

1938

Kenya

No. 38005 (Part I)

SUBJECT.

CO 533/487

Land Commission

(General Legislation)

CLOSED
UNTIL
1970

Previous

1937

Subsequent

Part II.

LAND

1. Gov Kenya

Conf 30

8-2-38

The copy of certain Memoranda together with interim Report of Leg. C. Sub-Committee, appointed to consider whole subject of draft legislation required, and comments thereon.

Gov. (20)

19/2

This has been discussed between Mr. Dawe, Mr. Dale and myself, and we have had the further advantage of consultation with Mr. William (Solicitor-General, Kenya). ~~Now~~ ^{now} I submit a draft reply, prepared in consultation with Mr. Dale, in accordance with the conclusions reached at the discussion. The draft is, I think, self-explanatory and it deals very largely with matters of detail on which it is unnecessary to comment further in this minute. In order to reduce the bulk of this bundle I am not circulating the original papers but duplicate copies of the previous correspondence.

Mr. William has seen the file and agrees with it.

J.P.P.

to be returned to file.

The only points on which special comments seem necessary are as follows:-

- (a) Contrary to the previous recommendation of the Government of Kenya (which was accepted here) that the "B1" lands, in the Land Commission's classification, should be merged with the "A" lands, the Governor, on the unanimous advice of the Executive Council, with which he agrees, now recommends that the "B1" lands should be dealt with exactly as advised by the Land Commission. My own personal view is that this is a wholly unnecessary over-elaboration as (a) I doubt whether any part of the "B1" lands could ^{ever} be withdrawn from native occupation and (b) the Government appears to have adequate powers to ensure that effective use is made

And it is a very small area (comparatively) (see?)

made of this land, without setting it up as a separate class.

It appears, however, that the Unofficial Members of the Sub-Committee of the Executive Council attach considerable importance to following the recommendation of the Land Commission in this matter, and they succeeded in persuading the Official Members and the Governor, with the result that it is now put forward as a unanimous recommendation. In the circumstances it is, I think, clear that it should be accepted.

(b) The Minority report of the Unofficial Members of the Sub-Committee has been sent home without any comment in the official despatch but I do not think that we can avoid commenting upon it in the reply.

As indicated in the Governor's semi-official letter (extract at No. 2) this Minority Report is in the nature of a political manifesto and has been put forward without any real expectation that it will produce any effect. The Unofficial Members are quite aware of the reasons why it is not possible to meet their wishes as regards the statutory reservation of the Highlands for Europeans. In this connection it may be mentioned that the Government of India on its part has also sent home a long telegram reiterating its attitude to this question - also apparently without any expectation that it will have any effect.

The

The Unofficial Members of the Sub-Committee have, however, drawn attention to a point on which Mr. Dale and I are inclined to think that it is not only possible, but may even be desirable, to meet them. This is the point raised at "C" on page 4 of the Minority report in which they point out that it is proposed to include in the Native Lands Order in Council, a provision to the effect that the areas of these lands shall not be altered (it is implied, but not expressed, that these areas should not be altered except by an Order in Council), whereas there is no corresponding provision in the draft Highlands Order in Council.

In the sentence at the bottom of page 2 and the top of page 3 of the Minority report they point out that acceptance of the Land Commission's recommendations as a whole by the European Elected representatives was specifically contingent on the acceptance of the recommendation in para. 1979 of the Report to the effect that the European community should be given the same measure of security in regard to land as was recommended for the natives. It was, however, pointed out in para. 7 of the Secretary of State's confidential despatch No. (4) of the 28th of October, that it would clearly be impracticable to create for the Highlands precisely similar machinery to that adopted for the native lands and that to this extent it is not practicable to give effect to this recommendation of the Land Commission. I submit, however, that there is no reason why the boundaries of the two areas should not receive the same

measure

No. 5 on 29005/3/56 Sent on Separately

measure of formal security. I use the word "formal" deliberately because the view held here is that no formal provision is required in either Order in Council. Since, however, a provision has been inserted in the draft Native Lands Order I see no reason why it should not also be inserted in the Highlands Order, and paragraph 15 of the draft despatch has been prepared on this basis.

(c) Since it is proposed to include in the reply some observations on the Minority Report submitted by the European Elected Members I have thought it desirable also to include a paragraph (paragraph 16) on the memorandum submitted by Mr. Pandya, so as to avoid the appearance of one-sidedness; though I am afraid that that paragraph will not give very much satisfaction to Mr. Pandya.

J. J. Pasain
11/3
W.D. 11.3

A good deal of this draft deals with drafting and other technical points on the proposed legislation with which the higher authorities need hardly be troubled.

The important passages are:-

Paragraph 2. We originally agreed, on Sir A. Wade's recommendation, that the 'A' and 'B' lands should be amalgamated. The Governor

now asks us to go back on that and I agree with Mr. Pasain that we should do so. We shall thus revert to the differentiation recommended by the Land Commission; and it is reasonable and logical to take our stand on that. It will be recollected that the 'A' lands were those to meet the claims made by natives as of right, and the 'B' lands were lands to be added to satisfy their economic requirements. The result aimed at in keeping the 'A' and 'B' lands distinct is to preserve a certain fluidity with regard to the latter.

Paragraphs 9 - 12. These paragraphs deal with the position of native right-holders; and the objects of the comments made is to ensure that the rights of these natives are properly safeguarded.

Paragraphs 15 - 16. These paragraphs deal with the observations on the draft legislation made by the European and Indian representatives. The burden of the European comment is that as everyone knows it is the intention to reserve the highlands to the Europeans, why not say so candidly in the Legislation? But the policy on this point is settled and it is obviously impracticable to meet the settlers' views. As will be seen from (2), they are no doubt simply flying their political flag in making this request, and do not expect it to be met. But I agree with Mr. Pasain that, as a sop to them, it would be desirable to include a provision in the Highlands Order-in-Council that the boundaries of the Highlands shall not be altered. We are doing this for the natives and it seems only reasonable that we should do it for the Europeans too.

I have cut out some of paragraph 15 of the draft

The B1 lands could be transferred to those which needed them more - but then, many from native use altogether - or so I think W.D.

W.D.

* meaning, of course, ex. ch. by another O.-in-C. W.D.

despatch as I do not think that it is suitable,
in a despatch which will be circulated to all
the Unofficial Members of the Executive Council,
for the Secretary of State to refer to his
difficulties in the House of Commons, and with
the Government of India, or to the oral explanations
which have been given in confidence to the
European Elected Members.

Mr. Paskin, with Mr. Dale's assistance,
has prepared this draft despatch with great
thoroughness and expedition; and I am sure
that his labours will be much appreciated by
the higher authorities.

A. J. Dale

14.3.1938

Scouting area.

*The draft despatch looks like
rather incoherent and there
is no point in this it should
stand other committees.*

CRB
15.3.38

Secretary of State,

A good deal of this admirable draft
which Mr. Paskin has prepared, with the help of
Mr. Dale, deals with detail, and I do not think
that

that you need be troubled with it. But I feel that
I must send it on for you to see the Minority Report
submitted by representatives of the European Members
of the Sub-Committee of the Executive Council which
dealt with this matter, and the comments in the draft
despatch in paras. 15 and 16. Even so, I do not think
that you need read right through the Minority Report,
as the early part is concerned more with detail: it
is the parts marked with blue on pages 3, 4 and 5 which
are important as raising the issue whether or not the
Highlands ought to be reserved by legislation for the
Europeans. There is no intention of making this
specific racial discrimination statutory.

? Draft despatch may issue.

CRB

16.3.38.

CRB 17.3.38

3 Kenya Tel. 18 Conf 17/3/38

4 To Kenya TEL 28 Conf 18.3.38

5 To Kenya Conf (2) - 1 Answer. *19/3* 18 March 1938

CRB

6. Col Dec 3pa.
For twelve copies of a memo.
on proposed legislation.

22.4.28

The Memo embodies the amendments
which were suggested in para 17 of No 5.
Paras 1, 3, 4 have been dealt with by inserting
the verbal amendments proposed; para 8 has
been deleted as suggested; and para 7 has
been entirely recast to meet the three
criticisms which had been made of the
draft.

? No action required
Clark White
4/5

Sir C. Bolton.

You will be interested to see
that this memo. has now been
published. The only comment I
have to offer is that it might
have been preferable to add at
the end of paras 4 & 8 sentences
to the effect that it is the intention
that alterations to the boundaries of
the Native Lands & the Highlands
Sh. not be allowed ~~to~~ (other than
as provided) except by an O.-i.-C.

These were words to this
effect at the end of para 4 of
the draft memo. submitted in No 5,
but their deletion was suggested
in para 17(2) of No 5. This was
because the para. purports to give
the substance of the relevant provision
of the draft O.-i.-C. which does not
include the words "except by an O.-i.-C."

The words now added to para 8
("... the boundaries so defined will be
unalterable") need however rather less

a statement of intention instead of
as a result of a proposed provision
in an O.-i.-C.

Of course, if the O. is raised in
Leg. Co. the Gov. will be able to
explain exactly what is intended. The
O. is whether it should be suggested
to him that the ~~Government~~ Govt. should
also mention this point (as a safeguard
against possible future ~~misapprehension~~),
even if the point is not raised by
someone else? I am inclined to think
that it might be a good thing to do.
If you agree I will opt. for course.

J.P. Bann
4/5

Mr. Parkin

Pl. put up a 5th 50. letter. The
omission was directed accordingly, even if on
a point of form, & I'd rather not say anything
now that the mind may create misunderstanding.

C.W.S.
4.5.28.

On reading the draft I doubt if the
point is a good one. So far as the
Highland Order is concerned, para 3
is the first of the "successive" paragraphs
& referred to at the end of para 3 &
must therefore definitely refer to it,
not an ad ministrative proviso, but
that the Order is to contain.
So I doubt if the ~~draft~~ letter is
clearly

However, G. C. W. 16th May so
that we may have Mr. Dale's
opinion on his return.

W.S.

6.5.38.

7. You Conf. 93 30.4.38
Hinds draft Native Lands Trust, Crown
lands (Amend) Bills & Kenya (Highlands) & Kenya (Native
lands) Orders in Council with memoranda &
replies to questions raised in No. 5. Asks for early
approval for publication of the two draft Bills.

8. W. Harragan s/o 30.4.38
Suggests that Mr. Stacey, his legal assistant
could be called in for consultation.

9. Sir R. Brooke Popham s/o to Sir C. Parkinson 30.4.38

10. To Sir R. Brooke Popham 9 asked 12.5.38

11. W. Harragan s/o 11.5.38
Mr. Dale. Hinds press report on debate & comments on
points raised.

We have agreed that we should

each send No. 7 & have

discuss. I am using the 2nd copy

copies for this purpose

vide to send to Sir R.

J. J. Pascoe
11/5

~~W.S.~~

Mr. Dale, Mr. Costley-White and I have now been
through all this revised draft legislation
and have considered it, together with the
explanations given in the covering despatch
and the explanatory memorandum, and have come
to the conclusion that, subject to a few
purely drafting amendments, the two Bills may

now

now be approved for introduction into the
Legislative Council. We have had the advantage
of being able to consult Mr. Stacey (Legal Assistant
to the Attorney-General of Kenya) who, as explained
in No. 8, has been mainly responsible for the
production of these revised drafts. All the
amendments that Mr. Dale thought necessary have now
been agreed with Mr. Stacey so that the draft
despatch submitted herewith may be regarded as an
"agreed" draft.

I have also discussed with Mr. Dawe the
question raised in my minute of the 4th of May, in
the light of Sir C. Bottomley's minute of the 6th
of May, and we have come to the conclusion that
it would be desirable for the Government spokesman,
when the measures are introduced into Legislative
Council, to explain the intention in regard to the
statements in paragraphs 4 and 5 of the published
explanatory memorandum, that it will be provided
in the two Orders-in-Council that the boundaries
of the Native Lands and the Highlands shall not be
altered. I submit a revised draft for conson.

J. J. Pascoe

21.5.38.

Sir G. Bache

I think you should see these papers now. I do not think you
need trouble about the two Bills, but the draft orders, which
will not be submitted to H. H. until the Bills have become Law,
are now I hope in their final form. Attached are copies
of the orders as last received from Kenya in conformity
with the amendments which it is supposed have should be

made (see the memo, attached). I have indicated in pencil the provisions which are new since you last saw them. There is nothing ^{in principle} ~~of substance new~~ in the draft that a new class of land - Native Reserves - appears. This is in exact accordance with the Commission's recommendations. The despatch at 1 on this file para. 3 explains Kenya's change of mind on this question of the B I lands.

This is one other point, arising out of the fact that the boundaries of the various lands are to be set out in Schedules to the Ordinances. I have ~~sent the~~ ^{be} ~~added~~ a para. to the draft letter about this, after discussing with Mr. Dale.

(W.D.)

255.

I have made one or two slight alterations in red which I have shown to Mr. Dale.

As regards the last paragraph of the preceding minute, I do not see what difference it makes, if boundaries are ever to be altered, whether they are altered by an Order in Council or a Bill reserved for H.M. No one can very well give public pledges that they never will be altered, and I can understand the desirability of covering

up

up that statement. I should have thought that the accurate thing for the spokesman to say was something like the following:-

"You will observe that the boundaries ~~can~~ now only ~~be~~ be altered by an Imperial Order in Council or by a Bill reserved for the signification of H.M.'s pleasure. The position therefore is fully safeguarded, etc., etc."

I have not any strong views about the other course if you are committed to it; it is only that I cannot see what satisfaction anybody gets from being told that the intention is that, if something is done which people in Kenya think ought not to be done, it will be done by an Order in Council.

H/B 26.5.38.

Sir C. Bottomley.

1. The draft despatch is mainly detail and I do not think that you need trouble to go at all closely into it. It has been drafted by Mr. Paskin and Mr. Dale, after consultation with Mr. Stacey, the Legal Assistant in Kenya, who is the expert on the draft Bills. I think that the decks are now clear for action and the Governor can go ahead with the introduction of the legislation without further reference home.

2.

2. The Governor is anxious to bring the Bills before the Legislative Council at the July session and to give them prior publication for longer than the statutory fourteen days. We ought, therefore, to try to get the despatch off this week if possible.

3. With regard to Sir G. Bushe's minute, I think that it would be politically undesirable to start saying now that the boundaries will be alterable by a reserved Bill as well as by an Imperial Order-in-Council. I agree, of course, that a reserved Bill gives just as much safeguard as an Order-in-Council, but we are dealing not with legalistic and technical conceptions but with politics and sentiment. From the 1934 White Paper onwards to the letter to the Elected Members Organisation enclosed in the Governor's latest despatch (7), we have taken the position (subject to certain refinements which are irrelevant here) that the boundaries will not be alterable except by Order-in-Council. I think that we ought to stand firmly on that. If now, at the eleventh hour, we attempt, with however much justification in logic, to alter our ground, we shall, it seems to me, lay ourselves open to suspicions and controversy. The settlers are hyper-sensitive on the question of the boundaries and I should have thought it was desirable that nothing should be done at this moment which might, I suppose, lead them to think that the new Secretary of State was

trying

trying to depart from a commitment entered into by his predecessor.

4. With regard to paragraphs 7 and 8 of the explanatory memorandum, my own feeling is that it would be very desirable for the Government spokesman in the Council to make it crystal clear exactly what those paragraphs mean. We do not want to be exposed to misunderstandings in the future, and I think that a plain statement of the position which will be 'understood of the people' would be advisable. The Government spokesman can only reiterate what has already been said that there is no intention of altering the boundaries except by Order-in-Council. Such a statement is, of course, of limited value as no Government can, either in the region of policy or of law, tie up the future, but it apparently gives some satisfaction to the settlers and as we have said it so far we had better go on saying it until all the legislation has been put through.

I suggest that you should write to the Governor on my points at 3 and 4 as in the draft submitted.

A. M. Awe

30.5.38.

Df to passed. But when action is complete the file should be sent to Sir C. Parkinson so that he may see how matters stand. Possibly the S. of S. should also see. W.A.S. 30-5-38

11^A To W. Haragiri 3/0. 8 and 30.5.38

12 To A.C.M. in Brookelopham 90 - 1/6/38

13 To Lupa Comf. (c/c. Encls. attached to draft). Coms 2/6/38
(7 Encls.)

Seen
2.6.38

Lord Francis Scott is coming to see the Secretary of State on the 16th of June to discuss various matters including "the security of the White Highlands, and Order in Council about it", and it is to be assumed that Lord Francis will make an eleventh hour attempt to persuade the Secretary of State to insert in the Order in Council some words which will serve as an assurance to the European community that their privileged position in the Highlands will be perpetuated.

The settlers' point of view on this question was stated with admirable clarity by Major Cavendish-Bentinck and other European Elected Members in the debate in the Legislative Council on the 28th and 29th of May, of which a full report is given in the cutting from the "East African Standard" which forms the enclosure to No. 11 on this file. Those speeches were themselves in the nature of an eleventh hour appeal to the Secretary of State, and the Government spokesman promised that the views of the Elected Members should be brought to the notice of the Secretary of State, although he held

held out no prospect that the Secretary of State would alter the decisions on these matters which have been arrived at after such prolonged discussion and consideration.

Briefly, the Elected Members' case is that ^{mere} an assurance that there is no intention of altering the administrative practice in regard to the alienation of land in the Highlands which has been followed for the last 30 years, is insufficient security, because such an assurance cannot bind future Secretaries of State. They therefore ask that their privileged position should be secured by appropriate words in the Order in Council itself. This is impossible for the following two reasons, which have been explained in confidence to Lord Francis Scott and Major Cavendish-Bentinck:-

(a) It would be unacceptable to the Government of India and to the Secretary of State for India. This aspect of the matter came before the Cabinet in February, 1936, (No. 25 on 38005/3A/35) and it was then decided that the Order should do no more than define the boundaries of the Highlands and should not refer to the privileged position of Europeans therein. (The Secretary of State will be familiar with the discussions with the Secretary of State for India which led up to this decision.)

