

38341

C0533/486
KENYA

38341

FREEHOLD LAND TENURE

Previous

Subsequent

1940.

R. 297
M^{rs}. Parkin
297 98
2/10/67
21/6

C.1
LAND

Extract of a letter from Lord Francis Scott to Sir Cosmo Parkinson, dated 1st September, 1937.

(B)
I also wrote some time ago to the Secretary of State on the subject of freeholding. Once the white Highlands are secured, there can be no objection to a system of freehold on conditions, and it makes an enormous difference when one wants to raise money on one's farm.

The following is the relevant extract from Lord Francis Scott's letter of the 26th July, to the Secretary of State:

"I cannot see that there can be any serious objection to freeholding land. The Government of Kenya promised last year to appoint a committee to explore the question. Without committing yourself to any actual scheme, would you be willing for some plan to be made by which leasehold land can be converted into freehold? I am dealing merely with the broad principle. It does make a real difference to getting finance to help develop land, if it is freehold."

The Secretary of State saw this letter but instructed that the Private Secretary should merely acknowledge it and explain that the Secretary of State had gone to Geneva and would not be back until the end of August, when the letter would be laid before him.

The development of the policy in regard to the alienation of land in Kenya is described on pages 6-17 of the report...

We do not appear to have heard of this. J.C.

Table A.

the Land Tenure Commission, Nairobi, (No. 58 in the Library collection of East African Pamphlets No. 10941). The position can be briefly

summarized as follows:—
The original land grants in Kenya were freehold. In 1902 a Crown Lands Ordinance was enacted making provision for both freehold grants of areas not exceeding 1,000 acres, and also for leasehold grants for term not exceeding 99 years. The policy of the Government gradually tended towards leasehold grants and since 1918 no new freehold grants have been made.

Grants of Crown lands are now made under the Crown Lands Ordinance, 1915, as follows:—

- (a) Ordinary farm leases are granted for a term of 99 years. The rent is twenty cents per acre per annum for the first period, revisable in 1945 and every twentieth year thereafter. Development conditions are imposed.
- (b) Township plots are granted on 99 year leases, but without any provision for the revision of rents.

Table B.

In 1922 there was issued the report of a Land Tenure Commission (No. 50 in Library volume of East African Pamphlets No. 10942). On page 7 of that Report the Commission recommended that while land grants should continue to be on lease in the first instance, all lessees should have the right, after, say, 5 years, of applying to the Land Board for a freehold

freehold title. All the development of the land on the property here in conformity with the requirements of the four Freehold Title Billions on the part of a State is in the direction of the capitalization of the land.

I have been unable to trace any of the papers relating to this report or any other papers dealing with a proposal to allow freehold grants of land in Kenya.

It will be seen from No. 2807/29 Northern Rhodesia that, in that year, it was decided that (with certain exceptions) all grants of land in Northern Rhodesia should be leasehold. This was a reversal of the practice of the C.S. Company, which had been in the habit of making freehold grants.

The following is an extract from Sir Cecil Bottomley's minute on that subject:

"I should like to point out that for 20 years at least before the 1922 Agreement, C.S. policy had been directed against freehold grants in Tropical Africa."

Quite recently (48013/7/46) a proposal to allow freehold grants in Lusitania was turned down.

The objections to freehold grants are that such a system very largely deprives the Government of any control over the development of the land, and opens the door to speculation and speculation. It is doubtful whether the Government would be prepared to agree to the re-annulment of freehold titles in Kenya.

J.P. Paine
18/3

We have not, so far as I remember, heard anything about freehold land in Kenya for some time. No doubt the imminence of the first rent ^{re}revision in 1945 is responsible for bringing the matter up.

It is not a question of securing the White Highlands." The Highlands could not be any more secure than they are and what it does come to is the point of principle as to whether the

Government of Kenya ought to let these lands go on freehold. I am quite convinced, in my own mind, that the answer is 'no', and further that no Government in this country could ever ^{agree to} ~~meet~~ it.

