, and unless and until a notice, setting forth the general purport of the proposed order and stating that a copy thereof is open to inspection, shall have been published in the Gazette and in some newspaper circulating in the district and exhibited in a conspicuous place at or near the public entrance to the local authority's offices fourteen days prior to the meeting of the local authority to be held for the purpose of making such order or such amending order.

(2) Any objection to any such order shall be lodged with the clerk to the local authority within thirteen days after the date of the publication of the notice as aforesaid.

(3) After any order has been made or amended by a local authority such order or amending order shall be submitted to the Commissioner for Local Government through the Provincial Commissioner for the approval of the Standing Committee, together with—

- (a) a copy of the minutes of the meeting of the local authority at which the order or amending order was adopted;

Orders by local authorities, how to be made.

Submission of orders for approval of Standing Committee.

(b) a certificate by the clerk to the authority that the provisions of sub-section (1) of this section have been complied with; and

(c) copies of any objections against the adoption of the order which may have been lodged in writing with the clerk, or, if no objections have been lodged, a statement to that effect.

(4) When the standing committee has approved of any order, with or without amendment, such order shall be published in the Gazette.

(5) Any person aggrieved by such order may within one month from the date of publication under sub-section (4) of this section submit to the Governor in Council a written objection to the order.

(6) As soon as possible after the expiration of a period of one month from the date of publication of the order under sub-section (4) of this section, the Governor in Council shall, after considering such written objections, if any, as may have been made under the last preceding sub-section, confirm, vary or reject such order.

(7) If the Governor in Council confirms, with or without amendment, any such order he shall cause the order to be ascertained by the clerk to the Executive Council who shall then cause the order to be published in the Gazette, and as from the date of such publication such order shall have the full force of law in the area to which it relates.

23. The Governor in Council may make orders of a similar nature to those which a local authority is empowered to make under section 21 of this Ordinance in respect of forest areas, unalienated Crown land or Railway land, and, in making such order, shall have regard—

(a) to the reasonable labour requirements of the Railway Administration or of any department of Government concerned;

(b) to the reasonable needs of such natives and Somalis; and

(c) to the terms of any order made under section 21 of this Ordinance in force in any area adjacent to such forest area, unalienated Crown land or Railway land.

Governor in Council shall make orders regarding Forest, Railway or unalienated Crown lands.

24. (1) Proceedings in respect of any offence against the provisions of sections 4, 6, 13, 14, 15, 16, 17 and 19 of this Ordinance may be instituted by the Police or by any person authorized in writing by a magistrate.

(2) A magistrate may, in his discretion—

(a) rescind any contract made under this Ordinance where it has been proved to his satisfaction that there has been a breach of the terms thereof, or, on the application of either party to the contract, when the other party has been convicted of a criminal offence against him or of a criminal offence involving serious moral turpitude; and

(b) cancel any permit given by an occupier in contravention of the provisions of this Ordinance:

Provided that in any such case the native or Somali shall retain his rights over growing crops unless the occupier elects to give him reasonable compensation therefor. In the event of any dispute as to the amount of compensation payable the magistrate shall determine the amount thereof.

(3) Compensation payable under this section may be paid to the magistrate by an occupier, but if proceedings have been instituted by the occupier for damages against the native or Somali, the magistrate shall not pay out the compensation to the native or Somali until the liability of the native or Somali to pay damages has been determined; and if the native or Somali is found to be liable to damages, such damages may be set off against the amount paid to the magistrate by the occupier.

25. A squatter shall on conviction be liable to a fine of one hundred shillings or in default of payment to imprisonment for any term not exceeding one month—

- (1) if he, after having entered into an agreement under this Ordinance, fails or refuses without lawful cause to enter upon his duties on the farm at the stipulated time;
- (2) if he, without lawful cause, absents himself from the place proper and appointed for the performance of his work on any day when the occupier may lawfully require him to work;
- (3) if he, during any time when he is lawfully required to work, is intoxicated and thus unfit to perform his work;

- (4) if he neglects or refuses to perform any work which it was his duty to have performed, or if he carelessly or improperly performs any work which from its nature it was his duty under his agreement to have performed carefully and properly;
- (5) if he, without leave and for his own purposes, makes use of any horse, vehicle or other property belonging to the occupier;
- (6) if he uses any abusive or insulting language or is guilty of insulting behaviour to the occupier or to any person lawfully placed by the occupier in authority over him, calculated to provoke a breach of the peace;
- (7) if he refuses to obey any command of the occupier, or of any person lawfully placed by the occupier in authority over him, which command it was his duty to obey;
- (8) if he grows upon the farm any crop which by his contract he is prohibited from growing;
- (9) if he, after the termination of his contract and subject to the provisions of section 5 (2) (k) and sub-section 16 (9) of this Ordinance, fails within a reasonable and specified time to leave the farm and to remove his family and stock therefrom.

26. A squatter shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for any term not exceeding six months—

- (1) if he wilfully or by wilful breach of duty or through drunkenness does any act tending to the immediate loss, damage or serious risk of any property placed by any other person in his charge for delivery to or on account of his occupier;
- (2) if, by wilful breach of duty or by neglect of duty or through drunkenness, he refuses or omits to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by the occupier in his charge, or placed by any other person in his charge for delivery to or on account of his occupier;

(3) if, being employed as a herdsman—

(a) he fails to report to the occupier the death or loss of any animal placed in his charge (which animal he alleges to have died or to have been lost) at the earliest opportunity after he has discovered, or at the earliest opportunity after he should in the ordinary course of duty have discovered, such death or loss;

(b) he fails, after having received an order from the occupier to preserve for the use or inspection of the occupier any part or parts of an animal which such squatter alleges to have died, to preserve such part or parts and is unable to prove to the satisfaction of the court the death of the animal which he alleges to have died;

(c) he alleges the loss of any animal placed in his charge and it is proved by the occupier to the satisfaction of the court that such animal could not, in the circumstances of the case, have become irrevocably lost without the act or default of the squatter.

(4) if, being employed in any capacity other than that of a herdsman, he alleges the loss of any property placed in his charge by or for the occupier and it is proved by the occupier to the satisfaction of the court that the property in question could not have been lost without the act or default of the resident labourer

Penalties for offences committed by occupier.

27. (1) An occupier shall be liable to a fine not exceeding two hundred shillings and in default of payment to imprisonment for a term not exceeding one month, or to both such fine and imprisonment, if he is convicted of any of the following acts or omissions, that is to say—

(a) if he fails to pay, on demand, the wages due to a squatter;

(b) if, before or after the expiration of the contract, upon demand made and without lawful cause, he refuses to deliver or to permit to be taken away any property belonging to a squatter lawfully remaining or being upon such occupier's land;

(c) if he fails knowingly or on demand to provide his squatters with proper medicines during illness and also, if procurable, medical attendance during serious illness: Provided that an employer's liability for medical attendance during illness shall not extend beyond a period of forty-two days.

(2) Upon any complaint brought before a court under the provisions of this Ordinance the magistrate may, in addition to any jurisdiction he might have exercised if this Ordinance had not been enacted, exercise all or any of the following powers:—

Discretionary powers of magistrates.

(a) He may adjust and set off one against the other all such claims on the part either of the employer or of the servant arising out of, or incidental to, the relation between them as the magistrate may find to be subsisting, whether such claims are liquidated or unliquidated, and whether such claims are for wages, damages or otherwise; and he may direct the payment of such sum as he finds due by one party to the other party.

To adjust and set off claims.

(b) He may direct fulfilment of the contract, and, in case where he might award damages for any breach of contract, he may, in lieu either of the whole of the damages which would otherwise have been awarded or some part of the damages, direct the party committing such breach to find security to the satisfaction of the magistrate for the due performance of so much of the contract as remains unperformed; and if the party neglects or refuses to find security, he may commit him to prison until he finds it, but the term of imprisonment shall not exceed three months.