(b) It would involve an infringement of the Convention of St. Germain and of the Anglo-Japanese Commercial Treaty of 1911.

Unfortunately, neither of these reasons is of such a character that it can be mentioned publicly, so ~~that~~ one has to fall back on the statement that the Government is unable to contemplate statutory racial discrimination in an Order in Council relating

relating to the occupation of ^{land in} this area.

(In this connection it will be recalled that the Government of India is implacably opposed even to the continuance of the existing administrative practice whereby alienation of land in the Highlands is restricted to Europeans, and it was only on the understanding that the Order in Council defining the boundaries of the Highlands would not contain any discriminatory provisions that the Secretary of State for India was prepared to acquiesce in its issue.) On this aspect of the matter I can only suggest that Lord Francis Scott should be reminded of the reasons why it is absolutely impossible to comply with the wishes of the European community in Kenya.

It might also be pointed out to Lord Francis Scott that the administrative practice of reserving the Highlands for European occupation has been followed for 30 years under Governments of every shade of political complexion. Moreover, even the inclusion in the Order in Council of words purporting to preserve the privileged position of the Europeans in the Highlands would not afford them the irrevocable measure of security that the settlers demand, since it would always be possible for such an Order in Council to be amended at some future date. In other words, the oral assurance that has been given that there is no intention of altering the present administrative practice is in fact just as valuable to the settlers as would be a

provision

provision in the Order in Council.

Apart from this question of the insertion of words in the Order to preserve the privileged position of Europeans in the Highlands, the Elected Members ask for two things:-

(a) that it should be prescribed that the fifth Unofficial Member of the Highlands Board, to be appointed by the Governor, should invariably be a European;

(b) that the functions of the Board should be extended to include the right of veto (at present exercised by the Governor in Council) on land transactions between parties of different races.

As regards (a), as explained in paragraph 8 of Lord Harlech's despatch of the 28th of October, 1937, (No. 17 on 38005/3/37), the deliberate intention was to leave the Governor free to appoint anyone whom he may wish to represent the interest of the natives (of whom there will be large numbers) still remaining in the Highlands. It was also considered to serve the further purpose that it provides an answer to the charge that Government will have abandoned the control of the land in the Highlands to the European Unofficials, since in theory it will still be open to the Governor to appoint an Indian or anyone else whom he chooses as the fifth Unofficial Member of the Board. ~~It is also necessary to observe that, on the strength of paragraph 16 of Lord Harlech's despatch of the 18th of March (No. 5 on this file), Mr. Pandya (one of the Indian Members of the Executive Council) has been given what is tantamount to an assurance~~

(Siv)

(Sir A Wade's letter of the 13th of April, which forms an enclosure to No 7 on this file) that the Governor will remain free in his choice of this fifth Unofficial Member of the Board.

As regards (b), the consideration at X above applies equally, and I do not think that the Secretary of State could justifiably give way on either of these points.

J. P. Paslin
9.6.38.

S. J. has seen.

Putty

Alie

Appare no. 6

- 14. Extract from Interview between S. of S. and Lord Francis Scott 17.6.38.
- 15. To Sir R. Brooke Popham. 2/0. (extract) (w/c note of interview) 1.7.38
- 16. You HOH 15.7.38
The progress report on administrative action taken to give effect to demands of the Kyo Land Commission up to 30.6.38.

Putty

Clonus White

25/7

J. P. Paslin

17. A. Creech Jones s/o to S. of S. 23/7/38
Requests copies of Bills amending Crown Lands Ordce.

DESTROYED UNDER STATUTE

18. To Creech Jones s/o (w/Gazette) 17 Answd. 23/7/38.

DESTROYED UNDER STATUTE

NOW SEE PART TWO

13

*Enclosure to Kenya Confidential despatch No:
of April, 1938.*

COLONY AND PROTECTORATE OF KENYA



A BILL TO MAKE PROVISION FOR NATIVE LANDS IN THE COLONY

- (a) The Bill printed on the left-hand side hereof is the Bill as originally drafted but embodying the amendments proposed by the Secretary of State in the memorandum enclosed in his despatch Confidential (6) of the 28th October, 1937. *He op. 38005/6/37*
- (b) The Bill printed on the right-hand side hereof is a revised draft of the Bill prepared by the Attorney General and includes those amendments suggested by the Secretary of State in his above-mentioned despatch which it is proposed to adopt, a certain number of drafting amendments, a re-arrangement of clauses, and certain amendments subsequently approved by the Secretary of State in his despatch Confidential (2) of the 18th March, 1938. 5

N.B. The numbers shown in blue-black ink are the numbers of the corresponding clauses of the Bill submitted to the Secretary of State under Kenya Confidential despatch of the 21st May, 1935.

A Bill to make Provision for Native Lands in the Colony

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

Short title.

1. This Ordinance may be cited as the Native Lands Trust Ordinance, 1938.

Commencement.

2. This Ordinance shall not come into operation until Orders have been made by His Majesty in Council providing for the establishment of a Native Lands Trust Board and a Highlands Board and for defining the areas of the native lands, the native land units, the native leasehold areas and the Highlands, and shall thereafter come into operation on such date as the Governor shall by proclamation in the Gazette appoint.

Interpretation.

3. In this Ordinance, unless the context otherwise requires:—

"Trust Board" means the Board which may be established as the Native Lands Trust Board in accordance with the provisions of any Order of His Majesty in Council;

the "Highlands" means the areas of land which may be declared to be such by Order of His Majesty in Council.

"Highlands Board" means the Board which may be established as the Highlands Board in accordance with the provisions of any Order of His Majesty in Council;

the "native lands", the "native land units" and the "native leasehold areas" mean respectively the areas of land which may be declared to be such by Order of His Majesty in Council;

"temporary native reserves" means the areas of land, the boundaries of which are set out in the Fourth Schedule to the Crown Lands Ordinance.

Cap. 140.

A Bill to make Provision for Native Lands in the Colony

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 Native Lands Trust Ordinance, 1938. Short title.

2. This Ordinance shall not come into operation until Orders have been made by His Majesty in Council providing for the establishment of a Native Lands Trust Board and a Highlands Board and shall thereafter come into operation on such date as the Governor shall by proclamation in the Gazette appoint. Commencement.

3. In this Ordinance, unless the context otherwise requires— Interpretation.

the "Highlands" means the areas of land the boundaries of which are set out in the Seventh Schedule to the Crown Lands Ordinance; Cap. 140.

"Highlands Board" means the Board which may be established as the Highlands Board in accordance with the provisions of any Order of His Majesty in Council;

"mining lease" does not include a lease in respect of a subterranean area.

"native lands" mean the areas of land the boundaries of which are set out in the First Schedule hereto;

"native land units" mean the subdivisions of land into which the native lands are divided, which subdivisions are described in the Second Schedule hereto;

"native leasehold areas" mean the areas of land the boundaries of which are set out in the Sixth Schedule to the Crown Lands Ordinance;

"native reserves" mean the areas of land the boundaries of which are set out in the Fourth Schedule to the Crown Lands Ordinance; Cap. 140.

Arrangement.

4. This Ordinance is divided into seven Parts relating to the following subject-matters, that is to say:—
- Part I—Administration.
 - Part II—Inter-tribal Occupation Permits—Exchanges.
 - Part III—Setting Apart.
 - Part IV—Exclusions.
 - Part V—Leases and Licences.
 - Part VI—Miscellaneous.
 - Part VII—Saving—Extinguishment of Rights—Repeals.

PART I

Local Boards.

Section 1813.

5. (1) There shall be established in every administrative district in which any native lands may be situate an advisory board to be known as the Local Land Board (hereinafter referred to as the "Local Board") which shall consist of—
- (a) the District Commissioner as Chairman;
 - (b) four members of the Local Native Council, one of whom shall be chosen by the members of such Council and three of whom shall be selected by the Provincial Commissioner; or
 - (c) four members appointed by the Provincial Commissioner from among the native inhabitants of any administrative district where there is no Local Native Council; and
 - (d) such additional members as may be co-opted at any time by the Board.
- (2) The Chairman of a Local Board and two other members shall form a quorum.
- (3) A Provincial Commissioner may attend any meeting of a Local Board in his Province and at such meeting may speak but may not vote.

Functions of Local Boards.

Section 1813.

6. It shall be the function of a Local Board generally to exercise the various powers and to carry out the duties assigned to Local Boards by this Ordinance and by any rules made thereunder, and to make written representations to the Trust Board in regard to any matter concerning the protection of the native lands upon which the advice of the Local Board has been rejected by a Provincial Commissioner.

Local Native Councils.
Cap. 129.
Various Sections of the Report.

7. The Local Native Councils established under the provisions of the Native Authority Ordinance shall be responsible at all times for exercising the various functions assigned to them in respect of the native lands by this Ordinance and by any rules made thereunder.

"temporary native reserves" mean the areas of land the boundaries of which are set out in the Fifth Schedule to the Crown Lands Ordinance;

Cap. 140.

"Trust Board" means the Board which may be established as the Native Lands Trust Board in accordance with the provisions of any Order of His Majesty in Council.

PART I

ESTABLISHMENT AND FUNCTIONS OF LOCAL BOARDS

4. (1) There shall be established in every administrative district in which any native lands may be situate an advisory board to be known as the Local Land Board (hereinafter referred to as the "Local Board") which shall consist of—

Local Boards

- (a) the District Commissioner as chairman;
- (b) four members of the Local Native Council, one of whom shall be chosen by the members of such Council and three of whom shall be selected by the Provincial Commissioner; or
- (c) four members appointed by the Provincial Commissioner from among the native inhabitants of any administrative district where there is no Local Native Council; and
- (d) such additional members as may be co-opted at any time by the Local Board.

(2) The Chairman of a Local Board and two other members shall form a quorum.

(3) A Provincial Commissioner may attend any meeting of a Local Board in his Province and at such meeting may speak but may not vote.

5. It shall be the function of a Local Board generally to exercise the various powers and to carry out the duties assigned to Local Boards by this Ordinance and by any rules made thereunder, and to make written representations to the Trust Board in regard to any matter concerning the protection of the native lands upon which the advice of the Local Board has been rejected by a Provincial Commissioner.

Functions of Local Boards.

PART II

INTER-TRIBAL OCCUPATION PERMITS—ADDITIONS AND EXCHANGES

Inter-tribal occupation permits. Sec. 1485-1488.

B. (1) The Governor upon such conditions and for such term as he may deem expedient, may issue permits to occupy areas of land in a native land unit to and for the benefit of any native tribe, group, family or individual of any other native land unit.

Section 1474.

(2) No such permit shall in any case be issued unless and until the land to which the permit relates has first been set apart in accordance with the provisions of Part III of this Ordinance.

Section 1486.

(3) In every case, prior to the issue of a permit under this section, the Governor shall consult the Trust Board. If the Trust Board objects to the issue of the permit the Governor shall refer the matter to the Secretary of State, whose decision shall be final.

Exchanges. Section 1474.

9. (1) Notwithstanding anything in this Ordinance contained the Governor, with the consent of the Trust Board and with the approval of the Legislative Council, may grant leases of land in the native lands to any person or persons for the purpose of effecting exchanges of land.

(2) Every such grant shall be made upon such conditions and for such term as the Governor may deem expedient and in every case the land to be so leased shall first be set apart and shall be subject to the payment of compensation in accordance with the provisions of Part III of this Ordinance.

(3) Any land in the native lands which is the subject of an exchange by way of lease between native lands and Crown lands shall be deemed, by reason of such exchange, to have become Crown land for the currency of the term of such lease.

(4) All lands which are the subject of any exchange with land in the native lands under this section shall be deemed to be vested in the Trust Board for the currency of the term of the lease granted under sub-section (1) of this section.

The provisions of this sub-section shall apply to such lands irrespective of whether they be Crown lands, or lands

Handwritten note: There is no addition to the list

PART II

INTER-TRIBAL OCCUPATION PERMITS AND EXCHANGES

Inter-tribal occupation permits.

6. (1) The Governor may, upon such conditions and for such term as he may deem expedient, issue permits to occupy areas of land in a native land unit to and for the benefit of any native tribe, group, family or individual of any other native land unit.

(2) No such permit shall in any case be issued unless and until the land to which the permit relates has first been set apart in accordance with the provisions of Part III of this Ordinance.

(3) The Governor shall, before issuing a permit under the provisions of this section, consult the Trust Board. If the Trust Board objects to the issue of the permit the Governor shall refer the matter to the Secretary of State, whose decision shall be final.

Exchanges.

7. (1) Notwithstanding anything in this Ordinance contained, the Governor may, with the consent of the Trust Board and with the approval of the Legislative Council, grant leases of land in the native lands to any person for the purpose of effecting exchanges of land between land in such native lands and other land.

(2) Every such grant shall be made upon such conditions and for such term as the Governor may deem expedient, and in every case the land to be so leased shall first be set apart and shall be subject to the payment of compensation in accordance with the provisions of Part III of this Ordinance.

(3) Any land in the native lands which is the subject of an exchange by way of lease between native lands and other land shall, by reason of such exchange, cease to form part of the native lands for the currency of the term of such lease.

Handwritten note: Now the original text now covers the same

(4) Any land in the native lands which is the subject of an exchange by way of lease between native lands and Crown lands shall be deemed, by reason of such exchange, to have become Crown land for the currency of the term of such lease.

(5) All land which is the subject of any exchange with land in the native lands under this section shall vest in the Trust Board for the currency of the term of the lease granted under sub-section (1) of this section.

The provisions of this sub-section shall apply to such land, irrespective of whether it be Crown lands, or land held under

Cap. 143. held under the Land Titles Ordinance, or lands alienated under the provisions of any of the following Ordinances:—

- (a) the Crown Lands Ordinance, 1902;
- (b) the Crown Lands Ordinance;
- (c) the Crown Lands (Discharged Soldiers Settlement) Ordinance;
- (d) the Registration of Titles Ordinance:

Section 1475. Provided always that, where the circumstances attending any exchange are such that the Governor, the Legislative Council, the Trust Board, the Local Board and the Local Native Council concerned are all agreed as to the need for permanency in the exchange, the Governor, in lieu of granting a lease under sub-section (1) of this section, may by notice published in the Gazette effect the exchange by a permanent exclusion of land from the native lands and a permanent vesting in the Trust Board of the land exchanged.

Exchanges in the Highlands. Section 1496. 10. No exchanges under the provisions of this Part shall be effected in respect of any land in the Highlands save with the consent of the Highlands Board.

PART III
SETTING APART

11. (1) Subject to the provisions of this Ordinance, and in the case of mining leases subject to the provisions of the Mining Ordinance, 1933, the Governor may—

Powers of Governor as to land in native lands for social purposes, trade, industry and other public purposes. No. 61 of 1933. Section 1539. Section 1541.

- (a) grant leases of land in the native lands to any person for such terms and subject to such conditions as the Governor may deem expedient; or
- (b) declare that land in the native lands is required for a public purpose.

(2) Prior to the making of a grant under this section the land to which such grant relates shall first be set apart in accordance with the provisions of this Part.

(3) Save as is provided in section 9 of this Ordinance, any land in the native lands set apart under the provisions of this Part shall, notwithstanding such setting apart and any grant of such land subsequently made, remain part of the native lands.

12. (1) When it is desired that land should be set apart in accordance with the provisions of this Ordinance, application shall be made to the Provincial Commissioner in writing, and notwithstanding anything contained in any other law for the time being in force in the Colony, a Provincial Commissioner may, subject to the provisions of this Part, set apart land in the native lands within his Province.

Powers to set apart land in the native lands. Section 1541.

(2) Residential sites, which are required for the accommodation of persons engaged in any trade or industry, may be included in the area to which an application relates.

(3) Where any such application is made for the purpose of developing the mineral resources of land in the native lands the application shall be accompanied by a plan, based on a survey by a licensed surveyor, of the area to which the application relates and shall be addressed to the Provincial Commissioner through the Commissioner of Mines.

Ordinance, 36/34. Section 25 (1) (modified). Section 25 (2) of that Ordinance. Section 1559.

the Land Titles Ordinance, or land alienated under the provisions of any of the following Ordinances:—

- (a) the Crown Lands Ordinance, 1902;
 - (b) the Crown Lands Ordinance;
 - (c) the Crown Lands (Discharged Soldiers Settlement) Ordinance:
- Cap. 143.
Cap. 140.
Cap. 141.

Provided that, where the circumstances attending any exchange of land are such that the Governor, the Legislative Council, the Trust Board, the Local Board and the Local Native Council concerned are all agreed as to the need for permanency in such exchange, the Governor, in lieu of granting a lease under sub-section (1) of this section, may, by notice in the Gazette, effect the exchange by a permanent exclusion of land from the native lands and a permanent vesting in the Trust Board of the land exchanged.

8. No exchanges under the provisions of this Part shall be effected in respect of any land in the Highlands, save with the consent of the Highlands Board. Exchanges in the Highlands.

PART III
SETTING APART

9. Notwithstanding anything contained in any other law for the time being in force in the Colony, a Provincial Commissioner may, subject to the provisions of this Part, set apart land in the native lands within his Province. Provincial Commissioner may set apart land.

10. Save as is provided in section 7 of this Ordinance, any land in the native lands set apart under the provisions of this Part shall, notwithstanding such setting apart and any grant of such land subsequently made, remain part of the native lands. Land set apart remains native land.

11. (1) When it is desired that land should be set apart in accordance with the provisions of this Ordinance, application in writing shall be made to the Provincial Commissioner of the Province in which the land to which such application relates is situate. Application for setting apart.

(2) Residential sites, which are required for the accommodation of persons engaged in any trade or industry, may be included in the area to which the application relates.