Kenya's only asset is its land. In order to allow of the necessary development of the country, Kenya ought to get a reasonable return from the land which it alienates to outsiders. Therefore the charging of a fair rent is the only proper thing to do, and that rent ought to be revised from time to time; as is provided in the present legislation. To take a new country like Kenya and give away freehold chunks of land is really a most unsound proceeding. If you are to get the full value of it, then the price to be paid for freehold land would have to be great enough to compensate for any reasonable foreseen improvement. With land at its prairie value as it was, and as a lot of it still is, it would be very difficult to charge a proper economic price. To let it go too cheap is to part with the assets of Government, and one can be quite certain that there would be a furious opposition here to setting up a race of "squires" in Kenya. Not that I have any objection to squires, but you can 'squire' away on a 99 year's lease just as much as on freehold.

If existing settlers were to be allowed to convert their leasehold farms into freehold, then the question would arise as to what basis the conversion should take place upon. Twenty to twenty-five years is a normal period for purchase, but that assumes that a more economic rent is being paid. The rent in Kenya is 2s. 6d. an acre till 1945, and it is probably ^{the case that} brought if any of the land is being put to any use at all, it is worth a good deal more now. Therefore, in justice to the Government, there would have to be a very comprehensive re-valuation, which would take a lot of time and would cost a lot of money.

Apart from these particular questions, the general principle all over the world nowadays is against freehold land, and I cannot see it being accepted for Kenya, which is about the last place, in my opinion, where the principle ought to be introduced.

This will mean, probably, the basis of a further controversy with the unofficials, who will proceed to argue that the entire safety of their whole future depends on having freehold land. When Lord Francis Scott says that it makes an enormous difference when you want to raise money, one is not sure how far to take him literally. From the point of view of raising money, there is very little difference between freehold and a 999 year's lease, and indeed, one of the troubles in Kenya has been that they have found it far too easy to raise money.

Hence

Hence over-mortgaging, and hence, considerable trouble. If you want to make certain that the farming community does not get into debt, the best thing for it is not cheap credit, but no credit at all. And having regard to Kenya's record between 1930 and 1936, I don't think that freehold or leasehold could possibly make any difference. In regard to leases in townships, it is another matter, but then land in townships is notoriously a precarious investment. It may go up, or it may not, and having regard to conditions in Kenya, it is somewhat doubtful whether anybody would be prepared to lend much on the security of a township plot. Land has appreciated beyond doubt in Nairobi and Mombasa, but it is by no means certain that it won't depreciate considerably in the next few years, and if anything occurs to shift the residential quarters, land will lose its value. So it is a speculation anyhow, since the value of the piece of land in a township depends rather on the site value than on its intrinsic worth.

J. S. G. Flood

20.9.1937.

The point has not been taken. The note is to have their first revision on Dec. 31. 1945. Consideration of the date of the lease. This proposal may already be a deterrent to would-be lessees. The point was mentioned when the terms of the C. L. Ord. were under consideration, & Sir F. Piddar's reply was "There will be no revision." He

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Apart from these particular questions, the general principle all over the world now-a-days is against freehold land, and I cannot see it being accepted for Kenya, which is about the last place, in my opinion, where the principle ought to be introduced.

This will mean, probably, the basis of a further controversy with the unofficials, who will proceed to argue that the entire safety of their whole future depends on having freehold land. When Lord Francis Scott says that it makes an enormous difference when you want to raise money, one is not sure how far to take him literally. From the point of view of raising money, there is very little difference between freehold and a 999 years' lease, and indeed, one of the troubles in Kenya has been that they have found it far too easy to raise money.

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J. C. Flood

20.9.1937.

The point has not been taken. The note as to have their first revision on Dec. 31. 1945. Was failure of the date of the lease. This proposal may already be a deterrent to women. In fact, the point was mentioned when the terms of the C. L. Ord. were under consideration, & Sir F. Fisher's reply was "There will be no revision". Perhaps

8/10/37
5.10.37
Mr. Creasy,

I shall be sending on in a day or two the draft of a personal letter to the Governor of Kenya sending him correspondence I have had with Lord Francis Scott over here. In a letter to me Lord Francis referred to this question of freeholding on which he had already written to the S. of S. on the 26th July. As you will see from the earlier part of Mr. Paskin's minute, that letter to the S. of S. was set aside at the time. I am not sure whether the S. of S. now wishes to send a reply. It would be as well, I think, for you to hold this up until you get the general draft letter to the Governor from which he will see that Sir C. Bottomley told Lord Francis Scott that any proposals which came to the C.O. i.e. from the Government of Kenya would have every consideration, but that we had been brought up in a school which held that the Government ought to retain a benefit from the land as land quite apart from any indirect fiscal benefit from its development. There was very great controversy before the war on this subject, and, ultimately, the then S. of S. yielded to the extent of allowing ordinary farm leases for a term of 999 years with periodical revision of rent. Personally,

I

I should like to see that system maintained, and not go back to freehold.

ack
5.10.37.