To direct fulfilment of the contract.

(c) He may rescind the contract upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages or other sums due, as he thinks fit.

To rescind the contract and apportion wages, etc.

(d) When no amount of compensation or damages can be assessed, or when pecuniary compensation will not in the opinion of the magistrate meet the circumstances of the case, he may, in addition to rescinding the contract and discharging the parties therefrom, impose a fine on either party of a sum not exceeding twenty pounds or in default of payment to imprisonment for a term not exceeding one month.

General
penalty.

28. Any person committing or knowingly permitting a breach of the provisions of this Ordinance or any Rules made thereunder for which no specific penalty is provided shall be liable, on conviction, to a fine not exceeding one hundred pounds, or to a term of imprisonment not exceeding two months, or to both such fine and such imprisonment.

Costs.

29. In any complaint under this Ordinance the process of the court for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that, if at the trial the complaint shall appear to the magistrate to be frivolous or vexatious, the party complaining shall be liable to pay a fine not exceeding ten pounds and to defray the cost of the process and of the witnesses in the case, and in default of payment of such fine and costs, shall be liable to imprisonment for any period not exceeding one month. Such fine and costs may be imposed upon the occasion of such trial and without any fresh action or proceeding for the recovery thereof.

Rules.

30. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

Appointment
of attestation
officers.

31. The Governor in Council may appoint any fit and proper person to be an attesting officer for the purposes of this Ordinance.

No stamp duty
shall be
chargeable
for the
attestation
of any contract.

32. Notwithstanding anything to the contrary contained in any law for the time being in force in the Colony, the attestation of any contract entered into under the provisions of this Ordinance, shall be exempt from all stamp duty.

Repeal.

No. 5 of 1925.

33. The Resident Native Labourers Ordinance, 1925, is hereby repealed.

FIRST SCHEDULE.

Memorandum of Agreement made this day of 19..... by and between (1) of (2) (hereinafter referred to as "the occupier") and (3) registered number of (4) (hereinafter referred to as "the squatter"), whereby it is agreed :-

1. That this agreement shall have effect from the day of 19..... and shall be for a term of years ending on the day of 19..... unless lawfully determined earlier.

2. That the squatter, together with his wife or wives and children shall reside and may graze stock on such part only of the occupier's farm at as the occupier may direct during the period of this agreement.

3. That during the period of this agreement the resident labourer and every male member of his family who is of the apparent age of sixteen years or over and is resident on the occupier's farm, and who is not working under any law for the time being in force in the Colony relating to master and servant, shall each work for the occupier at such times as the occupier may direct, for not less than (5) days at the election of the occupier in each period of twelve months, and that the occupier shall provide employment for the squatter and for such male members of his family for such number of days. The occupier shall give notice in writing to every male member of such family who during the continuance of the contract may attain the age of sixteen years that on the expiration of three months from the date of receiving such notice he will be required either to enter into a contract under the Resident Native Labourers Ordinance, 1925, with the occupier, or under any law for the time being in force in the Colony relating to master and servant with the occupier or some other employer in the vicinity, or to cease to reside on the occupier's farm.

4. That the time during which the squatter is required to work for the occupier shall be so arranged as to allow the squatter reasonable time to sow, cultivate and reap his own food crops.

5. That the occupier agrees to pay to the squatter and to the male members of his family wages at the rate of not less than for every (6) and (7)

6. That the occupier shall provide good and sufficient building material for the erection of huts for the accommodation of the squatter and his family.

7. That the occupier shall provide the squatter with sufficient and suitable land for the cultivation of food crops for himself and his family, and for grazing the following

General
penalty.

28. Any person committing or knowingly permitting a breach of the provisions of this Ordinance or any Rules made thereunder for which no specific penalty is provided shall be liable, on conviction, to a fine not exceeding one hundred pounds, or to a term of imprisonment not exceeding two months, or to both such fine and such imprisonment.

Costs.

29. In any complaint under this Ordinance the process of the court for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that, if at the trial the complaint shall appear to the magistrate to be frivolous or vexatious, the party complaining shall be liable to pay a fine not exceeding ten pounds and to defray the cost of the process and of the witnesses in the case, and in default of payment of such fine and costs, shall be liable to imprisonment for any period not exceeding one month. Such fine and costs may be imposed upon the occasion of such trial and without any fresh action or proceeding for the recovery thereof.

Rules.

30. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

Appointment
of attestation
officers.

31. The Governor in Council may appoint any fit and proper person to be an attesting officer for the purposes of this Ordinance.

No stamp duty
shall be
chargeable
for the
attestation of
any contract.

32. Notwithstanding anything to the contrary contained in any law for the time being in force in the Colony, the attestation of any contract entered into under the provisions of this Ordinance, shall be exempt from all stamp duty.

Repeal.
No. 5 of 1925.

33. The Resident Native Labourers Ordinance, 1925 is hereby repealed.

FIRST SCHEDULE.

Memorandum of Agreement made this day of 19..... between (1) of (2) (hereinafter referred to as "the occupier") and (3) registered number of (4) (hereinafter referred to as "the squatter"), whereby it is agreed:—

1. That this agreement shall have effect from the day of 19..... and shall be for a term of years ending on the day of 19..... unless lawfully determined earlier.

2. That the squatter, together with his wife or wives and children shall reside and may graze stock on such part only of the occupier's farm at as the occupier may direct during the period of this agreement.

3. That during the period of this agreement the resident labourer and every male member of his family who is of the apparent age of sixteen years or over and is resident on the occupier's farm, and who is not working under any law for the time being in force in the Colony relating to master and servant, shall each work for the occupier at such times as the occupier may direct, for not less than (5) days at the election of the occupier in each period of twelve months, and that the occupier shall provide employment for the squatter and for such male members of his family for such number of days. The occupier shall give notice in writing to every male member of such family who during the continuance of the contract may attain the age of sixteen years that on the expiration of three months from the date of receiving such notice he will be required either to enter into a contract under the Resident Native Labourers Ordinance, 1935, with the occupier, or under any law for the time being in force in the Colony relating to master and servant with the occupier or some other employer in the vicinity, or to cease to reside on the occupier's farm.

4. That the time during which the squatter is required to work for the occupier shall be so arranged as to allow the squatter reasonable time to sow, cultivate and reap his own food crops.

5. That the occupier agrees to pay to the squatter and to the male members of his family wages at the rate of not less than for every (6) and (7)

6. That the occupier shall provide good and sufficient building material for the erection of huts for the accommodation of the squatter and his family.

7. That the occupier shall provide the squatter with sufficient and suitable land for the cultivation of food crops for himself and his family, and for grazing the following

numbers of stock, namely ⁽³⁾..... provided that the resident labourer shall not plant or cultivate any of the following crops, namely..... or allow them to be planted or cultivated under his control and that he shall not cultivate land other than that allocated to him by the occupier.

8. That with the consent of a magistrate or an attesting officer this agreement may be terminated by either the occupier or the squatter giving to the other three calendar months' notice, provided that the squatter shall suffer no prejudice in regard to the care and reaping of his crops or in regard to the removal of his family or stock and provided that the occupier may demand the fulfilment by the squatter of any conditions of this agreement to which the squatter may be liable in respect of his obligation to work.

9. On the expiration or termination of this agreement from whatever cause, the squatter shall be entitled to remove all his movable property from the farm, but shall not remove any buildings. In respect of buildings or other immovable property the squatter shall be entitled to any reasonable compensation for materials contributed by him.

*10. That the squatter shall cause his children to attend regularly at the school provided by the occupier on the said land.