(3) Where any such application is made for the purpose of obtaining a mining lease of land in the native lands, the application shall be accompanied by a plan, based on a survey by a licensed surveyor, of the area to which the application relates and shall be addressed to the Provincial Commissioner through the Commissioner of Mines.

12. (1) Where an application has been duly made to him in respect of the setting apart from the native lands of an area of land not exceeding ten acres in extent, a Provincial

Procedure as to setting apart land not exceeding ten acres in extent

18
Procedure as to setting apart land not exceeding ten acres in extent. Section 1526. Section 1541.

This section repeats section 36/34 of Ordinance 36/34 (modified).

Section 1541 (4)

Section 26 of Ordinance 36/34.

Section 1541 (3)

13. (1) When application has been duly made to him in respect of the setting apart from the native lands of an area of land not exceeding ten acres in extent a Provincial Commissioner, subject to the provisions of this Ordinance and with the approval of the Local Board concerned, may set apart such land.

(2) Where the area of land to which a proposal to set apart relates does not exceed ten acres in extent and the Provincial Commissioner supports the proposal but the Local Board concerned objects thereto, such area shall not be set apart unless and until the approval of the Governor to such setting apart has been obtained.

(3) Where an application to set apart an area of land not exceeding ten acres in extent is made to a Provincial Commissioner and is not supported by him, such application shall be forwarded for the consideration of the Local Board concerned. Should the Local Board support the proposal, the application shall be forwarded for the consideration of the Governor.

(4) Where an application to set apart an area of land not exceeding ten acres in extent is not supported by either the Provincial Commissioner or the Local Board concerned, the Provincial Commissioner shall inform the applicant that the application has been refused. The applicant may appeal in writing to the Governor against such refusal within twenty-one days of the date on which he is notified thereof.

(5) The decision of the Governor upon any of the matters referred to him under this section shall be final.

14. (1) Where any application is made to a Provincial Commissioner under this Ordinance to set apart from the native lands an area of land exceeding ten acres in extent, such application shall in every case, subject to the provisions of section 15 of this Ordinance and after being submitted to the natives concerned and to the authorities set out in paragraph (e) and (d) of section 16 of this Ordinance, be referred to the Trust Board.

(2) If the Trust Board approves of such application it shall grant the application.

(3) If the Trust Board does not approve of such application it shall submit the application to the Governor together with the reasons for such non-approval, and the Governor may refer the matter to the Secretary of State, whose decision shall be final.

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Power of Trust Board as to applications to set apart land exceeding ten acres in extent. Section 1541 (4).

This section repeats Section 27 of Ordinance 36/34 except in subsection (3), where we have put "may" for "shall".

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Commissioner may, subject to the provisions of this Ordinance and with the approval of the Local Board concerned, set apart such land.

(2) Where the area of land to which a proposal to set apart relates does not exceed ten acres in extent and the Provincial Commissioner supports the proposal but the Local Board concerned objects thereto, such area shall not be set apart unless and until the approval of the Governor to such setting apart has been obtained.

(3) Where an application to set apart an area of land not exceeding ten acres in extent is made to a Provincial Commissioner and is not supported by him, such application shall be forwarded for the consideration of the Local Board concerned. Should the Local Board support the proposal, the application shall be forwarded for the consideration of the Governor.

(4) Where an application to set apart an area of land not exceeding ten acres in extent is not supported by either the Provincial Commissioner or the Local Board concerned, the Provincial Commissioner shall inform the applicant that the application has been refused. The applicant may appeal in writing to the Governor against such refusal within twenty-one days after the date on which he is notified thereof.

(5) The decision of the Governor upon any of the matters referred to him under the provisions of this section shall be final.

13. (1) Where an application is made to a Provincial Commissioner under this Ordinance to set apart from the native lands an area of land exceeding ten acres in extent, such application shall in every case, subject to the provisions of section 14 of this Ordinance and after being submitted to the natives concerned and to the authorities set out in paragraphs (b) and (c) of section 15 of this Ordinance, be referred to the Trust Board.

(2) If the Trust Board approves of such application it shall grant the application.

(3) If the Trust Board does not approve of such application it shall submit the application to the Governor together with the reasons for such non-approval, and the Governor may refer the matter to the Secretary of State, whose decision shall be final.

Power of Trust Board as to applications to set apart land exceeding ten acres in extent.

Power of Trust Board to delegate to Chief Native Commissioner.
Section 1541 (4).
Section 1631.
Section 1526.

Repeats Section 28 of Ordinance 36/34 (modified).

Conditions to be fulfilled prior to approval of setting apart.
Section 1526.

Vide para. 5 of Secretary of State's despatch No. 1027 of 11-12-34.

Repeats Section 36/34 (with additions).

Compensation to be paid prior to setting apart.

Section 1541.
Repeats Section 30 of Ordinance 36/34.

Setting apart to be gazetted.

Repeats Section 31 of Ordinance 36/34 (with additions).

New.

No. 61 of 1933.

20. 15. The Trust Board may, by notice published in the Gazette, delegate to the Chief Native Commissioner the power to grant the applications referred to in the last preceding section where the area of land to be set apart does not exceed fifty acres in extent, but the Chief Native Commissioner shall not refuse any such application without the consent of the Trust Board. In any case where the Trust Board supports the refusal of the Chief Native Commissioner the Board shall submit the application to the Governor together with the reasons for such refusal and the Governor may refer the matter to the Secretary of State, whose decision shall be final.

21. 16. Approval of the setting apart of land under the provisions of this Part shall in no case be granted unless and until all the following conditions have been fulfilled:—

- (a) the proposed setting apart must, in the opinion of the Provincial Commissioner, be for the benefit of the natives either by reason of the use to which the land is to be put or by reason of the anticipated revenue from rents;
- (b) the proposal to set apart the land must have been brought to the notice of the natives concerned and to the notice of the Local Native Council having jurisdiction over the area in which such land is situate, and such natives and such Local Native Council must have had an opportunity of expressing their views upon the proposal;
- (c) the Local Board concerned must have been consulted and representatives of the location or section concerned must have been co-opted as additional members of the Local Board for the purpose of expressing their views upon the proposal.
- (d) when the land is to be leased prior to, or at the time of the making of the application to the Provincial Commissioner for setting apart, an application for the grant of a lease in respect of the land to be set apart must have been duly lodged with the Provincial Commissioner.

17. Where an application to set apart land under this Part has been duly approved, the Provincial Commissioner shall not gazette such setting apart unless and until the sums of money payable by way of compensation in accordance with the provisions of sections 19, 20 and 21 of this Ordinance and calculated as hereinafter provided for have first been deposited with the District Commissioner.

22. 18. (1) When an application for setting apart has been duly approved by the proper authority as provided for in this Ordinance, and when the requirements of the last preceding section of this Ordinance have been complied with, the Provincial Commissioner shall publish in the Gazette a notice of such setting apart, and in such notice shall specify the boundaries of the land so set apart and the purposes for which the land is set apart. Such land shall be deemed to be set apart on, and not before, the date of the publication of such notice save where some other date is therein specified.

(2) Where land is set apart for mining purposes the provisions of this section shall be in addition to and not in derogation of the provisions of the Mining Ordinance, 1933.

14. The Trust Board may, by notice in the Gazette, delegate to the Chief Native Commissioner the power to grant the applications referred to in the last preceding section where the area of land to be set apart does not exceed fifty acres in extent, but the Chief Native Commissioner shall not refuse any such application without the consent of the Trust Board. In any case where the Trust Board supports the refusal of the Chief Native Commissioner the Board shall submit the application to the Governor together with the reasons for such refusal, and the Governor may refer the matter to the Secretary of State, whose decision shall be final.

Power of Trust Board to delegate to Chief Native Commissioner.

15. Approval of the setting apart of land under the provisions of this Part of this Ordinance shall in no case be granted unless and until all the following conditions have been fulfilled—

Conditions to be fulfilled prior to approval of setting apart.

- (a) the proposed setting apart must, in the opinion of the Provincial Commissioner, be for the benefit of the natives, either by reason of the use to which the land is to be put or by reason of the anticipated revenue from rents;
- (b) the proposal to set apart the land must have been brought to the notice of the natives concerned and to the notice of the Local Native Council having jurisdiction over the area in which such land is situate, and such natives and such Local Native Council must have had an opportunity of expressing their views upon the proposal;
- (c) the Local Board concerned must have been consulted and representatives of the location or section concerned must have been co-opted as additional members of the Local Board for the purpose of expressing their views upon the proposal;
- (d) when the land is to be leased, then before, or at the time of, the making of the application to the Provincial Commissioner for setting apart, an application for the grant of a lease in respect of the land to be set apart must have been duly lodged with the Provincial Commissioner.

18. (1) When an application for setting apart has been duly approved by the proper authority in accordance with the provisions of this Ordinance, the Provincial Commissioner shall publish in the Gazette a notice of such setting apart, and in such notice shall specify the boundaries of the land so set apart and the purposes for which the land is set apart. Such land shall be deemed to be set apart on, and not before, the date of the publication of such notice, save where some other date is therein specified:

Setting apart to be gazetted.

Provided that the Provincial Commissioner shall not gazette such setting apart unless and until the sums of money payable by way of compensation in accordance with the provisions of sections 17, 18 and 19 of this Ordinance and calculated as hereinafter provided have first been deposited with the District Commissioner.

Compensation to be paid prior to setting apart.

(2) Where land is set apart preparatory to the grant of a mining lease, the provisions of this section shall be in addition to and not in derogation of the provisions of the Mining Ordinance, 1933.

No. 61 of 1933.

19. (1) In every case where an application to set apart land has been duly approved by the proper authority under this Ordinance, the District Commissioner shall notify the natives in the area concerned that such application has been so approved.

(2) Any native who, though not a private right-holder within the meaning of section 20 of this Ordinance, is likely to be prejudicially affected by a proposal to set apart any

land under this Part, shall be entitled to apply for compensation to the District Commissioner concerned in respect of disturbance or of any other loss or expense likely to be caused by such setting apart, and the District Commissioner shall forward forthwith to the Provincial Commissioner the details of every such application.

(3) The compensation payable to any such native upon the granting of any such application for compensation by the Provincial Commissioner shall include full compensation for the vacation or destruction of any hut or huts or other buildings and for any growing crops which such native is unable to reap or which are, or are likely to be, destroyed or damaged.

(4) The amount of compensation to be awarded to any native under this section shall be assessed by the Provincial Commissioner after consultation with the Local Board concerned and shall, after such assessment, be deposited by the applicant for setting apart with the District Commissioner. The District Commissioner shall be responsible for notifying all persons concerned of the Provincial Commissioner's award.

(5) Any person aggrieved by an award of a Provincial Commissioner under this section may, within twenty-one days from the date of the making of such award, appeal in writing through the Provincial Commissioner to the Governor, whose decision shall be final. The Governor in special cases and in his absolute discretion may extend the time for lodging any such appeal.

(6) Where no such appeal has been lodged or where such appeal has been determined by the Governor, the District Commissioner shall, from the amount of compensation deposited with him in accordance with the provisions of this section and upon instructions from the Provincial Commissioner, pay the sums of money finally assessed to the persons entitled thereto.

17. (1) Where an application to set apart land has been duly approved by the proper authority under the provisions of this Ordinance, the District Commissioner shall notify the natives in the area concerned that such application has been so approved.

(2) Any native who, though not a private right-holder within the meaning of section 18 of this Ordinance, is likely to be prejudicially affected by the setting apart of any land under this Part of this Ordinance, shall be entitled to apply for compensation to the District Commissioner concerned in respect of disturbance or of any other loss or expense likely to be caused by such setting apart, and the District Commissioner shall forward forthwith to the Provincial Commissioner the details of every such application.

(3) The compensation payable to any such native upon the granting of any such application for compensation by the Provincial Commissioner shall include full compensation for the vacation or destruction of any hut or huts or other buildings and for any growing crops which such native is unable to reap or which are, or are likely to be, destroyed or damaged.

(4) The amount of compensation to be awarded to any native under this section shall be assessed by the Provincial Commissioner after consultation with the Local Board concerned, and shall, after such assessment, be deposited by the applicant for setting apart with the District Commissioner. The District Commissioner shall be responsible for notifying all persons concerned of the Provincial Commissioner's award.

(5) Any person aggrieved by an award of a Provincial Commissioner under this section may, within twenty-one days after the date of the making of such award, appeal in writing through the Provincial Commissioner to the Governor, whose decision shall be final. The Governor in special cases and in his absolute discretion may extend the time for lodging any such appeal.

(6) (a) Where no such appeal has been lodged, or where such appeal has been determined by the Governor and the sum of money finally assessed does not exceed the amount of compensation deposited with the District Commissioner in accordance with the provisions of this section, the District Commissioner shall, from the amount of compensation so deposited with him, and upon instructions from the Provincial Commissioner, pay the sums of money finally assessed to the persons entitled thereto.

(b) Where an appeal has been determined by the Governor and the sum of money finally assessed exceeds the sum of money deposited with the District Commissioner in accordance with the provisions of this section, the applicant for setting apart shall pay to the District Commissioner the additional sum of money so awarded as compensation, and the District Commissioner shall, upon the instructions of the Provincial Commissioner, pay the sums of money finally assessed to the persons entitled thereto.

New York
L. M. M. Co.

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Compensation
for private
right-holders.
Section 1541 (5).

Repeats Section
34 of Ordinance
36/34.

Section 1541 (6).

Section 1541 (7).

Section 34 (3) of
Ordinance 36/34.

Section 34 (4) of
Ordinance 36/34.

26
Deposit of
money pending
settlement of
disputes.

Repeats Section
35 of Ordinance
36/34 (with
additions).

Section 1541 (9).

20. (1) In any district where it is considered by the Provincial Commissioner that a recognizable form of private right-holding exists, any native who claims to be a private right-holder in respect of any portion of the land to which an application to set apart relates shall be entitled to apply to the District Commissioner for compensation and the District Commissioner shall forward forthwith every such application to the Provincial Commissioner.

(2) Where, after consultation with the Local Board, the Provincial Commissioner is satisfied as to the claim of any native so applying, compensation, in addition to the compensation awarded under the last preceding section, shall be awarded to such native, and compensation shall be calculated on the basis of the full agricultural value of the land plus fifteen per centum thereon.

(3) The amount of compensation to be awarded to any native under sub-section (2) of this section shall be assessed by the Provincial Commissioner after consultation with the natives concerned and with the Local Board.

(4) Where in any case the Provincial Commissioner and the Local Board are unable to agree upon the sum of money which should be so awarded as compensation, or where any person desires to appeal against a sum so awarded or against any decision of the Provincial Commissioner as to the existence or non-existence of any system of private right-holding, or against any decision as to the claim of a native to be a private right-holder, the matter shall be referred to the Governor, whose decision shall be final. Every appeal under this sub-section shall be made in writing through the Provincial Commissioner within twenty-one days of the date of the award or decision to which the appeal relates.

(5) All sums of money awarded as compensation under this section shall be deposited by the applicant for setting apart with the District Commissioner who shall be responsible for notifying any person concerned as to the amount so awarded.

21. (1) Where any dispute arises as to the person or persons entitled to receive any sum of money which has been duly assessed under the provisions of this Ordinance the Provincial Commissioner shall direct that such sum be deposited in the office of the District Commissioner by the applicant for setting apart, pending the making of a final award by the District Commissioner, but the setting apart of the land shall not be delayed by reason of any such dispute.

(2) Where a sum of money has been so deposited in the office of the District Commissioner under the provisions of the last preceding sub-section, the District Commissioner, after taking the advice of the Local Board having jurisdiction in the area concerned and after hearing all interested parties and their witnesses, shall make his award.

18. (1) In any district where the Provincial Commissioner considers that a recognizable form of private right-holding exists, any native who claims to be a private right-holder in respect of any portion of the land to which an application to set apart relates shall be entitled to apply to the District Commissioner for compensation, and the District Commissioner shall forward forthwith every such application to the Provincial Commissioner.

(2) Where, after consultation with the Local Board, the Provincial Commissioner is satisfied as to the claim of any native so applying, compensation, in addition to the compensation awarded under the last preceding section, shall be awarded to such native, and shall be calculated on the basis of the full agricultural value of the land plus fifteen per centum of such value.

(3) The amount of compensation to be awarded to any native under the provisions of sub-section (2) of this section shall be assessed by the Provincial Commissioner after consultation with the natives concerned and with the Local Board.

(4) Where the Provincial Commissioner and the Local Board are unable to agree upon the sum of money which should be so awarded as compensation, or where any person desires to appeal against a sum so awarded, or against any decision of the Provincial Commissioner as to the existence or non-existence of any system of private right-holding, or against any decision as to the claim of a native to be a private right-holder, the matter shall be referred to the Governor, whose decision shall be final. Every appeal under this sub-section shall be made in writing through the Provincial Commissioner within twenty-one days after the date of the award or decision to which the appeal relates.

(5) All sums of money awarded as compensation under this section shall be deposited by the applicant for setting apart with the District Commissioner, who shall be responsible for notifying any person concerned as to the amount so awarded.

19. (1) Where any dispute arises as to the persons entitled to receive any sum of money which has been duly assessed under the provisions of this Ordinance, the Provincial Commissioner shall direct that such sum be deposited in the office of the District Commissioner by the applicant for setting apart, pending the making of a final award by the District Commissioner, but the setting apart of the land shall not be delayed by reason of any such dispute.

(2) Where a sum of money has been so deposited in the office of the District Commissioner under the provisions of the last preceding sub-section, the District Commissioner, after taking the advice of the Local Board having jurisdiction in the area concerned and after hearing all interested parties and their witnesses, shall make his award.

Compensation
for private
right-holders.

Deposit of
money pending
settlement of
disputes.