I agree

Sir C. Bottomley

I have explained that the S.O.S. can not propose to offer to Lord Francis Scott on this point.

J. Creasy
11.10.37

There were no other views
beyond anything more to
Sir R. Brooke Popham. I said
in my general letter that
that if S.O.S. decided to
write on this subject to
Lord Francis Scott, S.O.S.
wd. let him (Sir R. Brooke
Popham) know.

S. A. Dept
an
P. Paskin
21/10

Register for records -
J. Bottomley
ack
11.10.37

1. Extract from Note of Discussion between
Sir C. Bottomley & Lord Francis Scott on 29.9.37
(Orig. rept. on 38300/37)

2. Extract from letter to Sir R. Brooke-Pollock dated 4.10.37
(Draft on 38300/37)

14/4/39
Mr. Mortimer (Commissioner of Lands, Kenya) called yesterday having been asked by Mr. Harrigin to sound the C.O. semi-officially as to what our reactions would be if a local committee were now to recommend that leasehold land in the Highlands should be converted to freehold, as it was felt that the Government could no longer resist the demand for a committee to be appointed to explore these questions.

I showed Mr. Mortimer the record of Sir C. Bottomley's conversation with Lord Francis Scott at No. 1 on this file and I gave him the reference to Sir C. Parkinson's letter of the 9th of October (No. 14 on 38300/37) with which a copy of Sir C. Bottomley's minute was sent to the Governor. I also told him the general tenor of the minutes of this file and told him that he was at liberty to tell Mr. Harrigin that Lord Harlech had expressed himself in favour of the maintenance of the present system. In reporting to Mr. Harrigin, Mr. Mortimer will make it clear that this last item of information is not for general consumption.

There is nothing more to be done on this unless and until we hear something further from Kenya. It can therefore be put by.

2
Extract from letter to Sir R. Brooke-Pollock dated 4.10.37
(Draft on 38300/37)

The only other point which I think I need mention is as regards freehold tenure in the Highlands. In his letter of the 1st September Lord Francis said that he wrote sometime ago to Mr. Ormsby Gore on this subject. That letter came just before Mr. Ormsby Gore was going to Geneva, and the relevant passage was :-

"I cannot see that there can be any serious objection to freeholding land. The Government of Kenya promised last year to appoint a committee to explore the question. Without committing yourself to any actual scheme, would you be willing for some plan to be made by which leasehold land can be converted into freehold? I am dealing merely with the broad principle. It does make a real difference to getting finances to help develop land, if it is freehold".
I do not know yet whether Mr. Ormsby Gore intends to send a reply, but of course if he does, he will let you know what he says.

Yours sincerely,

(Sgd.) A.C.C. Parkinson.

E

8
CWB

EXTRACT FROM MEMO OF DISCUSSION BETWEEN SIR G. BOTTOMLEY AND LORD FRANCIS SCOTT ON 22ND SEPT. 1957 (CPLD. MEMO. ON 38300/37)

Settlement, Freeholding and Publicity.

I said that the only hesitation which we are likely to have over further European settlement would be on the question whether the settlers would be able to get a living. I expressed the personal opinion that we ought now to get back to the old position that settlers ought to have a reasonable amount of capital behind them, but Lord Francis Scott thought that young men of a good farmer stock ought to be able to make a living. I said that we did not want to have any responsibility for failures.

As regards freeholding, I said that, of course, any proposals which came along would have every consideration, but that we (Mr. Flood was with me at that time) had been brought up in a school which held that the Government ought to retain a benefit from the land as land, quite apart from any indirect fiscal benefit from its development. As regards publicity, reference was made to the scheme for unofficial publicity which is now under consideration by the Governors' Conference. I said that I did not anticipate any opposition here to a good scheme of this sort.