†(Any other conditions).

As witness the hand of the parties hereto :-

Witness to the signature of the occupier.

Witness to the signature or mark of the said squatter.

SCHEDULE.

I/We being member(s) of the family of..... (the squatter) do hereby agree to abide by the terms of the agreement dated..... between him and..... (the occupier)

Signature(s) or Mark(s)	Registered No.	Nature of Service.	Remuneration.

I hereby certify that the contents of this agreement have been read and explained by me to the squatters the signatories to this agreement, and that they appear to have executed this agreement with a full knowledge of its contents.

The..... day of 19.....

.....
Magistrate or Attesting Officer.

(1) Full name of occupier.

(2) Address.

(3) Full name of native or Somali as given on registration certificate.

(4) Insert name of native's or Somali's district, location and chief.

(5) Not to be less than 180 days, but may be more if agreed.

(6) Day, month or thirty-day card worked.

(7) Insert conditions as to rations or other considerations if agreed upon or strike out if inapplicable.

(8) Number of each kind of stock to be specified.

*This clause to be inserted only in the case of missions or farms on which schools to the satisfaction of the magistrate are provided; otherwise to be struck out.

†Any other conditions agreed to by the parties which do not contravene the provisions of this or any other Ordinance. Such conditions, if any, shall be numbered consecutively.

SECOND SCHEDULE.

THE RESIDENT NATIVE LABOURERS ORDINANCE, 1935.

Form of Bond under section 5 (8).

Be it known unto all men by these presents that we (1) are jointly and severally bound unto (2) and to any one or more of them in the sum of (3) to be paid to the said (4) their and each of their heirs, executors, administrators, and assigns. For which payment well and truly to be made as liquidated damages and not as a penalty, we bind ourselves jointly and severally; and our heirs, executors and administrators, and every one of them firmly by these presents.

Sealed with our seals, dated this day of 19.....

The condition of the above written obligation is such that if (5) (hereinafter called "the occupier") the employer of the said (6) (hereinafter called "the squatter") do pay to each of the squatters performing their part of the agreement after-mentioned the several sums of money set opposite to their respective names in the schedule to an agreement made and entered into between the occupier and the squatter at on the day of 19..... and attested by (7) in regular (8) payments to be calculated from the day of 19..... and to execute, carry out and perform his part of the said agreement in all respects, then this obligation to be void, otherwise to be in full force and virtue.

Signed, sealed and delivered in the presence of :-

(To be signed and sealed by each of the obligants and attested, if practicable, by the officer attesting the relative agreement).

(1) Insert names and description of occupier and one or more sureties resident within the jurisdiction.

(2) Name and description of the squatter.

(3) Insert sum, not less than half the total amounts (less any advances), due by the contract.

(4) Repeat names of squatter.

(5) Name of occupier.

(6) Name or names of squatters.

(7) Official name of officer before whom agreement is signed.

(8) Weekly or monthly, etc., as the case may be.

THIRD SCHEDULE.

THE RESIDENT NATIVE LABOURERS ORDINANCE, 1935.

Squatter's Certificate.

(Under section 9).

I hereby certify that has during the period of twelve months commencing on the day of 19..... completed the days' work stipulated in this contract. His obligation to work under the terms of this contract commences again on the day of 19.....

Signature of Occupier and date.

FOURTH SCHEDULE.

THE RESIDENT NATIVE LABOURERS ORDINANCE, 1935.

Permit granted under the Provisions of section 4 (1) (c) to Reside on Alienated Lands.

Bearer s/o

Native Registration Certificate No.
Somali

is hereby permitted to reside on for (days), i.e. from (to)

Date

Signature of Occupier.

All permits to reside on any land for a period exceeding fourteen days must be countersigned by the District Commissioner in charge of the area in which such land is situated

Approved

District Commissioner.

Date District.

FIFTH SCHEDULE.

THE RESIDENT NATIVE LABOURERS ORDINANCE, 1935.
Register of Cattle and Stock (section 15).

Name of Farm

Occupier's Name

Registration No. and Name of Native or Somali

No. of Contract

Date of Commencement..... Date of Termination.....

Occupier's Registered Brand

Farm Brand No. allocated to Native or Somali

(a separate individual number to be allocated to each Native or Somali and to be branded on all his cattle)

No. of cattle allowed on contract

No.	Date of Arrival of cattle or stock on farm	Sex	Description of Cattle or Stock	Date of Branding	Remarks, as death, transfer, sale, theft, etc.,
1					
2					
3					
4					
5					
6					
7					
8					

N.B.—One page of the Register to be allocated to each Native or Somali.

38223/37.

G. O.

Mr. Flood. 14.5.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley (4.5)

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

A. CREECH JONES, ESQ., M.P.

FURTHER ACTION.

For the Secretary of State's signature.

18th May, 1937.

Dear Creech Jones,

On the 4th of May I wrote to you and said that I had not yet got a copy of the Kenya Resident Native Labour Bill. I now have a copy of it as published in the Gazette and I enclose one for you to look at. You will notice, however, that the Bill has been "published for criticism" and in point of fact it does not contain some amendments which I had suggested. I have not received any despatch on those points and I think you can take it that the Bill, when eventually introduced, will differ in several points from the draft now published.

I do not think

advantage can be gained by criticizing
it in detail in its present shape,
but I should gladly consider anything
which you like to put to me.

Yours sincerely,

W. Wainwright Gore

Colony and Protectorate of Kenya

GOVERNMENT NOTICE No. 207

HIS EXCELLENCY the Governor in Council has approved of the following Bill being published for criticism.

R. W. BAKER-BEALL,
Acting Clerk of the Executive Council.

A Bill to Regulate the Residence of Labourers on Farms.

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

1. This Ordinance may be cited as the **Resident Short title.**
Labourers Ordinance, 1937.

2. This Ordinance or any part thereof shall apply to such districts or areas, and from such date or dates, as the Governor in Council may, from time to time, by proclamation in the Gazette, appoint. **Application of Ordinance.**

3. In this Ordinance—
“attesting officer” means a person appointed as such by the Governor in Council under the provisions of section 31 of this Ordinance; **Interpretation.**

“cattle” means any bull, cow, steer, heifer or calf or any other animal which the Governor may, by order, declare to be cattle for the purposes of this Ordinance.

“family” means the wife or wives and the unmarried children, if any, of a native or Somali.

“farm” means any area of land (other than an area of land situated in a municipality, township or trading centre) which has been leased or sold by His Majesty or by the Governor and shall include any area of land set apart by the Government of the Colony for the purpose of experimental farming;

“forest area” means any forest area not situated in and forming part of a native reserve;

“local authority” means a district council established under the Local Government (District Councils) Ordinance, 1928, in respect of the area of jurisdiction so conferred upon it, and, where there is no district council, means the district commissioner acting in consultation with the body known as the district committee where such exists. **No. 21 of 1928.**

"mission" means any mission recognized as such by the Governor;

"occupier" means the owner or lessee or any other person having a legal right to occupy a farm, a forest area, unalienated Crown land or Railway land, and includes any manager or agent of such occupier, and in respect of forest areas, unalienated Crown land and Railway land, includes the Conservator of Forests, the Commissioner of Lands and the General Manager of the Kenya and Uganda Railways and Harbours respectively;

"Railway land" means any land the ownership of which or the control over which vests in the High Commissioner for Transport;

"resident labourer" means a native or a Somali who has entered into a contract under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925;

No. 5 of 1925.

"standing committee" means the Standing Departmental Committee established under the Local Government (Municipalities) Ordinance, 1928;

No. 19 of 1928.

"stock" includes cattle, sheep, goats, and such other animals or birds as the Governor may, by order, declare to be stock for the purposes of this Ordinance.