(3) Any person aggrieved by the award of a District Commissioner under this section may, within twenty-one days of the date of the making of such award, appeal to the Provincial Commissioner, whose decision shall be final. The Provincial Commissioner in special cases and in his absolute discretion, may extend the time for lodging any such appeal.

(4) Where no such appeal has been lodged or where such appeal has been duly determined, the District Commissioner shall, from the sum of money deposited with him, pay to the persons entitled thereto the various amounts awarded by him or by the Provincial Commissioner, as the case may be.

22. (1) Except in respect of cases of private right-holding where compensation has been paid as provided for by section 20 of this Ordinance and notwithstanding anything contained in the Mining Ordinance, 1933, a lump sum of money by way of commuted rent shall be payable in every case by a mining lessee for all land set apart under this Ordinance in respect of which a mining lease is granted to him, and the payment of such lump sum shall be additional to the rent payable to the Government of the Colony for such mining lease.

(2) The commuted rent payable for the land so set apart shall be paid by the applicant to the District Commissioner on behalf of the Local Board concerned, and shall be such a sum of money as the Provincial Commissioner shall assess as representing the total sum payable by way of annual rent over the term of years for which the mining lease is to be granted, the amount of such annual rent being calculated on the full agricultural value of the land.

(3) Any person aggrieved by the amount assessed as commuted rent under this section may, within twenty-one days of the making of such assessment, appeal in writing to the Governor, whose decision shall be final.

(4) The District Commissioner, as Chairman of the Local Board, shall be responsible for making payments in proper cases, out of the sums so paid to the Board by way of commuted rent, to such natives as may be entitled thereto under section 19.

(5) The District Commissioner, as Chairman of the Local Board, shall from time to time pay to the Local Native Council concerned any balance remaining in the hands of the Local Board from sums so paid by way of commuted rent.

(6) Where a mining lease in respect of any land set apart in the native lands is determined, from any cause whatsoever, at any time prior to the expiration of the term for which such lease was granted, no claim shall lie by the mining lessee or any other person for a proportionate or any other refund of any sum previously paid by way of commuted rent in respect of such mining lease. The provisions of this sub-section shall apply to all such mining leases, irrespective of whether they have been granted prior or subsequent to the date of the coming into operation of this Ordinance.

Commuted rent
for mining
leases.

No. 61 of 1933.

Section 37 of
Ordinance 36/34.

Section 1563.

Section 1541 (10)
and para. 8 of
the Secretary of
State's despatch
No. 1027 of
11-12-34 and
Telegram No. 13
of 17-1-35.

(3) Any person aggrieved by the award of a District Commissioner under this section may, within twenty-one days after the date of the making of such award, appeal to the Provincial Commissioner, whose decision shall be final. The Provincial Commissioner in special cases and in his absolute discretion, may extend the time for lodging any such appeal.

(4) Where no such appeal has been lodged or where such appeal has been duly determined, the District Commissioner shall, from the sum of money deposited with him, pay to the persons entitled thereto the various amounts awarded by him or by the Provincial Commissioner, as the case may be.

20. (1) Except in cases of private right-holding where compensation has been awarded under the provisions of section 18 of this Ordinance, and notwithstanding anything contained in the Mining Ordinance, 1933, a lump sum of money by way of commuted rent shall be payable in every case by a mining lessee for all land set apart under this Ordinance in respect of which a mining lease is granted to him, and the payment of such lump sum shall be additional to the rent payable to the Government of the Colony for such mining lease.

(2) The commuted rent payable for the land so set apart shall be paid by the applicant to the District Commissioner on behalf of the Local Board concerned, and shall be such a sum of money as the Provincial Commissioner shall assess as representing the total sum payable by way of annual rent over the term of years for which the mining lease is to be granted, the amount of such annual rent being calculated on the full agricultural value of the land.

(3) Any person aggrieved by the amount assessed as commuted rent under this section may, within twenty-one days after the making of such assessment, appeal in writing to the Governor, whose decision shall be final.

(4) The District Commissioner, as Chairman of the Local Board, shall be responsible for making payments in proper cases, out of the sums so paid to the Board by way of commuted rent, to such natives as may be entitled thereto under the provisions of section 17 of this Ordinance.

(5) The District Commissioner, as Chairman of the Local Board, shall from time to time pay to the Local Native Council concerned any balance remaining in the hands of the Local Board from sums so paid by way of commuted rent.

(6) Where a mining lease in respect of any land set apart in the native lands is determined, from any cause whatsoever, at any time before the expiration of the term for which such lease was granted, no claim shall lie by the mining lessee or any other person for a proportionate or any other refund of any sum previously paid by way of commuted rent in respect of such mining lease. The provisions of this sub-section shall apply to all such mining leases, irrespective of whether they have been granted before or subsequent to the commencement of this Ordinance.

Commuted rent
for mining
leases.

No. 61 of 1933.

(3) Any person aggrieved by the award of a District Commissioner under this section may, within twenty-one days of the date of the making of such award, appeal to the Provincial Commissioner, whose decision shall be final. The Provincial Commissioner in special cases and in his absolute discretion, may extend the time for lodging any such appeal.

(4) Where no such appeal has been lodged or where such appeal has been duly determined, the District Commissioner shall, from the sum of money deposited with him, pay to the persons entitled thereto the various amounts awarded by him or by the Provincial Commissioner, as the case may be.

22. (1) Except in respect of cases of private right-holding where compensation has been paid as provided for by section 20 of this Ordinance and notwithstanding anything contained in the Mining Ordinance, 1933, a lump sum of money by way of commuted rent shall be payable in every case by a mining lessee for all land set apart under this Ordinance in respect of which a mining lease is granted to him, and the payment of such lump sum shall be additional to the rent payable to the Government of the Colony for such mining lease.

(2) The commuted rent payable for the land so set apart shall be paid by the applicant to the District Commissioner on behalf of the Local Board concerned, and shall be such a sum of money as the Provincial Commissioner shall assess as representing the total sum payable by way of annual rent over the term of years for which the mining lease is to be granted, the amount of such annual rent being calculated on the full agricultural value of the land.

(3) Any person aggrieved by the amount assessed as commuted rent under this section may, within twenty-one days of the making of such assessment, appeal in writing to the Governor, whose decision shall be final.

(4) The District Commissioner, as Chairman of the Local Board, shall be responsible for making payments in proper cases, out of the sums so paid to the Board by way of commuted rent, to such natives as may be entitled thereto under section 19.

(5) The District Commissioner, as Chairman of the Local Board, shall from time to time pay to the Local Native Council concerned any balance remaining in the hands of the Local Board from sums so paid by way of commuted rent.

(6) Where a mining lease in respect of any land set apart in the native lands is determined, from any cause whatsoever, at any time prior to the expiration of the term for which such lease was granted, no claim shall lie by the mining lessee or any other person for a proportionate or any other refund of any sum previously paid by way of commuted rent in respect of such mining lease. The provisions of this sub-section shall apply to all such mining leases, irrespective of whether they have been granted prior or subsequent to the date of the coming into operation of this Ordinance.

(3) Any person aggrieved by the award of a District Commissioner under this section may, within twenty-one days after the date of the making of such award, appeal to the Provincial Commissioner, whose decision shall be final. The Provincial Commissioner in special cases and in his absolute discretion, may extend the time for lodging any such appeal.

(4) Where no such appeal has been lodged or where such appeal has been duly determined, the District Commissioner shall, from the sum of money deposited with him, pay to the persons entitled thereto the various amounts awarded by him or by the Provincial Commissioner, as the case may be.

20. (1) Except in cases of private right-holding where compensation has been awarded under the provisions of section 18 of this Ordinance, and notwithstanding anything contained in the Mining Ordinance, 1933, a lump sum of money by way of commuted rent shall be payable in every case by a mining lessee for all land set apart under this Ordinance in respect of which a mining lease is granted to him, and the payment of such lump sum shall be additional to the rent payable to the Government of the Colony for such mining lease.

(2) The commuted rent payable for the land so set apart shall be paid by the applicant to the District Commissioner on behalf of the Local Board concerned, and shall be such a sum of money as the Provincial Commissioner shall assess as representing the total sum payable by way of annual rent over the term of years for which the mining lease is to be granted, the amount of such annual rent being calculated on the full agricultural value of the land.

(3) Any person aggrieved by the amount assessed as commuted rent under this section may, within twenty-one days after the making of such assessment, appeal in writing to the Governor, whose decision shall be final.

(4) The District Commissioner, as Chairman of the Local Board, shall be responsible for making payments in proper cases, out of the sums so paid to the Board by way of commuted rent, to such natives as may be entitled thereto under the provisions of section 17 of this Ordinance.

(5) The District Commissioner, as Chairman of the Local Board, shall from time to time pay to the Local Native Council concerned any balance remaining in the hands of the Local Board from sums so paid by way of commuted rent.

(6) Where a mining lease in respect of any land set apart in the native lands is determined, from any cause whatsoever, at any time before the expiration of the term for which such lease was granted, no claim shall lie by the mining lessee or any other person for a proportionate or any other refund of any sum previously paid by way of commuted rent in respect of such mining lease. The provisions of this sub-section shall apply to all such mining leases, irrespective of whether they have been granted before or subsequent to the commencement of this Ordinance.

28

Term for which land is set apart with term of lease.
No. 61 of 1933. Modified section 38 of Ordinance No. 36 of 1934. Secretary of State's despatch No. 1027 of 11-12-34, para. 8.

23. (1) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which land is set apart under this Part shall be deemed to run concurrently with the term of the mining or other lease granted in respect of such land and with the term for which any such lease is thereafter renewed. The setting apart of the land shall be deemed to have expired automatically upon the final expiry of the lease and the land shall thereupon revert to native use.

No. 61 of 1933.

(2) Upon the first and every subsequent renewal of a mining lease, in addition to any fees and rent payable under the Mining Ordinance, 1933, there shall be paid for the renewal of the setting apart of the land in respect of which the mining lease was granted, the lump sum of commuted rent provided for in section 22 of this Ordinance, together with an additional sum equal to twenty per centum of the amount of such commuted rent.

(3) In every case where a lease under this Part is renewed the Provincial Commissioner shall publish in the Gazette a notice of the renewal of the setting apart of the land in respect of which the lease was granted, and such renewal shall take effect from the date of such publication save where some other date is in such notice specified. No such notice shall be published, in the case of the renewal of a mining lease, unless and until the sums provided for in the last preceding sub-section have been paid.

29

Method of making payments.
Section 39 of Ordinance 36/34.

24. Wherever under the provisions of this Part of this Ordinance a lump sum of money, from which payments to any native or natives are to be made, is deposited with a District Commissioner, such officer shall have an absolute discretion as to whether such payments are made by way of lump sums or by instalments over a period of time.

30

Setting apart for local public purposes. Part III, Chapter III.

25. (1) Where a Provincial Commissioner considers that it is desirable that any specific area of land in the native lands should be set apart—

- (a) for a township, trading centre, market or for a Government School, hospital, station or camp; or
- (b) for the purpose of issuing inter-tribal occupation permits as provided in section 8 of this Ordinance; or

21. (1) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which land is set apart under the provisions of this Part shall be deemed to run concurrently with the term of the mining or other lease granted in respect of such land and with the term for which any such lease is thereafter renewed. The setting apart of the land shall be deemed to have expired automatically upon the final expiry of the lease and the land shall thereupon revert to native use.

Term for which land is set apart to be concurrent with term of lease.
No. 61 of 1933.

(2) Upon the first and every subsequent renewal of a mining lease, in addition to any fees and rent payable under the Mining Ordinance, 1933, there shall be paid for the renewal of the setting apart of the land in respect of which the mining lease was granted, the sum of money by way of commuted rent as provided in section 20 of this Ordinance, together with an additional sum equal to twenty per centum of the amount of such commuted rent.

(3) In every case where a lease of native lands is renewed the Provincial Commissioner shall publish in the Gazette a notice of the renewal of the setting apart of the land in respect of which the lease was granted, and such renewal shall take effect from the date of such publication, save where some other date is in such notice specified. In the case of the renewal of a mining lease, no such notice shall be published unless and until the sums provided for in the last preceding sub-section have been paid.

(4) Where any lump sum of money is, under the provisions of this Part of this Ordinance, paid to or deposited with the District Commissioner for payment to the person or persons entitled thereto, such District Commissioner may, in his absolute discretion, pay such money to such person or persons either in one single payment or in a number of payments made over such period of time as may to him seem fit and desirable.

Desirable Area land in lands - see Clause 24 of the Bill on the left-hand

22. (1) Where a Provincial Commissioner considers it desirable that any specific area of land in the native lands should be set apart—

Setting apart for local public purposes.

- (a) for a township, trading centre, market, or for a Government school, hospital, station or camp; or
- (b) for the purpose of issuing inter-tribal occupation permits as provided in section 6 of this Ordinance; or

(c) for any purpose which, in the opinion of the Provincial Commissioner, is likely to benefit the natives resident in the native land unit concerned either by reason of the use to which the land is to be put or by reason of the anticipated revenue from rents,

the Provincial Commissioner shall cause a proposal to that effect to be submitted to the natives concerned and to the authorities set out in paragraphs (c) and (d) of section 16 of this Ordinance, and the provisions of sections 13, 14 and 15 of this Ordinance, save in so far as such provisions presuppose the making of an application to the Provincial Commissioner, shall apply to every such proposal.

(2) The Provincial Commissioner shall publish in the Gazette a notice of every such setting apart in accordance with the provisions of sub-section (1) of section 18 of this Ordinance, but no such notice shall in any case be so published unless and until the requirements of sub-section (3) of this section have been fulfilled.

(3) In respect of the setting apart of any land under this section, compensation shall be payable in accordance with the provisions of sections 19 and 20 of this Ordinance, save that the compensation shall be paid by the Local Native Council concerned.

Now clause 23 in K.H. mds
Section 1541 (11)
(b).

31
Setting apart for general public purposes.
Sections 1536-1539.

26. (1) Notwithstanding anything in this Part contained, but subject always to the provisions of sections 13, 14, 15, 19 and 20 of this Ordinance, a Provincial Commissioner may set apart land in the native lands for any of the following purposes:—

- (a) public reservoirs, aqueducts, canals, watercourses or water pipe lines;
- (b) public sewerage works;
- (c) public quays, wharves or landing places;
- (d) public aerodromes and landing grounds;
- (e) the development of electric power for public purposes from any lake, river or stream;
- (f) public telegraphs or telephones;
- (g) buildings or works in connexion with any of the foregoing purposes together with the necessary curtilage of such buildings or works;

(c) for any purpose which, in the opinion of the Provincial Commissioner, is likely to benefit the natives resident in the native land unit concerned either by reason of the use to which the land is to be put or by reason of the anticipated revenue from rents,

the Provincial Commissioner shall cause a proposal to that effect to be submitted to the natives concerned and to the authorities set out in paragraphs (b) and (c) of section 15 of this Ordinance, and the provisions of sections 12, 13 and 14 of this Ordinance, save in so far as such provisions presuppose the making of an application to the Provincial Commissioner, shall apply to every such proposal.

(2) The Provincial Commissioner shall publish in the Gazette, in accordance with the provisions of sub-section (1) of section 16 of this Ordinance, a notice of every such setting apart, but no such notice shall in any case be so published unless and until the requirements of section 23 of this Ordinance have been fulfilled.

23. Any compensation payable under the provisions of this Ordinance in respect of the setting apart of any land under the provisions of section 22 of this Ordinance shall be paid in accordance with the provisions of sections 17 and 18 of this Ordinance by the Local Native Council concerned.

Provided that, in the case of a permanent camp established for the use of the armed forces of the Crown, such compensation shall be paid from the general revenues of the Colony.

24. (1) Notwithstanding anything in this Part of this Ordinance contained, but subject always to the provisions of sections 12, 13, 14, 17 and 18 of this Ordinance, a Provincial Commissioner may set apart land in the native lands for any of the following purposes:—

- (a) public reservoirs, aqueducts, canals, watercourses or water pipe lines;
- (b) public sewerage works;
- (c) public quays, wharves or landing places;
- (d) public aerodromes and landing grounds;
- (e) the development of electric power for public purposes from any lake, river or stream;
- (f) public telegraphs or telephones;
- (g) buildings or works in connexion with any of the foregoing purposes, together with the necessary curtilage of such buildings or works;

Now Act
Setting apart for general public purposes.

(h) any other purpose which the Governor may declare to be a public purpose.

(2) Prior to the publication in the Gazette of the setting apart of land for any of the purposes provided for in this section, the compensation, if any, payable in accordance with the provisions of sections 19 and 20 of this Ordinance shall be paid from the general revenues of the Colony.

Section 1541 (11)
(a).

Setting apart for
railways, tram-
ways and roads.

Section 1607.

27. (1) Notwithstanding anything in this Part contained, but subject to the provisions of sections 19 and 20, a Provincial Commissioner may set apart from the native lands any land which is required for a public railway tramway or road, or for a tramway or road of access. For the purposes of this sub-section tramway or road of access shall mean a tramway or road which gives access—

- (a) from any land in the native lands set apart under this Ordinance to the nearest Railway station or halt or public road; or
- (b) from any land in the native lands in respect of which a mining lease has been granted to a lessee under the Mining Ordinance, 1933, to any points on the surface of any area of land in the native lands which overlies a subterranean area in respect of which such mining lessee has been granted a mining lease; or
- (c) from any surface point to which the last preceding paragraph relates to any other such surface point.

(2) In every case before land is set apart for any purpose under this section the Provincial Commissioner shall consult the Local Board as to the alignment of the proposed railway, tramway or road and as to the compensation to be paid in respect thereof. Where the Provincial Commissioner and the Local Board are unable to agree as to any such matter the

No. 61 of 1933.

(h) any other purpose which the Governor may, under the powers conferred upon him by sub-section (2) of section 48 of this Ordinance, declare to be a public purpose.