When native or Somali may reside on a farm.

4. (1) No native or Somali shall reside on or remain for a longer continuous period than forty-eight hours on any farm or in any forest area, or on any unalienated Crown land, or on any Railway land, unless he—

(a) is the occupier thereof or a member of the family of the occupier thereof; or

(b) has duly entered into a contract, still unexpired, under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925; or

No. 5 of 1925.

(c) is in actual employment on such farm, forest area, unalienated Crown land or Railway land, in pursuance of a contract made under the provisions of any law for the time being in force in the Colony relating to master and servant, as a member of the family of a native or Somali so employed; or

(d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and is closely related to a family lawfully residing on such farm, and who has obtained written permission from a magistrate or attesting officer by endorsement on a resident labourer's contract or otherwise; or

(e) is the holder of a permit in writing in that behalf given to him by the occupier and, in the case of a permit authorizing residence for a period of more than fourteen days, is also the holder of a permit from the district commissioner;

Provided that the provisions of this sub-section shall not apply to a native residing by right in the Lembus and Mt. Elgon forest areas.

(2) Any person who contravenes the provisions of this section shall be liable, on conviction, to a fine not exceeding five hundred shillings, and in default of payment to imprisonment for a period not exceeding one month.

(3) It shall be a sufficient defence for a native or Somali charged with an offence against the provisions of this section to produce a permit issued to him under the provisions of paragraph (e) of sub-section (1) of this section.

5. (1) When a native or Somali has entered into a contract, as in this section provided, the members of his family may also reside on the farm, forest area, unalienated Crown land or Railway land, as the case may be.

Contract of service to work on a farm.

(2) A contract under this section shall be in writing, shall be executed by the occupier and by the native or Somali and by all the male members of native's or Somali's family over the apparent age of sixteen years, shall be attested by a magistrate or by an attesting officer, shall be in the form of the agreement set out in the first Schedule to this Ordinance, and shall provide—

(a) for a term of not less than one year and not exceeding five years, notwithstanding anything to the contrary contained in any law for the time being in force in the Colony relating to master and servant;

(b) for the renewal or variation of the contract, by endorsement by the parties thereto, with the approval of a magistrate or attesting officer;

(c) for the native or Somali and any male member of his family resident on the farm who is of the apparent age of sixteen years or over, and who is not working under any law for the time being in force in the Colony relating to master and servant, to work for the occupier for not less than 180 days at the election of the occupier in any one year during the term of such contract, and for the occupier to provide employment and to pay wages to each such person for the number of days specified in the contract;

- (d) for the occupier to give notice in writing to every male member of such family who, during the continuance of the contract, may attain the age of sixteen years, to the effect that, on the expiration of three months from the date of receiving such notice such male member will be required either (i) to enter into a contract under this Ordinance with the occupier; or (ii) to enter, under any law for the time being in force in the Colony relating to master and servant, into a contract with the occupier or some other employer in the vicinity; or (iii) to cease to reside on the occupier's farm;
- (e) for the female members of the family who are willing and able to work to serve the occupier if he offers suitable work at a reasonable rate of wages;
- (f) for the supply by the occupier of building material for the family's huts;
- (g) for the use by the family of land for cultivation and, when agreed upon, for grazing;
- (h) for the kinds of crops which the native or Somali or his family may not grow on the farm;
- (i) for the number of stock which the native or Somali may graze on the farm;
- (j) for the rates of pay and other consideration to be paid or given to the native or Somali and any member of his family for the period of actual employment;
- (k) for the termination of the contract by not less than three months' notice on either side: Provided that the term of residence on a farm shall in no case be less than one year except with the approval of a magistrate;
- (l) in the event of termination of the contract in accordance with the last preceding paragraph, for the removal by the family of crops cultivated by such family or for payment by the occupier of compensation in lieu thereof. Provided that no crop shall be planted after notice of termination has been given by either party;
- (m) in the case of missions, for the regular attendance of the children of the family at school for the purpose of education within the meaning of section 20 of this Ordinance.

(3) Any contract under this section may, with the consent of the parties thereto, relate to a group of farms in the same district or in contiguous districts, provided all the farms in the group are in the same ownership or occupation, and provided a magistrate certifies that he is satisfied that proper control can be exercised over the resident labourers resident on such farms as are not in the personal occupation of a European.

(4) The original of every contract made under this section shall be filed in the office of the district commissioner in which the parties reside and one copy of the contract shall be handed to the occupier and one copy to the head of the contracting native family.

(5) A magistrate or attesting officer may refuse to attest any contract which does not provide for a fair remuneration in money, having regard to the local rates of wages, or any contract which, in his opinion, is likely to lead to a breach of the provisions of this Ordinance.

(6) A magistrate or attesting officer may, in his discretion, refuse to attest any contract entered into by a native or Somali whom he considers to be an undesirable.

(7) A magistrate may for any good and sufficient reason order the removal of a native or Somali, or of a resident labourer, and/or his stock from any farm, forest area, Railway land or unalienated Crown land; and such magistrate may after inquiry assess the costs of such removal and determine by whom such costs shall be paid.

(8) (a) A magistrate or attesting officer may, when he deems it necessary before attesting any contract under this section, require the occupier to give security for the payment of the wages of the resident labourer with whom the contract is to be made.

(b) Such security may be given by a bond in the form set out in the Second Schedule hereto, or to the like effect, with one or more sureties approved by the magistrate or attesting officer.

(9) When notice of termination of a contract has been given by either party thereto the occupier shall forthwith notify the district commissioner accordingly.

(10) On a change of occupancy of a farm the contract shall be deemed to have been assigned to the new occupier and to be a contract between the new occupier and the resident labourer.

When natives or Somalis may not reside on farms.

Resident labourers' contracts to be endorsed on registration certificate.

6. No occupier shall allow any native or Somali to reside on a farm in contravention of the provisions of this Ordinance.

7. (1) When a native has entered into a contract of service under the provisions of section 5 of this Ordinance, it shall be the duty of the occupier forthwith to endorse in blue or blue-black ink upon such native's registration certificate, in the columns respectively provided therefor, the following particulars:—

- (a) the name of the employer and district in which the native is employed;
- (b) the nature of the native's employment, preceded by a capital letter R, to denote that he is a resident labourer;
- (c) the date of the commencement of the contract; and
- (d) the rate of wages in cash.

(2) On the termination of such contract the occupier shall endorse in blue or blue-black ink the date of such termination in the column provided in the resident labourers registration certificate for the date of discharge.

(3) It shall be the duty of the resident labourer, on the termination of the contract, to request the occupier to make such endorsement, but failure on the part of the resident labourer to make the request shall not relieve the occupier of the responsibility for making such endorsement.

(4) In the event of the occupier refusing or omitting to make such endorsement, the resident labourer shall forthwith report to the district commissioner in whose office the contract is filed; and such district commissioner may, if he is satisfied from the information at his disposal that the endorsement has been omitted through ignorance or mistake or wilfully by the occupier and through no fault of the resident labourer, after inquiry complete in blue or blue-black ink such endorsement on the registration certificate affixing such date for the date of discharge as may appear to him to be consistent with the circumstances.

(5) Any occupier who refuses or omits to endorse a registration certificate in accordance with the provisions of this section shall be deemed to have committed a breach of the provisions of this Ordinance.

8. (1) Every male native, other than a Somali, who is a party to a contract made under the provisions of the Resident Native Labourers Ordinance, 1925, shall, within one month after the date of the application of this Ordinance to the area in which he is residing under such contract, produce his registration certificate to the occupier. Endorsement of existing contracts. No. 5 of 1925.