(2) Before the publication in the Gazette of the setting apart of land for any of the purposes referred to in this section, the compensation, if any, payable in accordance with the provisions of sections 17 and 18 of this Ordinance shall be paid from the general revenues of the Colony.

25. (1) Notwithstanding anything in this Part of this Ordinance contained, but subject to the provisions of sections 17 and 18 of this Ordinance, a Provincial Commissioner may set apart from the native lands any land which is required for a public railway, tramway or road, or for a tramway or road of access.

Setting apart for
railways, tram-
ways and roads.

For the purposes of this sub-section, tramway or road of access means a tramway or road which gives access—

- (a) (i) from any land forming part of the native lands and which has been set apart under the provisions of this Ordinance, or
- (ii) from any land situate within the boundaries of the native lands (whether or not it forms part of the native lands), or
- (iii) from any land situate outside the boundaries of the native lands through any part of the native lands, to the nearest railway station or halt or public road; or
- (b) from any land in the native lands in respect of which a mining lease has been granted to a lessee under the Mining Ordinance, 1933, to any points on the surface of any area of land in the native lands which overlies a subterranean area in respect of which such mining lessee has been granted a mining lease; or
- (c) from any surface point to which the last preceding paragraph relates to any other such surface point.

(2) Before any land is set apart for any purpose under the provisions of this section, the Provincial Commissioner shall consult the Local Board as to the alignment of the proposed railway, tramway or road and as to the compensation to be paid in respect thereof. Where the Provincial Commissioner and the Local Board are unable to agree as to any

Provincial Commissioner shall make a report thereon to the Governor, whose decision shall be final.

(3) It shall not be obligatory on the Provincial Commissioner to consult the Trust Board as to any proposal to

Section 1610, and
Sections 1616 and
1617.

set apart land under this section, but the Provincial Commissioner shall forward to the Board an estimate of the area of land likely to be withdrawn from agricultural use by reason of such setting apart.

(4) Where the Trust Board is of opinion that, by reason of any such setting apart, the agricultural land available in any native land unit is likely to be insufficient for the economic needs of the natives concerned, the Board may recommend to the Governor the addition to such native land unit of an area of land equal in value to the area of land withdrawn from agricultural use. Any land so added shall be deemed to be included in the native lands for the purposes of this Ordinance.

Section 1610.

(5) Where the Trust Board is in any way dissatisfied by reason of any setting apart of land under this section or by reason of any matter arising from such setting apart, the Board may make representations to the Governor or to the Secretary of State: but it shall not be obligatory to delay the construction of public works upon land so set apart pending the consideration of any such representations.

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Compensation
for setting apart
of railways, etc.
Section 1613.

28. (1) All compensation payable in respect of the setting apart of land in accordance with the provisions of the last preceding section shall be payable in accordance with the provisions of this section.

Section 1611.

(2) Where the setting apart is in respect of a road, the whole cost of whose construction has not been defrayed from the general revenues of the Colony and the whole cost of whose maintenance has not been, and at the time of such setting apart is not so defrayed, such compensation shall be payable by the Local Native Council concerned from its revenues.

Section 1612.

(3) Where the setting apart is in respect of a road, the whole cost of whose construction has been defrayed from the general revenues of the Colony and the whole cost of whose maintenance has been and at the time of such setting apart is so defrayed, the compensation payable shall be paid from the general revenues of the Colony.

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such matter the Provincial Commissioner shall make a report thereon to the Governor, whose decision shall be final.

(3) It shall not be obligatory on the Provincial Commissioner to consult the Trust Board as to any proposal to set apart land under this section, but the Provincial Commissioner shall forward to the Board an estimate of the area of land likely to be withdrawn from agricultural use by reason of such setting apart.

(4) Where the Trust Board is of opinion that, by reason of any setting apart under the provisions of this section or of section 24 of this Ordinance, the agricultural land available in any native land unit is likely to be insufficient for the economic needs of the natives concerned, the Board may recommend to the Governor the addition to such native land unit of an area of land equal in value to the area of land withdrawn from agricultural use. Any land so added shall be deemed to be included in the native lands for the purposes of this Ordinance.

(5) Where the Trust Board is in any way dissatisfied by reason of any setting apart of land under this section or by reason of any matter arising from such setting apart, the Board may make representations to the Governor or to the Secretary of State, but it shall not be obligatory to delay the construction of public works upon land so set apart pending the consideration of any such representations.

28. (1) All compensation payable in respect of the setting apart of land in accordance with the provisions of the last preceding section shall be settled by one outright payment.

Compensation
for setting apart
of railways, etc.

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(2) Where the setting apart is in respect of a road, the whole cost of the construction of which has not been defrayed from the general revenues of the Colony and the whole cost of the maintenance of which has not been, and at the time of such setting apart is not so defrayed, the compensation payable shall be paid by the Local Native Council concerned from its revenues.

(3) Where the setting apart is in respect of a road, the whole cost of the construction of which has been defrayed from the general revenues of the Colony and the whole cost of the maintenance of which has been and at the time of such setting apart is so defrayed, the compensation payable shall be paid from the general revenues of the Colony.

Section 1615.

(4) Where the maintenance of a road, the cost of whose construction has not been defrayed from the general revenues of the Colony, becomes at any time a charge upon such revenues, it shall be the duty of the Provincial Commissioner, after consultation with the Local Board, to submit a claim

No. 18 of 1929.

for the repayment to the Local Native Council of the sum paid by such Council under the provisions of sub-section (2) of this section. Every such claim shall be considered by the Central Roads and Traffic Board established under the Central Roads and Traffic Board Ordinance, 1929, and the decision of the Governor upon such claims shall be final:

Provided that any compensation payable by reason of a re-alignment of any such road shall be payable from the general revenues of the Colony.

Section 1612.

(5) Where the setting apart is in respect of a railway the compensation, if any, shall be payable by the High Commissioner for Transport.

(6) Nothing in this section contained relating to compensation shall be deemed to apply to any public road or railway which was in existence in the native lands prior to the date of the coming into operation of this Ordinance, irrespective of whether, in the case of a public road, such road had or had not at such date been declared to be a public road under any Ordinance relating to roads.

(7) Where land has been set apart under this section for a tramway or road of access the compensation, if any, payable shall be paid by the owner of such tramway or by the lessee of the land to and from which access is given by such road, as the case may be.

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District Commissioners to keep registers.

20. Every District Commissioner in the native lands shall cause a register to be kept in his office containing a description of all land which has been set apart, in accordance with the provisions of this Ordinance, from the native lands in his district, together with all particulars relating to such land.

PART IV
EXCLUSIONS

PERMANENT EXCLUSIONS (PUBLIC PURPOSES)

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Exclusions for public purposes.

Section 1517.
Sections 1518-19
Section 1577.

30. (1) Subject always to the provisions of sub-section (2) of this section and notwithstanding anything in Part III of this Ordinance contained, the Governor, after consulting the Local Board and with the consent of the Trust Board, may exclude from the native lands any land required for

(4) Where the maintenance of a road, the cost of the construction of which has not been defrayed from the general revenues of the Colony, becomes at any time a charge upon such revenues, it shall be the duty of the Provincial Commissioner, after consultation with the Local Board, to submit a claim for the repayment to the Local Native Council of the sum paid by such Council under the provisions of sub-section (2) of this section. Every such claim shall be considered by the Central Roads and Traffic Board established under the Central Roads and Traffic Board Ordinance, 1929, and the decision of the Governor upon such claim shall be final:

No. 18 of 1929.

Provided that any compensation payable by reason of a re-alignment of any such road shall be paid from the general revenues of the Colony.

(5) Where the setting apart is in respect of a railway, the compensation, if any, payable shall be paid by the High Commissioner for Transport.

(6) Nothing in this section contained relating to compensation shall be deemed to apply to any public road or railway which was in existence in the native lands prior to the commencement of this Ordinance, irrespective of whether, in the case of a public road, such road had or had not at such date been declared to be a public road under any Ordinance relating to roads.

before the date of

(7) Where land has been set apart under the provisions of this section for a tramway or road of access the compensation, if any, payable shall be paid by the owner of such tramway or by the lessee of the land to and from which access is given by such road, as the case may be.

27. Every District Commissioner in the native lands shall cause a register to be kept in his office containing a description of all land which has been set apart, in accordance with the provisions of this Ordinance, from the native lands in his district, together with all particulars relating to such land.

District Commissioners to keep registers.

PART IV
EXCLUSIONS

PERMANENT EXCLUSIONS FOR PUBLIC PURPOSES

28. (1) Subject to the provisions of sub-section (2) of this Ordinance and notwithstanding anything in Part III of this Ordinance contained, the Governor, after consulting the Local Board and with the consent of the Trust Board, may exclude from the native lands any land required for any of the purposes

Exclusions for public purposes.

any of the purposes set out in sections 25, 26 and 48 of this Ordinance and the land so excluded shall thereupon no longer be deemed to be part of the native lands. Representatives

of the location or section concerned and of the local natives concerned shall be co-opted on the Local Board in every case where such Board is consulted by the Governor for the purposes of this section.

(2) No such exclusion shall in any case be made unless and until the Governor is satisfied that a majority of the natives concerned has expressed a desire that the land required should be so excluded in lieu of being set apart, and unless and until the Local Native Council concerned has passed a resolution to that effect.

(3) Where any land is so excluded from the native lands the Governor, by notice published in the Gazette, shall add to the native land unit from which such land has been excluded an area of suitable and, where possible, contiguous unalienated Crown land of equivalent value. Any land so added shall be deemed to be included in the native lands for the purposes of this Ordinance:

Provided that, in cases where land so excluded is required solely for the actual site of a building together with the curtilage thereof, no such addition of land need be made:

And provided further that, in any case where an equivalent area of land has been added to the native lands before and in anticipation of any individual exclusion, no additional area need be added under the provisions of this sub-section.

(4) No land situate in the Highlands shall be added to the native lands, as provided in the last preceding sub-section, save with the consent of the Highlands Board, and if the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final.

(5) In any case where the Trust Board does not consent to the exclusion of land under this section, the Governor may refer the matter to the Secretary of State, whose decision shall be final.

TEMPORARY EXCLUSIONS (MINING PURPOSES)

31. (1) Where application has been made for the grant of a mining lease of land in the native lands, such land may be temporarily excluded from the native lands by the Governor in any case where he is satisfied that a majority of the natives concerned has expressed a desire that this procedure be followed in lieu of setting apart the land in accordance with the provisions of Part III of this Ordinance, and

set out in sections 22, 24 and 52 of this Ordinance, and the land so excluded shall thereupon cease to form part of the native lands. Representatives of the location or section concerned and of the local natives concerned shall be co-opted on the Local Board in every case where such Board is consulted by the Governor for the purposes of this section.

(2) No such exclusion shall be made unless and until the Governor is satisfied that a majority of the natives concerned has expressed a desire that the land required should be so excluded in lieu of being set apart, and unless and until the Local Native Council concerned has passed a resolution to that effect.

(3) Where any land is so excluded from the native lands the Governor shall, by notice published in the Gazette, add to the native land unit from which such land has been excluded an area of suitable and, where possible, contiguous unalienated Crown land of equivalent value. Any land so added shall form part of the native lands for the purposes of this Ordinance:

Provided that, in any case where land so excluded is required solely for the actual site of a building together with the curtilage thereof, no such addition of land need be made:

And provided further that, in any case where an equivalent area of land has been added to the native lands before and in anticipation of any individual exclusion, no additional area need be added under the provisions of this sub-section.

(4) No land situate in the Highlands shall be added to the native lands under the provisions of sub-section (3) of this section, save with the consent of the Highlands Board, and if the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final.

(5) In any case where the Trust Board does not consent to the exclusion of land under this section, the Governor may refer the matter to the Secretary of State, whose decision shall be final.

TEMPORARY EXCLUSIONS FOR MINING PURPOSES

29. (1) Where an application has been made for the grant of a mining lease of land in the native lands, such land may be temporarily excluded from the native lands by the Governor if he is satisfied that a majority of the natives concerned has expressed a desire that this procedure be followed in lieu of setting apart the land in accordance with the

Section 1717.

C. F. Section 1515, 1516.

Section 1496.

Section 1521.

Temporary Exclusions for Mining. Section 15 A (1) of Ordinance 36/34 (modified).

Temporary Exclusions for Mining.

that the Local Native Council has passed a resolution to that effect. Every proposal for any such temporary exclusion shall first be laid before the Provincial Commissioner who shall report thereon to the Trust Board and the Board shall consider the practicability or otherwise of such proposal, having regard to the provisions of sub-section (2) of this section, and shall thereafter make its recommendations to the Governor, whose decision shall be final.

Section 1567,
Part of Section
15 A (2) of
Ordinance 36/34,
Section 1586,
Section 1777.

(2) In every case where land is so temporarily excluded under this section from the native lands there shall be added temporarily to the native lands for the currency of the term of such exclusion, an area of unalienated Crown land equal in agricultural value and, so far as may be, equal in size to the area which has been so excluded.

Section 15 A (4)
of Ordinance
36/34 (modified),
No. 61 of 1933.

(3) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which land is temporarily excluded under this section shall be deemed to run concurrently with the term of the mining lease granted in respect of such land, and, save where the mining lease shall have been renewed in accordance with the provisions of the Mining Ordinance, 1933, the term of such temporary exclusion shall be deemed to have expired automatically upon the expiry of the mining lease. Where the mining lease is renewed for any term the exclusion of the land temporarily excluded shall be deemed also to have been renewed for a like term.

No. 61 of 1933.

Section 15 A (5)
of Ordinance
36/34 (modified),
Section 1571.

(4) Upon the final determination of a mining lease in respect of which land has been temporarily excluded, the land so excluded shall forthwith revert to and again become part of the native lands and thereupon any land temporarily added to the native lands by reason of such temporary exclusion shall cease to be part of the native lands and shall revert to the Crown:

Provided that in any case where the Trust Board is satisfied that the agricultural value of any portion of an area so temporarily excluded has been permanently impaired by reason of mining operations conducted thereon during the currency of the mining lease, the Governor, on the recommendation of the Trust Board, may make a permanent addition of land to the native lands from the land temporarily added thereto. The land so added shall be an area of

Section 1777.

Section 1496.

land equal in agricultural value and so far as may be equal in size to the portion of the native lands which has been so impaired in value.

provisions of Part III] of this Ordinance, and that the Local Native Council has passed a resolution to that effect. Every proposal for any such temporary exclusion shall first be laid before the Provincial Commissioner, who shall report thereon to the Trust Board, and the Board shall consider the practicability or otherwise of such proposal, having regard to the provisions of sub-section (2) of this section, and shall thereafter make its recommendations to the Governor, whose decision shall be final.

(2) In every case where land is temporarily excluded from the native lands under the provisions of this section there shall be added temporarily to the native lands for the currency of the term of such exclusion an area of unalienated Crown land equal in agricultural value and, so far as may be, equal in size to the area which has been so excluded.

(3) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which land is temporarily excluded from the native lands under the provisions of this section shall be deemed to run concurrently with the term of the mining lease granted in respect of such land, and the term of such temporary exclusion shall be deemed to have expired automatically upon the expiry of the mining lease: Provided that if the mining lease is, under the provisions of the Mining Ordinance, 1933, renewed for any term, the exclusion of the land temporarily excluded shall be deemed also to have been renewed for a like term.

(4) Upon the final determination of a mining lease in respect of which land has been temporarily excluded, the land so excluded shall forthwith revert to and form part of the native lands, and thereupon any land temporarily added to the native lands by reason of such temporary exclusion shall cease to form part of the native lands and shall revert to the Crown:

Provided that in any case where the Trust Board is satisfied that the agricultural value of any portion of an area so temporarily excluded has been permanently impaired by reason of mining operations conducted thereon during the currency of the mining lease, the Governor may, on the recommendation of the Trust Board, make a permanent addition of land to the native lands from the land temporarily added thereto. The land so added shall be an area of land equal in agricultural value and, so far as may be, equal in size to the portion of the native lands which has been so impaired in value.

Section 15 A (6)
of Ordinance
36/34.

(5) No land situate in the Highlands shall be added to the native lands as provided in sub-sections (2) and (4) of this section, save with the consent of the Highlands Board, and if the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final.

(6) No mining lease shall be granted in respect of any land which is to be temporarily excluded in accordance with the provisions of this section unless and until all compensation arising by reason of such exclusion has been duly paid to the proper authority. Notice of every temporary exclusion of land and of every temporary addition to the native lands consequent thereon and of every renewal and expiration of any such exclusion and addition shall be published in the Gazette.

Compensation
for exclusion,
Section 1569.

Section 15 A (2)
(partially) of
Ordinance 36/34.

COMPENSATION

32. (1) Any native who is disturbed in his occupation of land in the native lands by reason of any permanent or temporary exclusion of land under this Part may make application for compensation as provided in section 19 of this Ordinance, and shall, in addition to receiving such compensation, be entitled so far as may be practicable to reside, together with his family, during the term of such exclusion in the area which has been added to the native lands by reason of such exclusion.

Section 15 A (3)
of Ordinance
36/34.

(2) Where any native, irrespective of whether he is entitled to compensation as provided in the last preceding sub-section, has satisfactorily established a claim, in accordance with section 20 of this Ordinance, to be a private right-holder in respect of any land permanently or temporarily excluded from the native lands under this Part, he shall be entitled, in addition to any compensation which may have been paid to him for disturbance, to receive compensation as a private right-holder as provided in section 20 of this Ordinance.

(5) No land situate in the Highlands shall be added to the native lands under the provisions of sub-sections (2) and (4) of this section save with the consent of the Highlands Board, and if the Board does not consent to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final.

(6) No mining lease shall be granted in respect of any land which is to be temporarily excluded in accordance with the provisions of this section unless and until all compensation payable by reason of such exclusion has been duly paid to the proper authority. Notice of every temporary exclusion of land and of every temporary addition to the native lands consequent thereon and of every renewal and expiration of any such exclusion and addition shall be published in the Gazette.

COMPENSATION

30. (1) Any native who is disturbed in his occupation of land in the native lands by reason of any permanent or temporary exclusion of land under the provisions of this Part of this Ordinance may make application for compensation in accordance with the provisions of section 17 of this Ordinance, and shall, in addition to receiving such compensation, be entitled, so far as may be practicable, to reside, together with his family, during the term of such exclusion in the area which has been added to the native lands in consequence of such exclusion.

Compensation
for exclusion.

(2) Any native who has satisfactorily established a claim, in accordance with the provisions of section 18 of this Ordinance, to be a private right-holder in respect of any land permanently or temporarily excluded from the native lands under this Part, shall, whether or not he is entitled to compensation under the provisions of sub-section (1) of this section, be entitled, in addition to any compensation which may have been paid to him for disturbance, to receive compensation as a private right-holder under the provisions of section 18 of this Ordinance:

Provided that any such native may at his option, and in lieu of receiving such compensation as a private right-holder, elect to reside, if practicable, with his family during the term of such exclusion in the area which has been added to the native lands by reason of such exclusion, but without prejudice to any right he may have to receive compensation under the provisions of sub-section (1) of this section.

PART V
LEASES AND LICENCES

31. Subject to the provisions of this Ordinance, and in the case of mining leases subject to the provisions of the Mining Ordinance, 1933, the Governor may grant leases of land in the native lands to any persons for such terms and subject to such conditions as the Governor may deem expedient:

Provided that, before any lease is granted under the provisions of this section, or under the provisions of the Mining Ordinance, 1933, the land to which such lease relates shall, subject to the provisions of section 29 of this Ordinance, be first set apart in accordance with the provisions of Part III of this Ordinance.

32. (1) The Chief Native Commissioner may, subject to any general or special directions of the Governor, execute any lease, to be granted under the provisions of this Ordinance, of land in the native lands.

(2) Leases may be granted under the provisions of this Ordinance for any term not exceeding thirty-three years, subject to such conditions as may be prescribed:

Provided that, with the consent of the Secretary of State, leases may be granted for any term exceeding thirty-three years but not exceeding ninety-nine years.

(3) Leases granted for a term of one year or less shall be in such form as may be prescribed.

(4) Leases for a term exceeding one year shall be in the form of grants under the provisions of the Registration of Titles Ordinance.

(5) Leases in respect of plots in townships or trading centres shall be granted subject to the provisions of the Town Planning and Development Ordinance, 1931.

(6) Nothing in this section contained shall be deemed to apply to leases granted under the provisions of the Mining Ordinance, 1933.

33. (1) On the determination of any mining or other lease granted in respect of land in the native lands which has been set apart under the provisions of this Ordinance, the property in all buildings on such land, whether erected by the lessee or by any other person, shall, in the absence of any

Powers of Governor to grant leases in Native Lands No. 61 of 1933.

Chief Native Commissioner to execute leases.

Term of leases.

Form of leases for one year or less.

Form of leases for more than one year. Cap. 142.

Leases for township or trading centres. No. 48 of 1931.

Mining leases. No. 61 of 1933.

Buildings on leased native lands.

PART V
LEASES AND LICENCES

33. (1) The Chief Native Commissioner, subject to any general or special directions of the Governor, may execute any lease of the native lands to be granted under this Ordinance.

(2) Leases under this Ordinance may be granted for any term not exceeding thirty-three years subject to such conditions as may be prescribed by rules under this Ordinance:

Provided always that, with the consent of the Secretary of State, leases may be granted for terms exceeding thirty-three years but not in any case exceeding ninety-nine years.

(3) The form of leases granted for a term of one year or less shall be governed by rules made under this Ordinance.

(4) Leases for a term exceeding one year shall be issued in the form of grants under the provisions of the Registration of Titles Ordinance.

(5) The issue of leases in respect of plots in townships or trading centres shall be subject to the provisions of the Town Planning and Development Ordinance, 1931.

(6) Nothing in this section contained shall be deemed to apply to leases issued under the Mining Ordinance, 1933.

34. (1) On the determination of any mining or other lease granted in respect of land in the native lands which has been set apart under the provisions of this Ordinance, all buildings on such land, whether erected by the lessee or by any other person, shall, in the absence of any provision

Power of Chief Native Commissioner to grant leases. Section 9 (1) of Ordinance 9/1930. Sections 1768/1769.

Term of leases.

Section 9 (1) (slightly modified).

Form of leases for one year or less

Form of leases for more than one year. Cap. 142.

Leases for township or trading centres. No. 48 of 1931.

Mining leases. No. 61 of 1933.

Buildings on leased native lands.

Section 61 of
Cap. 140
(amended).

to the contrary contained in the lease, pass to the Trust Board on behalf of the native population of the native lands without payment of compensation to the lessee or to any other person in respect of such buildings:

Provided that the lessee may remove any such buildings within three months of the determination of the lease in any case where—

- (a) the term of the lease does not exceed thirty-three years; and
- (b) the buildings were erected by the lessee during the currency of the term of the lease; and
- (c) the lease is not determined by forfeiture; and
- (d) the Trust Board does not elect to purchase the buildings on behalf of the native population of the native lands.

(2) Where the Trust Board elects to purchase any such buildings in accordance with paragraph (d) of the proviso to sub-section (1) of this section, the lessee shall have no option as to the sale to the Board, but if he does not agree to the price offered by the Board the matter shall be referred to arbitration.

41
Rents.
Section 10 of
Ordinance
9/1930
(modified).
Section 1533.

35. Subject to the provisions of section 22 of this Ordinance the rent payable in respect of any land in the native lands leased under the provisions of this Ordinance shall in every case be assessed by the Provincial Commissioner in consultation with the Local Board, subject to the approval of the Governor, and shall be paid to the Local Native Council concerned. Due regard shall be had in all such assessments to the fair economic value of the land and to such conditions regarding improvements as may be prescribed in the lease.

42
Lessee
prohibited from
alienating.
Section 11 of
Ordinance
9/1930.

36. (1) Save as may otherwise be prescribed by rules made under this Ordinance, no lessee under this Ordinance shall alienate the land comprised in his lease or any part thereof by sale, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent of the Provincial Commissioner.

provision to the contrary contained in the lease, pass to and vest in the Trust Board on behalf of the native population of the native lands without payment of compensation to the lessee or to any other person in respect of such buildings:

Provided that where—

- (a) the term of the lease does not exceed thirty-three years; and
- (b) the buildings were erected by the lessee or by his predecessor in title; and
- (c) the lease is not determined by forfeiture.

the lessee may, within six months after the determination of the lease, remove any such buildings unless the Trust Board elects to purchase the buildings on behalf of the native population of the native lands and informs the lessee accordingly before such lessee has commenced to remove such buildings:

Provided further that nothing in this section contained shall be deemed to affect the provisions of sections 36, 56 and 58 of the Mining Ordinance, 1933, except that the Commissioner of Mines shall not allow a further period in excess of three months under the aforesaid section 36, or fix a time in excess of six months under the aforesaid section 56, save with the consent of the Trust Board.

(2) Where the Trust Board elects to purchase any such buildings in accordance with the proviso to sub-section (1) of this section, the lessee shall have no option as to the sale to the Trust Board, but if he does not agree to the price offered by the Trust Board the matter shall be referred to arbitration under the provisions of the Arbitration Ordinance.

Cap. 18.

34. Subject to the provisions of section 20 of this Ordinance, the rent payable in respect of any land in the native lands, in respect of which a lease has been granted, shall be assessed by the Provincial Commissioner in consultation with the Local Board, shall be subject to the approval of the Governor, and shall be paid to the Local Native Council concerned. Due regard shall be had in all such assessments to the fair economic value of the land and to such conditions regarding improvements as may be contained in the lease.

Rents.

35. (1) Save as may otherwise be prescribed, no lessee of land in the native lands shall alienate the land, or any part thereof, comprised in his lease by sale, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent in writing of the Provincial Commissioner.

Lessee
prohibited from
alienating.

Supreme Court for the recovery of the land. On proof or the facts, the Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and may order that possession of the land be given by the lessee to the Chief Native Commissioner, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

39. (1) Notwithstanding anything in this Ordinance contained but subject to the conditions and fees prescribed in any rules made under this Ordinance licences may be issued to any person or persons relating to—

- (a) the grazing of cattle on native lands;
- (b) the removal of timber or other forest produce from any part of the native lands not included in a gazetted forest area;
- (c) the taking of sand, lime, stone, and other common minerals (excluding salt) from the native lands;
- (d) wayleaves in the native lands;

Provided that any licence granted under paragraph (a), (b) or (c) shall be granted for a period not exceeding twelve months at any one time.

(2) Licences for the grazing of cattle may be granted by the Chief Native Commissioner or by such Provincial or District Commissioners as the Chief Native Commissioner from time to time may appoint as licensing officers: Provided that in the granting of such licences the Chief Native Commissioner and all licensing officers shall conform to any general or special instructions which the Trust Board may have issued in respect of the native lands to licensing officers.

(3) Subject to any general or special instructions issued by the Trust Board at any time the Chief Native Commissioner or such Provincial or District Commissioner as the Chief Native Commissioner may appoint as licensing officers may issue licences for the removal of timber or other forest produce from the native lands.

(4) Licences for the taking of sand, lime, stone, and other common minerals (excluding salt) from the native lands may be granted by a Provincial Commissioner or by such District Commissioners as a Provincial Commissioner may appoint as licensing officers.

(5) Subject always to any law for the time being in force in the Colony, way-leave licences may be granted by a Provincial Commissioner. Such licences may empower the holder thereof, his servants and agents to enter upon land in the Native Lands for the purposes of laying pipes, setting up electric power or telephone lines, cables or aerial ropeways, and erecting such poles and pylons and making such excavations as may be necessary, in the opinion of the Provincial Commissioner, for the carrying out of any such purpose.

for the recovery of the land. On proof of the facts, the Court shall, subject to relief upon such terms as to it may appear just, declare the lease forfeited, and may order that possession of the land be given by the lessee to the Chief Native Commissioner, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

38. (1) Notwithstanding anything in this Ordinance contained, but subject to such conditions and fees as may be prescribed, licences may be granted to any person relating to—

- (a) the grazing of live stock on native lands;
- (b) the removal of timber or other forest produce from any part of the native lands not included in an area declared under the provisions of section 3 of the Forest Ordinance to be a forest area;
- (c) the taking of sand, lime, stone, and other common minerals (excluding surface salt) from the native lands;
- (d) wayleaves in the native lands;

Provided that no licence referred to in paragraphs (a), (b) or (c) of this sub-section shall be granted for a period exceeding twelve months at any one time.

Subject to any general or specific instructions issued by the Trust Board, the Chief Native Commissioner, or such Provincial or District Commissioner as he may appoint as licensing officers, may grant licences for the grazing of cattle in the native lands, and for the removal of timber or other forest produce from the native lands.

Licences for the taking of sand, lime, stone and other common minerals (excluding surface salt) from the native lands may be granted by a Provincial Commissioner or by such District Commissioners as a Provincial Commissioner may appoint as licensing officers.

A Provincial Commissioner may grant a wayleave licence to any person empowering the holder thereof, his servants and agents to enter upon land in the native lands for the purposes of laying pipes, setting up electric power or telephone lines, cables, or aerial ropeways, and erecting such poles and pylons and making such excavations as may, in the opinion of the Provincial Commissioner, be necessary for the carrying out of any such purpose.

43
Licences,
Section 1623.

Grazing.

Forest produce.

Section 1626.

Common
minerals.
Section 1627.

Wayleaves.

For consideration
at the request
of the Com-
missioner of
Mines.

Licences

Cap. 149.

Forest produce

Common
minerals.

Wayleaves.

Supreme Court for the recovery of the land. On proof of the facts, the Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and may order that possession of the land be given by the lessee to the Chief Native Commissioner, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

39. (1) Notwithstanding anything in this Ordinance contained but subject to the conditions and fees prescribed in any rules made under this Ordinance licences may be issued to any person or persons relating to—

- (a) the grazing of cattle on native lands;
- (b) the removal of timber or other forest produce from any part of the native lands not included in a gazetted forest area;
- (c) the taking of sand, lime, stone, and other common minerals (excluding salt) from the native lands;
- (d) wayleaves in the native lands:

Provided that any licence granted under paragraph (a), (b) or (c) shall be granted for a period not exceeding twelve months at any one time.

(2) Licences for the grazing of cattle may be granted by the Chief Native Commissioner or by such Provincial or District Commissioners as the Chief Native Commissioner from time to time may appoint as licensing officers: Provided that in the granting of such licences the Chief Native Commissioner and all licensing officers shall conform to any general or special instructions which the Trust Board may have issued in respect of the native lands to licensing officers.

(3) Subject to any general or special instructions issued by the Trust Board at any time the Chief Native Commissioner or such Provincial or District Commissioner as the Chief Native Commissioner may appoint as licensing officers may issue licences for the removal of timber or other forest produce from the native lands.

(4) Licences for the taking of sand, lime, stone, and other common minerals (excluding salt) from the native lands may be granted by a Provincial Commissioner or by such District Commissioners as a Provincial Commissioner may appoint as licensing officers.

(5) Subject always to any law for the time being in force in the Colony, way-leave licences may be granted by a Provincial Commissioner. Such licences may empower the holder thereof, his servants and agents to enter upon land in the Native Lands for the purposes of laying pipes, setting up electric power or telephone lines, cables or aerial ropeways, and erecting such poles and pylons and making such excavations as may be necessary, in the opinion of the Provincial Commissioner, for the carrying out of any such purpose.

for the recovery of the land. On proof of the facts, the Court shall, subject to relief upon such terms as to it may appear just, declare the lease forfeited, and may order that possession of the land be given by the lessee to the Chief Native Commissioner, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

38. (1) Notwithstanding anything in this Ordinance contained, but subject to such conditions and fees as may be prescribed, licences may be granted to any person relating to—

- (a) the grazing of live stock on native lands;
- (b) the removal of timber or other forest produce from any part of the native lands not included in an area declared under the provisions of section 3 of the Forest Ordinance to be a forest area;
- (c) the taking of sand, lime, stone, and other common minerals (excluding surface salt) from the native lands;
- (d) wayleaves in the native lands:

Provided that no licence referred to in paragraphs (a), (b) or (c) of this sub-section shall be granted for a period exceeding twelve months at any one time.

(2) Subject to any general or specific instructions issued by the Trust Board, the Chief Native Commissioner, or such Provincial or District Commissioner as he may appoint as licensing officers, may grant licences for the grazing of cattle in the native lands, and for the removal of timber or other forest produce from the native lands.

(3) Licences for the taking of sand, lime, stone and other common minerals (excluding surface salt) from the native lands may be granted by a Provincial Commissioner or by such District Commissioners as a Provincial Commissioner may appoint as licensing officers.

(4) A Provincial Commissioner may grant a wayleave licence to any person empowering the holder thereof, his servants and agents to enter upon land in the native lands for the purposes of laying pipes, setting up electric power or telephone lines, cables, or aerial ropeways, and erecting such poles and pylons and making such excavations as may, in the opinion of the Provincial Commissioner, be necessary for the carrying out of any such purpose.

43
Licences.
Section 1623.

Grazing.

Forest produce.

Section 1626.

Common minerals.
Section 1627.

Wayleaves.

For consideration
at the request
of the Com-
missioner of
Mines.

Licences

Cap. 149

Forest produce

Common minerals.

Wayleaves.

Prior to the issue of any such wayleave licence the Provincial Commissioner shall consult the Local Board as to any compensation which may be payable and, if he shall be unable to agree with the Board as to such compensation, the Provincial Commissioner shall report the matter to the Governor whose decision shall be final. In any case where the usefulness of any land for agricultural purposes is in any

way impaired by reason of the grant of any such wayleave licence, compensation in respect thereof shall be payable.

Licence fees,
Modification of
Section 8 (3) of
Ordinance 9/30.

(6) All fees prescribed in respect of licences issued under this section shall be paid to the Local Native Council concerned.

Renewals:
Section 1628.

(7) Where the Trust Board objects to any licence which has been issued, such licence shall not be renewed unless and until the Board has withdrawn such objection:

Appeal.

Provided that in any case where the Board refuses to approve the issue or renewal of any licence provided for by this section, the applicant for such licence may within thirty days of such refusal, appeal in writing to the Governor, whose decision shall be final.

Forfeiture of
licences.

Section 13 of
Ordinance 9/30
(modified).
Section 1774.

40. (1) If the fees or any part thereof payable under a licence granted under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if the licensee shall fail to comply with, or shall commit any breach of, any of the conditions of his licence, the Chief Native Commissioner may cause an application for the forfeiture of such licence to be made to a magistrate of the first class.

(2) Upon receipt of such application together with particulars in writing specifying the fees in arrear or the condition which has not been complied with or of which a breach has been committed, the magistrate shall cause to be served upon the licensee a copy of such particulars together with a notice of the date, not being less than fourteen days from the date of such notice, when the application is to be heard.

(3) If upon the date fixed for the hearing of the application, or to which such hearing has been adjourned, it shall be proved to the satisfaction of the magistrate that fees are in arrear or that the licensee has failed to comply with or

Before granting any such wayleave licence the Provincial Commissioner shall consult the Local Board as to any compensation which may be payable and, if he is unable to agree with the Board as to such compensation, he shall report the matter to the Governor, whose decision shall be final. In any case where the usefulness of any land for agricultural purposes is in any way impaired by reason of the grant of any such wayleave licence, compensation in respect thereof shall be payable.

(6) All fees prescribed in respect of licences issued under the provisions of this section shall be paid to the Local Native Council concerned.