(2) Such occupier shall thereupon make an endorsement upon the registration certificate as is required by sub-section (1) of the last preceding section and shall forthwith render a return to the Chief Registrar of Natives, as required under section 9 of the Native Registration Ordinance, showing the registration numbers and the names of every registered native resident upon his farm. Cap. 127.

9. Any occupier entering into a contract with a native under section 5 of this Ordinance shall be deemed to have engaged such native within the meaning of the Native Registration Ordinance, and sections 9, 10, 17, 18 and 20 of the Native Registration Ordinance, and such Rules made under the said Ordinance as the Governor in Council may by notice prescribe, shall apply to such occupier and native as if the contract were an agreement within the meaning of the said Ordinance. Application of certain provisions of Native Registration Ordinance. Cap. 127.

10. When a resident labourer has, within any period of twelve months, completed the number of days' work specified in such contract, the occupier shall, if so required by such resident labourer deliver to him a certificate to that effect in the form set out in the Third Schedule hereto, specifying the date on which the resident labourer's obligation to work under such contract recommences. Resident labourers' certificates.

11. Notwithstanding anything containing in sub-section (3) of section 13 of the Native Registration Ordinance it shall not be an offence to employ a person holding a resident labourer's certificate during the period shown on such certificate as the period in which the squatter is under no obligation to work for the occupier. Saving of offence under section 13 of the Native Registration Ordinance. Cap. 127.

12. Any occupier shall be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding two months or to both such fine and such imprisonment, if he fails in any one year to provide employment for not less than the number of days specified in the contract for each person for whom, under the terms of any contract made under this Ordin- Occupier to provide employment contracted for.

No. 5 of 1925. ance or under the Resident Native Labourers Ordinance, 1925, he is under an obligation to provide such employment: Provided that notwithstanding the terms of any such contract, a Provincial Commissioner shall have power, for any good and sufficient reason, to reduce the minimum number of days work required from resident labourers in any area within his province.

Contract to be produced.

13. Any magistrate, or any person duly authorized in writing in that behalf by a magistrate, or any police officer of or above the rank of assistant sub-inspector, or a justice of the peace may demand from any occupier the production of any contract entered into by such occupier under the provisions of section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, and such occupier shall forthwith produce such contract.

No. 5 of 1925.

Record of resident labourers

14. Every occupier shall keep records sufficient to show the date of the contract of each resident labourer, the number of days on which such resident labourer has worked and the wages paid.

Register of resident labourers' stock.

15. (1) Every occupier shall keep an up-to-date register of all cattle eligible for branding, and of such other stock in respect of which a register may be required to be kept by an order made under the provisions of section 21 of this Ordinance, kept on his farm and owned by natives or Somalis lawfully residing thereon.

(2) Such register shall be in the form set out in the Fifth Schedule to this Ordinance.

Resident labourers' stock on farms.

16. (1) No native or Somali other than an occupier or a member of the family of such occupier, shall graze any stock on any farm unless—

- (a) he is lawfully residing on such farm under the provisions of paragraphs (b), (c), (d) or (e) of sub-section (1) of section 4 of this Ordinance; and
- (b) such stock is his own personal property; and
- (c) if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, he has received the written consent of the occupier and the written approval of the district commissioner or the attestation officer for keeping such stock on the farm; and

(d) every head of cattle over the age of six months kept by such native or Somali on the farm is legibly branded by the occupier at his own expense with his brand together with the letter "S" and the farm number allocated to the native or Somali and shown in the register required to be kept under the provisions of section 15 of this Ordinance.

(2) (a) The written consent of the occupier and the written approval of a magistrate or attesting officer required by paragraph (c) of sub-section (1) of this section shall specify the number of stock which such native or Somali may keep on the farm.

(b) In arriving at such number the occupier and the magistrate or attesting officer shall have regard—

(i) to any order made under the provisions of section 21 of this Ordinance, in force in the area in which the farm is situated; and

(ii) to the reasonable needs of the native or Somali and of the members of his family residing with him.

(3) Any native or Somali—

(a) who keeps upon a farm any stock which is not his own personal property; or

(b) who, if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, keeps upon a farm any stock in respect of which he has not received the written consent of the occupier and the written approval of a magistrate or attesting officer; or

(c) who keeps on a farm any stock in excess of the number which he is authorized to keep in pursuance of such written consent of the occupier and such approval of the district commissioner or an attesting officer; or

(d) who keeps on a farm any head of cattle which is not branded in accordance with the provisions of this section,

shall be guilty of an offence against this Ordinance.

(4) The provisions of sub-sections (2) and (3) of this section relating to the number of stock which a native or a Somali may lawfully keep upon a farm shall not apply to

No. 5 of 1925. the stock of a native or Somali who before the commencement of this Ordinance has entered into a contract, which is still unexpired, under section 5 of the Resident Native Labourers Ordinance, 1925, and who, under the provisions of sub-section (1) of this section, lawfully has such stock on the farm: Provided that every such native or Somali shall, within three months after the date of the application of this Ordinance to the area in which he is residing, furnish a record to the occupier who shall forward a return to a magistrate or attesting officer specifying the number of each kind of stock which such native or Somali is keeping on such farm.

(5) In assessing the number of cattle, sheep and goats kept on a farm no account shall be taken of stock under the age of six months.

(6) No occupier shall, after the expiration of a period of six months from the date of the application of this Ordinance to the area in which such occupier's farm is situate, brand any head of cattle kept on his farm by a native or Somali lawfully residing thereon if such head of cattle is already branded with any recent registered brand denoting ownership unless and until such cattle have been re-branded as provided for in sub-section (10) of this section.

(7) It shall be the duty of an occupier to maintain his brand on every head of cattle in a legible condition.

(8) Any occupier who commits a breach of sub-sections (6) or (7) of this section or who suffers any stock to be kept on his farm in contravention of the provisions of this Ordinance shall be guilty of an offence.

(9) (a) Nothing in this section contained shall be construed as entitling any person to move or to compel the movement of stock in contravention of any restrictions in force under any law for the time being in force in the Colony relating to diseases of animals.

No. 5 of 1925. (b) If, at the time of the termination of any contract made under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, or of any engagement or engagement between an occupier and a native or a Somali under the law for the time being in force in the Colony relating to master and servant, any such restrictions are in force prohibiting the movement of stock from such farm, such stock shall remain on the farm without charge, and the owner of

such stock may also remain on such farm until such restrictions are removed or unless other arrangements are made for the care or disposal of such stock to the satisfaction of the parties and of a magistrate; and in any such case any such contract shall be deemed to remain in force until such restrictions are removed or until such other arrangements are made, as the case may be.

(10) (a) No cattle over the age of six months owned by a native or a Somali and kept on a farm in accordance with the provisions of this Ordinance shall be removed from a farm unless the owner has first produced them to the occupier who shall, at his own expense, cause such cattle to be re-branded with his own brand reversed.

(b) Any owner of cattle who moves from a farm any such cattle which have not been so re-branded, and any occupier who on request refuses or fails so to re-brand any cattle, shall be guilty of an offence.

(11) Where the owner of any stock has committed a breach of the provisions of this section, or where a person in possession of any stock has, with the connivance and consent of the owner of the stock, committed a breach of the provisions of this section, a magistrate may, in addition to imposing any other penalty provided in this Ordinance, order that the stock in respect of which the offence has been committed be confiscated.

(12) All stock kept on a farm by a native or a Somali shall be deemed for all purposes to be the personal property of such native or Somali.

17. (1) A magistrate, or a veterinary officer authorized in writing by the Chief Veterinary Officer, or a police officer of or above the rank of assistant sub-inspector, or any person duly authorized by a magistrate in that behalf may—

(a) enter upon a farm and demand from the occupier the production of any register or records which are required to be kept under the provisions of this Ordinance;

(b) take all reasonable and proper steps to satisfy himself as to the correctness of any particulars entered therein; and

(c) demand from such occupier an explanation of any apparent discrepancies therein.