(7) Where the Trust Board objects to any licence which has been granted under the provisions of this section, such licence shall not be renewed unless and until the Board has withdrawn such objection:

Provided that where the Board refuses to approve the grant or renewal of any licence which may be granted under the provisions of this section, the applicant for such licence or renewal, as the case may be, may within thirty days after the date of such refusal, appeal in writing to the Governor, whose decision shall be final.

39. (1) If the fees or any part thereof payable under a licence granted under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if the licensee fails to comply with or commits any breach of any of the conditions of his licence, the Chief Native Commissioner, Provincial Commissioner, or licensing officer, as the case may be, may cause an application for the forfeiture of such licence to be made to a magistrate of the first class.

(2) Upon receipt of such application, together with particulars in writing specifying the fees in arrear or the condition which has not been complied with or of which a breach has been committed, the magistrate shall cause to be served upon the licensee a copy of such particulars together with a notice of the date, not being less than fourteen days after the date of such notice, when the application is to be heard.

(3) If upon the date fixed for the hearing of the application, or the date to which such hearing has been adjourned, it be proved to the satisfaction of the magistrate that fees are in arrear, or that the licensee has failed to comply with, or

has committed a breach of any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may appear just, declare the licence forfeited.

47
Debt not to be extinguished by forfeiture.

Section 14 of Ordinance 9/30. Section 1774.

41. No forfeiture under any of the provisions of this Ordinance or of any rule made thereunder shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

48
Licences and permits to be issued subject to rules. Sections 1623-1628.

Trust Board to be land-holder for purpose of Water Ordinance, 1929. No. 35 of 1929.

Service of process on.

42. The issue of licences and occupation permits in respect of land set apart under this Ordinance shall, save where a contrary intention is in this Ordinance expressed, be governed by rules made under this Ordinance.

43. The Trust Board shall, in respect of water flowing into, through or out of the native lands, be deemed, for the purposes of the Water Ordinance, 1929, to be the land holder in relation to such native lands.

44. (1) Service on the Trust Board of all legal processes and notices shall be effected by service on the Chief Native Commissioner who, in any legal proceedings, may be plaintiff or defendant, as the case may be, in the name of the Trust Board.

(2) Any costs incurred by or damages awarded against the Trust Board in connexion with any legal proceedings shall be paid by the Treasurer out of the revenues of the Colony.

has committed a breach of any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may to him appear just, declare the licence forfeited.

Debt not to be extinguished by forfeiture.

40. No forfeiture of any lease or licence under the provisions of this Ordinance, or of any rule made thereunder, shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

41. The issue of licences and occupation permits in respect of land set apart under the provisions of this Ordinance shall, save where a contrary intention is in this Ordinance expressed, be governed by rules made under this Ordinance.

Licences and permits to be issued subject to rules.

PART VI
MISCELLANEOUS POWERS
The Trust Board

42. The Trust Board shall, in respect of water flowing into, through or out of the native lands, be deemed, for the purposes of the Water Ordinance, 1929, to be the land holder in relation to such native lands.

Trust Board to be land-holder for purpose of Water Ordinance, 1929. No. 35 of 1929.

43. The Trust Board may, by notice in the Gazette, delegate to the Chief Native Commissioner the power to exercise on behalf of the Trust Board any of the functions or powers of the Trust Board in respect of water permits which, in the opinion of the Trust Board, are of a minor character.

Trust Board may delegate powers under Water Ordinance, 1929.

44. The Trust Board at any time may cause general or specific instructions to issue in regard to the grant by Provincial Commissioners or licensing officers of licences to remove sand, lime, and any other common minerals (except surface salt), timber and other forest produce, from the native lands.

Trust Board may issue instructions to grant licences to remove sand, lime, timber and other forest produce.

45. (1) Service on the Trust Board of all legal processes and notices shall be effected by service on the Chief Native Commissioner who, in any legal proceedings, may be plaintiff or defendant, as the case may be, in the name of the Trust Board.

Service of process on.

(2) Any costs incurred by or damages awarded against the Trust Board in connexion with any legal proceedings shall be paid by the Treasurer out of the revenues of the Colony.

NW
Def. expenses

Local Native Councils

46. The Local Native Councils established under the provisions of the Native Authority Ordinance shall be responsible at all times for exercising the various functions assigned to them in respect of the native lands by this Ordinance and by any rules made thereunder.

Local Native Councils.

No. 2 of 1957

Miscellaneous Powers of Governor

47. (1) The Governor may, with the consent of the Trust Board, make adjustments of the boundaries of the native land units where the Trust Board is satisfied that any such adjustment is of a minor character and in the interests of the native population.

Governor may make minor adjustments to boundaries of Native Land Units.

See section 1650 of the Statute

(2) Where any such adjustment has been made notice thereof shall be published in the Gazette, and the Second Schedule to this Ordinance shall be read and construed subject to the adjustments specified in such notice.

(3) Where in the opinion of the Governor it is necessary in the interests of the native population of the Colony to increase the area of one native land unit by diminishing the area of a neighbouring native land unit thereby involving a major adjustment of the boundaries of the native land units, the Governor shall refer the matter to the Trust Board for its advice and shall thereafter refer the matter to the Secretary of State for his decision.

Major adjustments of boundaries of native land units.

New

48. (1) The Governor may, by notice in the Gazette, declare that land in the native lands is required for public purposes.

Governor may declare that land is required for public purposes.

(2) The Governor may, by notice in the Gazette, declare what is a public purpose for the purposes of this Ordinance.

See memorandum enclosed to the Secy. of State dated 18/10/57

49. (1) Subject to the provisions of section 70 of this Ordinance, the Governor may, by writing under his hand, order any native, who at the commencement of this Ordinance is not residing in the native lands, the native reserves, the temporary native reserves, or the native leasehold areas and whose rights have, under the provisions of section 70 of this Ordinance, been extinguished, forthwith to remove himself, his family and his property (if any) from the land on which he is residing:

Governor may order native to remove into Native Land Unit.

New See para 6 of Memo to the Secy of State dated 16/10/57 and para 9 of the same dated 16/10/57

New.

45. (1) Subject to the provisions of section 66 of this Ordinance, the Governor by writing under his hand may order any native, who at the date of the coming into operation of this Ordinance is not resident in the native land unit provided under this Ordinance for the tribe to which such native belongs, to remove himself forthwith into such native land unit:

New.

Provided that no such order shall be made unless the Governor is satisfied that sufficient land for the accommodation of the native in such native land unit is available and that provision for compensation for disturbance has been made.

(2) Any native who disobeys or fails to comply with any order made under this section shall be guilty of an offence against this Ordinance.

46. (1) The Governor subject to the provisions of subsection (2) of this section at any time, may—

- (a) enter on any land in the native lands, and take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not;
- (b) enter upon such land and set up poles and carry electric, telegraph or telephone lines across such land, and lay sewers, water pipes, electric, telegraph or telephone lines therein;
- (c) enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream, and may construct dams, and divert any river or stream;
- (d) by writing under his hand authorize officers of the Government of the Colony and of any local authority duly established by any Ordinance in force in the Colony and any contractors employed by such officers, to exercise any of the powers conferred

Powers of Governor in regard to land in the native lands.

(Section 16 of the Native Lands Trust Ordinance, 1930).

Section 1780.
Section 1783.

Provided that no such order shall be made unless the Governor is satisfied that sufficient suitable land for the accommodation of the native and his family is available and that provision for compensation for disturbance has been made.

(2) Any native who disobeys or fails to comply with any order made under this section shall be guilty of an offence against this Ordinance.

(3) Where any native is convicted of an offence under the provisions of this section, the Court may, in addition to any penalty which it may impose under this Ordinance, authorize any administrative officer or police officer to cause such native, together with his family and property, if any, to be removed from the land on which he is residing in contravention of an order made under the provisions of sub-section (1) of this section.

Powers of Entry

50. (1) The Governor, subject to the provisions of subsection (2) of this section, may at any time—

- (a) enter upon any land in the native lands, and take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not;
- (b) enter upon such land and set up poles and carry electric, telegraph or telephone lines across such land, and lay sewers, water pipes, electric, telegraph or telephone lines therein;
- (c) enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream, and may construct dams and divert any river or stream;
- (d) by writing under his hand authorize officers in the service of the Government of the Colony, of the High Commissioner for Transport, and of any local authority duly established by any Ordinance in force in the Colony, and any contractors employed by such officers, to exercise any of the powers conferred

Powers of entry of Governor on Native Lands.

order made by Governor subject to the provisions of this section
Conf. No. 20 of 1930
Section 17 of the Native Lands Trust Ordinance
Conf. 1207 of 1930

Now, Conf. 1207 of 1930

upon the Governor by this section; any authority granted under this paragraph shall be deemed to include the assistants, servants and agents of the officers or contractors to whom such authority is granted.

(2) Compensation, assessed in accordance with the provisions of sections 19 and 20 of this Ordinance, shall be payable, in respect of anything done under this section for loss or disturbance and for the fair value of buildings and crops destroyed or damaged and in any case where the usefulness of any land for agricultural purposes is impaired by anything so done, compensation in respect thereof shall be payable.

(3) The powers conferred by this section may be exercised before the compensation is paid, but not before compensation has been assessed.

(4) It shall not be competent for the Trust Board or a Local Board to make any representations in regard to the exercise of any powers under this section except in so far, in the case of a Local Board, as the Provincial Commissioner may refer to such Board any question of compensation.

47. (1) Any officer of the Government of the Colony and any person authorized by any such officer shall for any purpose relating to this Ordinance have power at all times to enter on any land in native lands or to enter any premises or place on such lands and there to make such inspection, examination and inquiry and to call for such information as may be necessary for carrying any of the provisions of this Ordinance into effect.

(2) If any person refuses to permit any duly authorized officer or his representative to carry out any of the powers provided for in sub-section (1) of this section or obstructs or hinders any such officer or his representative in the execution of his duty under this Ordinance or fails to give any required information or furnishes false information to such officer or to his representative such person shall be guilty of an offence under this Ordinance and shall on conviction by a magistrate of the first or second class be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

upon the Governor by this section. Any authority granted under the provisions of this paragraph shall be deemed to include the assistants, servants or agents of the officers or contractors to whom such authority is granted.

(2) Compensation, assessed in accordance with the provisions of sections 17 and 18 of this Ordinance, shall be payable in respect of anything done under this section for loss or disturbance and for the fair value of buildings and crops destroyed or damaged, and, in any case where the usefulness of any land for agricultural purposes is impaired by anything so done, compensation in respect thereof shall be payable.

(3) The powers conferred by this section may be exercised before the compensation is paid, but not before compensation has been assessed.

(4) It shall not be competent for the Trust Board or a Local Board to make any representations in regard to the exercise of any powers under this section except in so far, in the case of a Local Board, as the Provincial Commissioner may refer to such Board any question of compensation.

51. (1) Any officer of the Government of the Colony and any person authorized by any such officer shall for any purpose relating to this Ordinance have power at all times to enter upon any land in the native lands or to enter any premises or place on such lands and there to make such inspection, examination and inquiry and to call for such information as may be necessary for carrying into effect any of the provisions of this Ordinance or of any other law for the time being in force.

(2) Any person who refuses to permit any duly authorized officer or his representative to carry out any of the powers conferred by sub-section (1) of this section, or obstructs or hinders any such officer or his representative in the execution of his duty under this Ordinance, or fails to give any required information, or furnishes false information, to such officer or to his representative, shall be guilty of an offence under this Ordinance and shall, on conviction by a magistrate of the first or second class, be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Section 1783.

Power to enter land and premises.

New.
Sections 1787 and 1811.

Section 20 of Ordinance 9/30 (amplified).

Obstruction of officers.

New.

Power to enter land and premises.

Obstruction of officers.

Consent of Trust Board to be necessary in case of forest areas. Section 1618 et seq. Cap. 149.

48. (1) Notwithstanding anything contained in this Ordinance, land in the native lands may with the consent of the Trust Board be declared to be a forest area as defined by the Forest Ordinance.

(2) Any land in the native lands duly declared to be a forest area shall be proclaimed as such in accordance with the provisions of the Forest Ordinance and shall be administered and controlled in accordance with rules made under the Forest Ordinance or any other Ordinance at any time in force in the Colony relating to forests.

(3) All net profits accruing to the Conservator of Forests from the working of forest areas in the Native Lands shall be paid annually to the Local Native Council.

For the purposes of this section such net profits shall be deemed to be the sum of money remaining after the deduction of all working and maintenance charges. Where, in any year, a loss is incurred the amount of such loss shall be carried forward and added to the working and maintenance charges for the ensuing year.

49. (1) No action shall lie against the Government of the Colony or against any officer thereof or against any person authorized by any such officer, for any act done in good faith and without negligence under the provisions of this Ordinance or done for the purpose of carrying into effect any such provisions.

(2) No compensation shall be payable to any person for any act done in good faith and without negligence under the provisions of this Ordinance, save where express provision is made in this Ordinance for the payment of compensation.

(3) No action, prosecution or other proceeding shall be commenced in the Colony against any person for any act done in pursuance or execution or intended execution of this Ordinance or in respect of any alleged neglect or default in the execution of this Ordinance unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

50. All acts heretofore done by the Governor or by any officer of the Government of the Colony or by any person acting under the direction of the Governor or of any officer of such Government in regard to any matter related to the purposes of this Ordinance are hereby made and declared to be lawful and are confirmed as on and from the time of the performance of such acts, and the Governor and

Validation of acts previously done, and indemnity therefor.

PART VII
MISCELLANEOUS PROVISIONS

52. (1) Notwithstanding anything contained in this Ordinance, land in the native lands may, with the consent of the Trust Board, be declared to be a forest area as defined by the Forest Ordinance.

(2) Any land in the native lands duly declared to be a forest area shall be proclaimed as such in accordance with the provisions of the Forest Ordinance and shall be administered and controlled in accordance with rules made under that Ordinance or any other Ordinance at any time in force in the Colony relating to forests.

(3) All net profits accruing to the Conservator of Forests from the working of forest areas in the native lands shall be paid annually to the Local Native Council concerned.

For the purposes of this section the net profit of any forest area shall be the revenues derived from such forest area after deducting from such revenues the cost to the Government of the Colony, including overhead expenses, of working and maintaining such forest area. Where, in any year, a loss is incurred, the amount of such loss shall be carried forward and added to the working and maintenance charges for the ensuing year.

53. (1) No action shall lie against the Government of the Colony or against any officer thereof or against any person authorized by any such officer, for any act done under the provisions of this Ordinance in good faith and without negligence, or done for the purpose of carrying into effect any such provisions.

(2) No compensation shall be payable to any person for any act done under the provisions of this Ordinance in good faith and without negligence, save where express provision is made in this Ordinance for the payment of compensation.

54. All acts heretofore done by the Governor or by any officer of the Government of the Colony or by any person acting under the direction of the Governor or of any officer of such Government in regard to any matter for which lawful authority is provided in this Ordinance and for which no lawful authority existed prior to the commencement of this Ordinance are hereby made and declared to be lawful and are confirmed as on and from the time of the performance of such acts, and the Governor and every such officer or

Consent of Trust Board to be necessary in case of forest areas. Cap. 149.

Cap. 149.

Cap. 149.

Indemnity.

Compensation.

Validation of acts previously done, and indemnity therefor.

person is hereby freed, acquitted, discharged, and indemnified, as well against the King's Most Gracious Majesty, his heirs and successors, as against any and all persons whatsoever, from all legal proceedings of any kind whatsoever whether civil or criminal, in respect of any such acts.

55. (1) All actions, suits and proceedings respecting land in the native lands or respecting any lease, licence or permit relating thereto, or respecting the breach of any covenant contained in any such lease, licence or permit, or respecting any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents or fees, or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name and title of the Chief Native Commissioner.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any advocate or by any administrative officer duly authorized by him in writing in that behalf.

56. (1) Any application, statement, demand, instrument, notice or other document authorized or required by this Ordinance, or any rule made thereunder, may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode or by sending it through the post in a registered letter addressed to him there.

(2) Where any such document is to be served on a person by being sent through the registered post it shall be deemed to have been served not later than the seventh day succeeding the day on which it was posted, and for proof of such service it shall be sufficient to prove that the letter containing the notice was properly addressed, registered and posted.

57. (1) Any order, notice or other document required by this Ordinance, or any rule made thereunder, to be published may be published by affixing a copy in some public or conspicuous place or situation in the area concerned, and, where it is deemed necessary, by publishing it in the Gazette.

(2) Such publication or affixing shall be deemed good and sufficient publication and notice to all persons concerned.

(3) Any person tearing, defacing, altering, injuring or removing any notice so affixed shall be guilty of an offence against this Ordinance, and shall be liable on conviction by a magistrate to a fine not exceeding ten pounds.

every such officer or person is hereby freed, acquitted, discharged, and indemnified, as well against the King's Most Gracious Majesty, his heirs and successors, as against any and all persons whatsoever, from all legal proceedings of any kind whatsoever whether civil or criminal, in respect of any such acts.

54. (1) All actions, suits and proceedings respecting land in the native lands or respecting any lease, licence or permit relating thereto, or respecting the breach of any covenant contained in any such lease, licence or permit, or respecting any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents or fees, or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name of the Chief Native Commissioner, who may be plaintiff in any such action, suit or proceedings.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any advocate or by any administrative officer duly authorized by him in writing in that behalf.

52. (1) Any application, statement, demand, instrument, notice or other document authorized or required by this Ordinance or any rule made thereunder may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode or by sending it through the post in a registered letter addressed to him there.

(2) Where any such document is to be served on a person by being sent through registered post it shall be deemed to have been served not later than the seventh day succeeding the day when posted and for proof of such service it shall be sufficient to prove that the letter containing the notice was properly registered, addressed and posted.

58. (1) Any order, notice or other document required by this Ordinance, or any rule made thereunder, to be published may be published by affixing a copy in some public or conspicuous place or situation in the area concerned, and, where it is deemed necessary, by publishing it in the Gazette.