(2) Any occupier who knowingly makes a false entry in any register or records or who refuses to produce any register or records or to furnish any explanation when lawfully called upon to do so, or who shall knowingly furnish a false explanation, shall be guilty of an offence.

Removal of resident labourers from undeveloped farms.

18. A magistrate may by notice served upon the occupier or, if the occupier has no address in the Colony or if such address is unknown, by notice published in the Gazette, require the occupier of a farm, which is not being developed, and which is not, in his opinion, under such occupation as to ensure the observance of the provisions of this Ordinance, to remove any native or Somali, found residing on such farm, within twenty-eight days from the date of the service of such notice or from the date of the publication of the notice in the Gazette, as the case may be; and if such native or Somali is not so removed then a magistrate, or such other person as he may authorize in that behalf, shall remove such native or Somali and send him to a native reserve or to such other place as the magistrate may determine: Provided that, when the magistrate is satisfied that such native or Somali, although residing on a farm that is not being developed, is employed by the occupier of such farm on another farm in the same occupation or ownership under a contract of service or under a resident labourer's contract, he shall allow such native or Somali to remain on such farm.

Prohibition against payment by natives or Somalis.

19. (1) (a) No payment in money or in kind shall be demanded or taken from any native or Somali lawfully residing on a farm for the right to reside on or to cultivate any land or to graze any stock, or for the use of salt licks, fuel or water on such farm.

(b) No occupier shall enter into a contract with a native or Somali lawfully residing on his farm whereby the occupier shares any profit derived by such native or Somali from his cultivation or from the increase or produce of his stock on the farm of such occupier.

(2) Manure produced on a farm by a resident labourer's stock shall be the property of the resident labourer during the period of his contract: Provided that, if such manure is not reasonably required for the purposes of the resident labourer's cultivation on such farm, the occupier may use such manure for the purpose of his own cultivation free of cost other than the cost of transporting the manure from one place on the farm to another.

(3) Nothing in this section contained shall be deemed to render illegal the purchase by an occupier at a reasonable price of the stock of a resident labourer or the produce of a resident labourer's stock or cultivation.

20. Natives or Somalis employed on farms in the occupation of missions and engaged in receiving or imparting industrial or technical instruction with or without literary or theological instruction or training for not less than one hundred and eighty days in each year shall be exempt from the provisions of section 4 of this Ordinance if such instruction or training is under proper and responsible control to the satisfaction of a magistrate.

Natives or Somalis employed on mission lands.

21. (1) Subject to the provisions of section 2 and of section 22 of this Ordinance a local authority may, in respect of any farm or group of farms within the area of its jurisdiction, by order published in the Gazette and in a newspaper circulating within such area—

Local option. Power to make orders.

- (a) prohibit the engagement of resident labourers on any farm, or group of farms;
- (b) limit the number of resident labourers to be engaged on any farm or group of farms;
- (c) prohibit the keeping of stock by natives or Somalis on any farm, either generally or in respect of any specified kind of stock, or limit the numbers of any specified kind of stock which may be kept on a farm by resident labourers, or prescribe the conditions under which native or Somali stock shall be kept;
- (d) prescribe the number of days in a year on which a resident labourer shall work and for which he shall receive wages: Provided that such number of days shall in no case be less than one hundred and eighty, and provided further that no resident labourer shall be required to work for more than two hundred and seventy days in any year unless he so desires.

(2) In making any order as aforesaid the local authority shall have regard—

- (a) to the wishes of the occupiers of farms within the area of its jurisdiction, so far as such wishes can be reasonably and conveniently ascertained;
- (b) to the reasonable labour requirements of farms; and
- (c) to the reasonable needs of resident labourers on such farms.

(3) When such an order has been made it shall be the duty of the occupier of a farm to which such order applies, within one month after the date of the publication of the order in the Gazette in accordance with the provisions of sub-section (7) of section 22 of this Ordinance, to give notice of termination of such contracts as may be necessary to make the said order effective, and failure to give such notice shall be an offence against the provisions of this Ordinance.

(4) The Governor in Council if he is satisfied that, contrary to the wishes of the majority of the occupiers in any areas so far as such wishes can reasonably and conveniently be ascertained, a local authority has neglected or refused to make any order as aforesaid or that circumstances obtaining in any area are such that an order under this section should be made, may call upon such local authority to make such order as in the circumstances may be just and expedient, and, if the local authority within a reasonable time after being so called upon refuses or neglects to make an order, the Governor in Council may in respect of the area of jurisdiction of such local authority or any part thereof by order exercise any of the powers conferred upon a local authority by sub-section (1) of this section.

22. (1) No order shall be made or amended by a local authority unless and until a copy of such proposed order or amending order has been deposited at the office of the local authority for inspection by any person at all reasonable times, and unless and until a notice, setting forth the general purport of the proposed order and stating that a copy thereof is open to inspection, shall have been published in the Gazette and in some newspaper circulating in the district and exhibited in a conspicuous place at or near the public entrance to the local authority's offices fourteen days prior to the meeting of the local authority to be held for the purpose of making such order or such amending order.

(2) Any objection to any such order shall be lodged with the clerk to the local authority within thirteen days after the date of the publication of the notice as aforesaid.

(3) After any order has been made or amended by a local authority such order or amending order shall be submitted to the Commissioner for Local Government through the Provincial Commissioner for his approval of the Standing Committee, together with—

(a) a copy of the minutes of the meeting of the local authority at which the order or amending order was adopted;

Orders by local authorities, how to be made.

Submission of orders for approval of Standing Committee.

- (b) a certificate by the clerk to the authority that the provisions of sub-section (1) of this section have been complied with; and
- (c) copies of any objections against the adoption of the order which may have been lodged in writing with the clerk, or, if no objections have been lodged, a statement to that effect.

(4) When the standing committee has approved of any order, with or without amendment, such order shall be published in the Gazette.

(5) Any person aggrieved by such order may within one month from the date of publication under sub-section (4) of this section submit to the Governor in Council a written objection to the order.

(6) As soon as possible after the expiration of a period of one month from the date of publication of the order under sub-section (4) of this section, the Governor in Council shall, after considering such written objections, if any, as may have been made under the last preceding sub-section, confirm, vary or reject such order.

Governor in Council to confirm or vary order.

(7) If the Governor in Council confirms, with or without amendment, any such order he shall cause the order to be so certified by the clerk to the Executive Council who shall then cause the order to be published in the Gazette, and as and from the date of such publication such order shall have the full force of law in the area to which it relates.

23. The Governor in Council may make orders of a similar nature to those which a local authority is empowered to make under section 21 of this Ordinance in respect of forest areas, unalienated Crown land or Railway land, and, in making such order, shall have regard—

Governor in Council shall make orders regarding Forest, Railway or unalienated Crown lands.

- (a) to the reasonable labour requirements of the Railway Administration or of any department of Government concerned;
- (b) to the reasonable needs of such natives and Somalis; and
- (c) to the terms of any order made under section 21 of this Ordinance in force in any area adjacent to such forest area, unalienated Crown land or Railway land.

Institution of proceedings for offences.

24. (1) Proceedings in respect of any offences against the provisions of sections 4, 6, 13, 14, 15, 16, 17 and 19 of this Ordinance may be instituted by the Police or by any person authorized in writing by a magistrate.

(2) A magistrate may, in his discretion—

- (a) rescind any contract made under this Ordinance where it has been proved to his satisfaction that there has been a breach of the terms thereof, or, on the application of either party to the contract, when the other party has been convicted of a criminal offence against him or of a criminal offence involving serious moral turpitude; and
- (b) cancel any permit given by an occupier in contravention of the provisions of this Ordinance:

Provided that in any such case the native or Somali shall retain his rights over growing crops unless the occupier elects to give him reasonable compensation therefor. In the event of any dispute as to the amount of compensation payable the magistrate shall determine the amount thereof.

(3) Compensation payable under this section may be paid to the magistrate by an occupier, but if proceedings have been instituted by the occupier for damages against the native or Somali, the magistrate shall not pay out the compensation to the native or Somali until the liability of the native or Somali to pay damages has been determined; and if the native or Somali is found to be liable to damages, such damages may be set off against the amount paid to the magistrate by the occupier.

Penalties for offences committed by resident labourers.

25. A resident labourer shall on conviction be liable to a fine of one hundred shillings or in default of payment to imprisonment for any term not exceeding one month—

- (1) if he, after having entered into an agreement under this Ordinance, fails or refuses without lawful cause to enter upon his duties on the farm at the stipulated time;
- (2) if he, without lawful cause, absents himself from the place proper and appointed for the performance of his work on a day when the occupier may lawfully require him to work;
- (3) if he, during any time when he is lawfully required to work, is intoxicated and thus unfit to perform his work;

- (4) if he neglects or refuses to perform any work which it was his duty to have performed, or if he carelessly or improperly performs any work which from its nature it was his duty under his agreement to have performed carefully and properly;
- (5) if he, without leave and for his own purposes, makes use of any horse, vehicle or other property belonging to the occupier;
- (6) if he uses any abusive or insulting language or is guilty of insulting behaviour to the occupier or to any person lawfully placed by the occupier in authority over him, calculated to provoke a breach of the peace;
- (7) if he refuses to obey any command of the occupier, or of any person lawfully placed by the occupier in authority over him, which command it was his duty to obey;
- (8) if he grows upon the farm any crop which by his contract he is prohibited from growing;
- (9) if he, after the termination of his contract and subject to the provisions of paragraph (k) of sub-section (2) of section 5 and sub-section (9) of section 16 of this Ordinance, fails within a reasonable and specified time to leave the farm and to remove his family and stock therefrom.

26. A resident labourer shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for any term not exceeding two months—

Penalties for more serious offences committed by resident labourers.

- (1) if he wilfully or by wilful breach of duty or through drunkenness does any act tending to the immediate loss, damage or serious risk of any property placed by any other person in his charge for delivery to or on account of his occupier;
- (2) if, by wilful breach of duty or by neglect of duty or through drunkenness, he refuses or omits to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by the occupier in his charge, or placed by any other person in his charge for delivery to or on account of his occupier;

(3) if, being employed as a herdsman—

(a) he fails to report to the occupier the death or loss of any animal placed in his charge (which animal he alleges to have died or to have been lost) at the earliest opportunity after he has discovered, or at the earliest opportunity after he should in the ordinary course of duty have discovered, such death or loss;

(b) he fails, after having received an order from the occupier to preserve for the use or inspection of the occupier any part or parts of an animal which such resident labourer alleges to have died, to preserve such part or parts and is unable to prove to the satisfaction of the court the death of the animal which he alleges to have died;

(c) he alleges the loss of any animal placed in his charge and it is proved by the occupier to the satisfaction of the court that such animal could not, in the circumstances of the case, have become irrevocably lost without the act or default of the resident labourer.

(4) if, being employed in any capacity other than that of a herdsman, he alleges the loss of any property placed in his charge by or for the occupier and it is proved by the occupier to the satisfaction of the court that the property in question could not have been lost without the act or default of the resident labourer.

Penalties for
offences
committed by
occupier.

27. (1) An occupier shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for a term not exceeding two months, or to both such fine and imprisonment, if he is convicted of any of the following acts or omissions, that is to say—

(a) if he fails to pay, on demand, the wages due to a resident labourer;

(b) if, before or after the expiration of the contract, upon demand made and without lawful cause, he refuses to deliver or to permit to be taken away any property belonging to a resident labourer lawfully remaining or being upon such occupier's land;

(c) if he fails knowingly or on demand to provide his resident labourers with proper medicines during illness and also, if procurable, medical attendance during serious illness. Provided that an employer's liability for medical attendance during illness shall not extend beyond a period of forty-two days.

(2) Upon any complaint brought before a court under the provisions of this Ordinance the magistrate may, in addition to any jurisdiction he might have exercised if this Ordinance had not been enacted, exercise all or any of the following powers:

(a) He may adjust and set off one against the other all such claims on the part either of the occupier or of the resident labourer arising out of, or incidental to, the relation between them as the magistrate may find to be subsisting, whether such claims are liquidated or unliquidated, and whether such claims are for wages, damages or otherwise; and he may direct the payment of such sum as he finds due by one party to the other party.

(b) He may direct fulfilment of the contract and, in case where he might award damages for any breach of contract, he may, in lieu either of the whole of the damages which would otherwise have been awarded or some part of the damages, direct the party committing such breach to find security to the satisfaction of the magistrate for the due performance of so much of the contract as remains unperformed; and if the party neglects or refuses to find security, he may commit him to prison until he finds it, but the term of imprisonment shall not exceed three months.

(c) He may rescind the contract upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages or other sums due as he thinks fit.

(d) When no amount of compensation or damages can be assessed, or when pecuniary compensation will not, in the opinion of the magistrate meet the circumstances of the case, he may, in addition to rescinding the contract and discharging the parties therefrom, impose a fine on either party of a sum not exceeding twenty pounds or, in default of payment, imprisonment for a term not exceeding one month.

General penalty.

28. Any person committing or knowingly permitting a breach of the provisions of this Ordinance or any Rules made thereunder for which no specific penalty is provided shall be liable, on conviction, to a fine not exceeding one hundred pounds, or to a term of imprisonment not exceeding two months, or to both such fine and such imprisonment.

Costs.

29. In any complaint under this Ordinance the process of the court for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that, if at the trial the complaint shall appear to the magistrate to be frivolous or vexatious, the party complaining shall be liable to pay a fine not exceeding ten pounds and to defray the cost of the process and of the witnesses in the case, and in default of payment of such fine and costs, shall be liable to imprisonment for any period not exceeding one month. Such fine and costs may be imposed upon the occasion of such trial and without any fresh action or proceeding for the recovery thereof.

Rules.

30. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

Appointment of attestation officers.

31. The Governor in Council may appoint any fit and proper person to be an attesting officer for the purposes of this Ordinance.

No stamp duty shall be chargeable for the attestation of any contract.

32. Notwithstanding anything to the contrary contained in any law for the time being in force in the Colony, the attestation of any contract entered into under the provisions of this Ordinance, shall be exempt from all stamp duty.

Repeal. No. 5 of 1925.

33. The Resident Native Labourers Ordinance, 1925, is hereby repealed.

FIRST SCHEDULE

Memorandum of Agreement made this day of 19..... by and between (a) (hereinafter referred to as "the occupier") and (b) (hereinafter referred to as "the resident labourer"), whereby it is agreed—

1. That this agreement shall have effect from the day of 19..... and shall be for a term of years ending on the day of 19..... unless lawfully determined earlier.

2. That the resident labourer, together with his wife or wives and children shall reside and may graze stock on such part only of the occupier's farm at as the occupier may direct during the period of this agreement.