(2) Such publication or affixing shall be deemed good and sufficient publication and notice to all persons concerned.

(3) Any person tearing, defacing, altering, injuring or removing any notice so affixed shall be guilty of an offence against this Ordinance, and shall be liable on conviction by a magistrate to a fine not exceeding ten pounds.

Actions to be brought in name of Chief Native Commissioner. (Section 19 of the Native Lands Trust Ordinance, 1930) (modified). Section 1786.

Proceedings to be brought in name of Chief Native Commissioner.

Service of notice, etc. New.

Service of notice, etc.

Publication of Notices, etc. New.

Publication of Notices, etc.

Defacing notices, etc. Penalty.

Defacing notices, etc. Penalty.

57 Appeal.

New.

54. Save where provision to the contrary is expressly made in this Ordinance, no appeal shall lie from any decision given, order made, or matter or thing done under this Ordinance.

58 Saving. Section 1816.

New.

55. Save in so far as other provision is expressly made in this Ordinance, nothing in this Ordinance contained shall be deemed to affect any other law relating to land or mining in the Colony.

59 Penalty.

New.

56. Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Ordinance or of any rules made thereunder, or in breach of the conditions and restrictions subject to or upon which any licence or permit has been issued, shall be deemed to be an offence against this Ordinance, and for every such offence for which no penalty is specially provided the offender shall be liable on conviction by a magistrate to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

60 Penalty for unauthorized occupation of land in native lands.

Section 21 of Ordinance-9/30. Trespass.

57. (1) Any person who unlawfully occupies land in the native lands; in any manner whatsoever, shall be guilty of an offence against this Ordinance.

Section 1667.

(2) No person entering or being in the native lands shall be deemed to be a trespasser on or to be in unlawful occupation of such native lands save in so far as he would be liable to be proceeded against for trespass or for unlawful occupation of land under the provisions of this Ordinance or any rules made thereunder or under the provisions of any other law at any time in force in the Colony.

61 Penalty for false declaration. New.

58. Any person who makes a false declaration in relation to any matter or thing required to be done by this Ordinance or by any rules made thereunder, or who produces any false declaration or certificate, knowing the same to be false in any material particular shall be guilty of an offence against this Ordinance.

63 Saving of other powers. New.

59. Nothing in this Ordinance contained shall prevent a prosecution under any other law, but so that a person shall not be punished twice for the same offence.

58. Save where provision to the contrary is expressly made in this Ordinance, no appeal shall lie from any decision given, order made, or matter or thing done under this Ordinance.

59. Save in regard to matters wherein express provision is made in this Ordinance, the native lands shall be subject in all respects to the general law from time to time in force in the Colony.

Penalties

60. Every omission or neglect to comply with and every act done, or attempted to be done, contrary to the provisions of this Ordinance or of any rule or order made thereunder, or in breach of the conditions and restrictions subject to or upon which any licence or permit has been issued, shall be deemed to be an offence against this Ordinance, and for every such offence for which no penalty is specially provided the offender shall be liable on conviction by a magistrate to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

61. (1) Any person who unlawfully occupies land in the native lands, in any manner whatsoever, shall be guilty of an offence against this Ordinance.

(2) No person entering or being in the native lands shall be deemed to be a trespasser on or to be in unlawful occupation of such native lands save in so far as he would be liable to be proceeded against for trespass or for unlawful occupation of land under the provisions of this Ordinance or any rules made thereunder or under the provisions of any other law for the time being in force in the Colony.

62. Any person who makes a false declaration in relation to any matter or thing required to be done by this Ordinance, or by any rules made thereunder, or who produces any false declaration or certificate, knowing the same to be false in any material particular, shall be guilty of an offence against this Ordinance.

63. Nothing in this Ordinance contained shall prevent a prosecution under any other law, but so that a person shall not be punished twice for the same offence.

62

Construction.
No. 9 of 1930.

60. (1) Any reference in any enactment to the Native Lands Trust Ordinance, 1930, or to any Ordinance amending the same, shall, unless the context otherwise requires, be construed to refer to this Ordinance.

New.

(2) Any reference in any enactment to a Native Reserve shall, unless the context otherwise requires, be construed to refer to an area in the native lands as defined by this Ordinance.

(3) Any reference in any enactment to the Native Lands Trust Board or to the Central Board shall, unless the context otherwise requires, be construed to refer to the Trust Board defined in section 3 of this Ordinance.

(4) Any reference in this Ordinance to any other Ordinance shall be construed to include any Ordinance amending or replacing such other Ordinance.

64

Rules.
(Section 22 of
Native Lands
Trust Ordinance,
1930, modified.)
Section 1789.

61. (1) Subject to the provisions of this Ordinance the Governor may with the advice and consent of the Trust Board make rules, relating to the native lands, for the purpose of carrying this Ordinance into effect and for prescribing the fees to be paid for any matter or thing done under this Ordinance, and more particularly for all or any of the following purposes:—

- (a) controlling the occupation and use of the native lands for grazing and pasturing stock and flocks and herds;
- (b) compulsorily reducing the numbers of stock, flocks and herds in any native land unit;
- (c) regulating the reconditioning of any native land unit and for such purpose prohibiting and regulating the occupation of any areas therein;
- (d) regulating generally the use and conservation of any area in the native lands;
- (e) regulating any matters relating to the tenure of land as between natives in the native lands;
- (f) regulating the grant of leases in respect of land set apart in the native lands, and all matters relating thereto, and prescribing—
 - (i) the form of leases issued for a term of one year or less;

Construction

Construction.
No. 9 of 1930.

64. (1) Any reference in any enactment to the Native Lands Trust Ordinance, 1930, or to any Ordinance amending the same, shall, unless the context otherwise requires, be construed to refer to this Ordinance.

(2) Any reference in any enactment to a native reserve shall, unless the context otherwise requires and save in the case of this Ordinance or of Part VI of the Crown Lands Ordinance, be construed to refer to an area in the native lands as defined by this Ordinance.

Cap. 140.

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(3) Any reference in any enactment to the Native Lands Trust Board or to the Central Board shall, unless the context otherwise requires, be construed to refer to the Trust Board defined in section 3 of this Ordinance.

(4) Any reference in this Ordinance to any other Ordinance shall be construed to include any Ordinance amending or replacing such other Ordinance.

Rule-making Powers

Governor may
make Rules.

65. (1) Subject to the provisions of this Ordinance, the Governor may, with the advice and consent of the Trust Board, make rules, relating to the native lands, for the purpose of carrying this Ordinance into effect and for prescribing the fees to be paid for any matter or thing done under this Ordinance, and more particularly for all or any of the following purposes:—

- (a) controlling the occupation and use of the native lands for grazing and pasturing stock, flocks and herds;
- (b) compulsorily reducing the numbers of stock, flocks and herds in any native land unit;
- (c) regulating the reconditioning of any native land unit and for such purpose prohibiting and regulating the occupation of any areas therein;
- (d) regulating generally the use and conservation of any area in the native lands;
- (e) regulating any matters relating to the tenure of land as between natives in the native lands;
- (f) regulating the grant of leases in respect of land set apart in the native lands and all matters relating thereto, and prescribing—
 - (i) the form of leases issued for a term of one year or less;

(ii) the term for which any particular class of lease may be granted;

(iii) the conditions or restrictions subject to and upon which any particular class of lease may be granted;

(iv) the method of collecting the rents for leases and the persons or bodies to whom such rents are to be paid;

(g) regulating the issue of licences in the native lands in respect of—

(i) native cattle-grazing rights;

(ii) the removal of timber, forest produce, sand, lime, stone and other common minerals (excluding salt); and

(iii) wayleaves.

(h) prescribing the form and term of licences and occupation permits and the conditions upon and subject to which such licences and permits may be issued.

(2) In any rules made under this section the Governor may reserve power to apply all or any of the provisions of such rules to the native lands as a whole, or to any one native land unit, or to any specified part of any native land unit.

PART VII

SAVING—EXTINGUISHMENT OF RIGHTS—REPEALS

62. Save where a contrary intention is expressed, nothing in this Ordinance contained shall be deemed to affect the validity of any subsisting title to land within the native lands nor the validity of any subsisting grant of mining or other rights therein in any case where such title was acquired or such grant was made prior to the date of the coming into operation of this Ordinance. All such titles and rights and the powers thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance under which such titles or rights were granted as if this Ordinance had not been enacted:

Provided that all land held under any such subsisting title or grant shall be deemed to be included in the native lands from the date of the coming into operation of this Ordinance.

Section 1625

Saving of existing rights.
Section 23 of Ordinance 9/30 (adapted).
Section 1789.

(ii) the term for which any particular class of lease may be granted;

(iii) the conditions or restrictions subject to and upon which any particular class of lease may be granted;

(iv) the method of collecting the rents for leases and the persons to whom such rents are to be paid;

(g) regulating the issue of licences in the native lands in respect of—

(i) native cattle-grazing rights;

(ii) the removal of timber, forest produce, sand, lime, stone and other common minerals (excluding surface salt); and

(iii) wayleaves.

(h) prescribing the form and term of licences and occupation permits and the conditions upon and subject to which such licences and permits may be issued.

(2) In any rules made under this section the Governor may reserve power to apply all or any of the provisions of such rules to the native lands as a whole, or to any one native land unit, or to any specified part of any native land unit.

(3) Any rules made under the provisions of this section shall be in addition to, and not in derogation of, the provisions of any law for the time being in force relating to the matters specified in paragraphs (a), (b), (c) and (d) of this section.

PART VIII

SAVING—EXTINGUISHMENT OF RIGHTS—REPEALS

66. Save where a contrary intention is expressed in this Ordinance, nothing herein contained shall be deemed to affect the validity of any subsisting title to land within the native lands nor the validity of any subsisting grant of mining or other rights therein in any case where such title was acquired or such grant was made before the commencement of this Ordinance. All such titles and rights and the powers thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance under which such titles or rights were granted as if this Ordinance had not been enacted:

Provided that all land held under any such subsisting title or grant shall be deemed to be included in the native lands from the commencement of this Ordinance.

Saving of existing rights.

Crown rights.
Section 1811
1639-1649.

63. Except as expressly provided in this Ordinance nothing herein contained shall affect prejudicially any right, power, privilege or exemption of the Crown.

Rights of
natives in the
native lands.
Section 1796.

64. In respect of the occupation, use, control, inheritance, succession and disposal of any land situate in the native lands every native tribe, group, family and individual shall have all the rights which they enjoy or may enjoy by virtue of existing native law and custom or any subsequent modifications thereof, in so far as such rights are not repugnant to any of the provisions of this Ordinance, or any rules made thereunder, or to the provisions of any other Ordinance or rules at any time in force in the Colony.

Forfeiture of
land for treason
or rebellion.
Section 1796.

65. Notwithstanding anything in this Ordinance contained the Governor, in cases where the offences of treason or rebellion against His Majesty have been proved to have been committed, by any native tribe, group, family or individual, and in addition to any other punishment lawfully inflicted in respect of an offence so committed, may order that any land in the native lands, held or occupied by any such tribe, group, family or individual, be forfeited and revert to His Majesty. Every such order of the Governor shall be subject to the approval of the Secretary of State.

Extinction of
of native rights.
Section 1854.

66. (1) From the date of the coming into operation of this Ordinance all existing native rights in any land in the Colony situate outside the boundaries of the native lands, the temporary native reserves and the native leasehold areas, irrespective of whether such rights relate to tribal, group, family or individual holdings, are hereby declared to be extinguished: and the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and of section 86 of the Crown Lands Ordinance shall no longer have effect in respect of land alienated under such Ordinances respectively:

Provided that the rights of a private right-holder shall not be so extinguished until he shall have reaped any crops which may have been planted prior to the date of the coming into operation of this Ordinance:

Provided further that no native shall be compelled to remove himself from such land except by order of the Governor made in accordance with section 45 of this Ordinance:

Section 1854
(proviso (iii)).

67. Save as is expressly provided in this Ordinance, nothing herein contained shall affect prejudicially any right, power, privilege or exemption of the Crown.

68. In respect of the occupation, use, control, inheritance, succession and disposal of any land situate in the native lands, every native tribe, group, family and individual shall have all the rights which they enjoy or may enjoy by virtue of existing native law and custom or any subsequent modifications thereof, in so far as such rights are not repugnant to any of the provisions of this Ordinance, or to any rules made thereunder, or to the provisions of any other law for the time being in force in the Colony.

69. Notwithstanding anything in this Ordinance contained, the Governor, in cases where the offences of treason or rebellion against His Majesty have been proved to have been committed by any native tribe, group, family or individual, and in addition to any other punishment lawfully inflicted in respect of an offence so committed, may order that any land in the native lands, held or occupied by any such tribe, group, family or individual, be forfeited and revert to His Majesty. Every such order of the Governor shall be subject to the approval of the Secretary of State.

70. (1) With effect from the commencement of this Ordinance, all existing native rights in any land in the Colony situate outside the boundaries of the native lands, the native reserves, the temporary native reserves and the native leasehold areas, irrespective of whether such rights relate to tribal, group, family or individual holdings, are hereby declared to be extinguished; and the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and of section 86 of the Crown Lands Ordinance shall no longer have effect in respect of land alienated under such Ordinances respectively:

Provided that the rights of a private right-holder shall not be so extinguished until he shall have harvested any annual crops which may have been planted before the date of the coming into operation of this Ordinance:

Provided further that, notwithstanding the provisions of section 12 of the Native Authority Ordinance, 1937, no native, whose rights in respect of the land upon which he, or his family, is, or are, residing, have been extinguished under the provisions of this section, shall be compelled to remove him-

No. 2 of 1937.

Section 1854 and
provisos (i) and
(ii).

And provided further that nothing in this section contained shall be deemed to apply to—

- (a) rights enjoyed by individual natives under any specific title granted to them;
- (b) rights of resident labourers secured by contract until the termination of the contract;
- (c) existing rights of grazing in any areas in respect of which forest concessions have been granted by the Government of the Colony;
- (d) native rights in the Protectorate.

Note to Section
1854.

(2) Nothing in this section contained shall be construed as affecting any native tribes or communities, for whom no specific native land unit is provided by this Ordinance, in regard to the right of such tribes or communities to occupy the areas of unalienated Crown land in which they are resident at the date of the coming into operation of this Ordinance.

Repeal.
Section 1790.
No. 9 of 1930.
No. 51 of 1932.
No. 36 of 1934.

67. Subject to the provisions of section 62 of this Ordinance, the Native Lands Trust Ordinance, 1930, as amended by the Native Lands Trust (Amendment) Ordinance, 1932, and by the Native Lands Trust (Amendment) Ordinance, 1934, is hereby repealed.

self from such land except by order of the Governor made in accordance with the provisions of section 49 of this Ordinance:

And provided further that nothing in this section contained shall be deemed to apply to—

- (a) rights enjoyed by individual natives under any specific title granted to them;
- (b) rights of resident labourers secured by contract under the provisions of the Resident Native Labourers Ordinance, 1925, until the termination of the contract;

No. 5 of 1935.

- (c) existing rights of grazing in any areas in respect of which forest concessions have been granted by the Government of the Colony;
- (d) native rights in the Protectorate of Kenya.

(2) Nothing in this section contained shall be construed as affecting any native tribes or communities, for whom no specific native land unit is provided by this Ordinance, in regard to any right which such tribes or communities may have to occupy the areas of unalienated Crown land in which they are resident at the date of the coming into operation of this Ordinance.

71. Subject to the provisions of section 66 of this Ordinance, the Native Lands Trust Ordinance, 1930, as amended by the Native Lands Trust (Amendment) Ordinance, 1932, and by the Native Lands Trust (Amendment) Ordinance, 1934, is hereby repealed.

Repeal.

No. 9 of 1930.

No. 51 of 1932.

No. 36 of 1934.

FIRST SCHEDULE

KENYA
No. 404



48
GOVERNMENT HOUSE
NAIROBI
KENYA

15 JULY, 1938.

JUL 1938
O. O. REGY

Sir,

31 ex 23034/36
I have the honour to refer to paragraph 4 of Sir Philip Cunliffe-Lister's (now Viscount Swinton) despatch Kenya No. 575 of the 15th May, 1934, in which he asked for half-yearly Progress Reports on the administrative action taken to give effect to the recommendations of the Kenya Land Commission to be furnished.

Reports covering the period up to the 31st December, 1937, have already been supplied. I now forward a further report for the period ending the 30th June, 1938.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. Brooke-Johnson

AIR CHIEF MARSHAL,
GOVERNOR.

THE RIGHT HONOURABLE,
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON. S.W.1.

SUMMARY OF ACTION TAKEN ON COMMISSION'S RECOMMENDATIONS.

50

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
591 & 622	Pangani.	<p style="text-align: center;"><u>KIKUYU PROVINCE.</u></p> <p style="text-align: center;"><u>NAIROBI MUNICIPALITY.</u></p> <p>Natives to be removed by sections to Pumwani. Compensation to be paid.</p>	<p>Accommodation in new Native Village completed and demolition of houses in Pangani resumed.</p>
680-682	Mile Railway Zone and Chyulu Triangle.	<p style="text-align: center;"><u>MASAI DISTRICT.</u></p> <p>Not to be included in Masai Reserve but either of the following courses to be followed:-</p> <ol style="list-style-type: none"> (1) Masai to take out annual lease until alternative watering places are available in the Reserve; or (2) Agricultural land in the Reserve to be ceded in exchange for Chyulu Triangle or other desired land. 	<p>The inclusion of these areas in the Masai Reserve in exchange for other lands approved</p>
757-9	Yatta Plateau.	<p style="text-align: center;"><u>UKAMBA PROVINCE.</u></p> <p>300 sq. miles to be added to Machakos Native Reserve as B1.</p>	<p>Reclassification of 'C' areas as B2 for a period of ten years approved.</p>