3. That during the period of this agreement the resident labourer and every male member of his family who is of the apparent age of sixteen years or over and is resident on the occupier's farm, and who is not working under any law for the time being in force in the Colony relating to master and servant, shall each work for the occupier at such times as the occupier may direct, for not less than (a) days at the election of the occupier in each period of twelve months, and that the occupier shall provide employment for the resident labourer and for such male members of his family for such number of days. The occupier shall give notice in writing to every male member of such family who during the continuance of the contract may attain the age of sixteen years that on the expiration of three months from the date of receiving such notice he will be required either to enter into a contract under the Resident Labourers Ordinance, 1937, with the occupier, or under any law for the time being in force in the Colony relating to master and servant with the occupier or some other employer in the vicinity, or to cease to reside on the occupier's farm.

4. That the time during which the resident labourer is required to work for the occupier shall be so arranged as to allow the resident labourer reasonable time to sow, cultivate and reap his own food crops.

5. That the occupier agrees to pay to the resident labourer and to the male members of his family wages at the rate of not less than for every (a) and (b)

6. That the occupier shall provide good and sufficient building material for the erection of huts for the accommodation of the resident labourer and his family.

7. That the occupier shall provide the resident labourer with sufficient and suitable land for the cultivation of food crops for himself and his family, and for grazing the following

numbers of stock, namely (6).....
 provided that the resident labourer shall not plant or cultivate
 any of the following crops, namely.....
 or allow them to be planted or cultivated under his control,
 and that he shall not cultivate land other than that allocated
 to him by the occupier.

8. That with the consent of a magistrate or an attesting
 officer this agreement may be terminated by either the occupier
 or the resident labourer giving to the other three calendar
 months' notice, provided that the resident labourer shall suffer
 no prejudice in regard to the care and reaping of his crops or
 in regard to the removal of his family or stock and provided
 that the occupier may demand the fulfilment by the resident
 labourer of any conditions of this agreement to which the
 resident labourer may be liable in respect of his obligation to
 work.

9. On the expiration or termination of this agreement
 from whatever cause, the resident labourer shall be entitled
 to remove all his movable property from the farm, but shall not
 remove any buildings. In respect of buildings or other im-
 movable property the resident labourer shall be entitled to any
 reasonable compensation for materials contributed by him.

*10. That the resident labourer shall cause his children
 to attend regularly at the school provided by the occupier on
 the said land.

†(Any other conditions).

As witness the hand of the parties hereto:—

Witness to the signature of the occupier.

.....

Witness to the signature or mark of the resident labourer.

.....

SCHEDULE.

I/We being member(s) of the family of.....
 (the resident labourer) do hereby agree to abide by the terms of
 the agreement dated..... between him and.....
 (the occupier)

Signature(s) or Mark(s).	Registered No.	Nature of Service.	Remuneration.

I hereby certify that the contents of this agreement have
 been read and explained by me to the resident labourers the
 signatories to this agreement, and that they appear to have
 executed this agreement with a full knowledge of its contents.

The..... day of 19.....

.....
 Magistrate or Attesting Officer.

(1) Full name of occupier.

(2) Address.

(3) Full name of native or Somali as given on registration. Insert
 name of native's or Somali's district, location and chief.

(4) Not to be less than 180 days, but may be more if agreed.

(5) Day, month or thirty-day card worked.

(6) Insert conditions as to rations or other considerations if agreed upon
 or strike out if inapplicable.

(7) Number of each kind of stock to be specified.

*This clause to be inserted only in the case of missions or farms
 on which schools to the satisfaction of the magistrate are provided,
 otherwise to be struck out.

†Any other conditions agreed to by the parties which do not con-
 travene the provisions of this or any other Ordinance. Such conditions,
 if any, shall be numbered consecutively.

SECOND SCHEDULE.

THE RESIDENT LABOURERS ORDINANCE, 1937.
Form of Bond under section 5 (8).

Be it known unto all men by these presents that we (1) are jointly and severally bound unto (2) and to any one or more of them in the sum of (3) to be paid to the said (4) their and each of their heirs, executors, administrators, and assigns. For which payment well and truly to be made as liquidated damages and not as a penalty, we bind ourselves jointly and severally; and our heirs, executors and administrators, and every one of them firmly by these presents.

Sealed with our seals, dated this day of 19.....

The condition of the above written obligation is such that if (5) (hereinafter called "the occupier") the employer of the said (6) (hereinafter called "the resident labourer") do pay to each of the resident labourers performing their part of the agreement after-mentioned the several sums of money set opposite to their respective names in the schedule to an agreement made and entered into between the occupier and the resident labourer at on the day of 19..... and attested by (7) in regular (8) payments to be calculated from the day of 19..... and to execute, carry out and perform his part of the said agreement in all respects, then this obligation to be void, otherwise to be in full force and virtue.

Signed, sealed and delivered in the presence of :-

(To be signed and sealed by each of the obligants and attested, if practicable, by the officer attesting the relative agreement)

- (1) Insert names and description of occupier and one or more sureties resident within the jurisdiction.
(2) Name and description of the resident labourers.
(3) Insert sum, not less than half the total amounts (less any advances), due by the contract.
(4) Repeat names of resident labourers.
(5) Name of occupier.
(6) Name or names of resident labourers.
(7) Official name of officer before whom agreement is signed.
(8) Weekly or monthly, etc., as the case may be.

THIRD SCHEDULE.

THE RESIDENT LABOURERS ORDINANCE, 1937.
Resident Labourer's Certificate.
(Under section 9).

I hereby certify that has during the period of twelve months commencing on the day of 19..... completed the days' work stipulated in this contract. His obligation to work under the terms of this contract commences again on the day of 19.....

Signature of Occupier and date.

FOURTH SCHEDULE.

THE RESIDENT LABOURERS ORDINANCE, 1937.

Permit granted under the Provisions of section 4 (1) (c) to
Reside on Alienated Lands.

Bearer s/o

Native Registration Certificate No.
Somali

is hereby permitted to reside on

for (days), i.e. from

(to)

Date

Signature of Occupier.

All permits to reside on any land for a period exceeding fourteen days must be countersigned by the District Commissioner in charge of the area in which such land is situated.

Approved.

District Commissioner.

Date District

FIFTH SCHEDULE.

Page No. 1.

THE RESIDENT LABOURERS ORDINANCE, 1937.

Register of Cattle and Stock (section 15).

Name of Farm

Occupier's Name

Registration No. and Name of Native or Somali.....

No. of Contract

Date of Commencement..... Date of Termination.....

Occupier's Registered Brand

Farm Brand No. allocated to Native or Somali

(a separate individual number to be allocated to each Native or Somali and to be branded on all his cattle)

No. of cattle allowed on contract

No.	Date of Arrival of cattle or stock on farm	Sex	Description of Cattle or Stock	Date of Branding	Remarks, as to death, transfer, sale, theft, etc.,
1					
2					
3					
4					
5					
6					
7					
8					

N.B.—One page of the Register to be allocated to each Native or Somali.

OBJECTS AND REASONS

This Bill is designed to give effect to the recommendations contained in the Report of the Committee appointed to review the Resident Native Labourers Ordinance, 1925, and to report what amendments were necessary for its improvement.

2. With the exception of certain minor amendments relating to penalties, and a few changes in terminology the Bill follows the Draft Bill appended to the above-mentioned Report.

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

4

DOWNING STREET,
4th May, 1937.

Dear Creech Jones,

(3)

You wrote to me on the 28th April asking for a copy of a Bill to amend the Kenya Resident Native Labour Ordinance.

As I indicated in reply to your question in the House on the 28th April, the Bill has not yet got beyond the draft stage. I have not received the revised draft, nor shall I necessarily do so. Nor, to my knowledge, has the Bill been published in the Gazette.

Yours sincerely,

W. Austrey Gore

P.S. If you personally would like to glance at the Confidential despatch I sent to the Kenya Government on the whole subject I could show it you here. But it is obviously not for publication.

W.O.G.

A. Creech Jones, Esq., M.P.