Legibly

PUBLIC RECORD OFFICE.

(N.B. *One* document only is to be applied for on each Ticket.)

Reference

10221

...ifo and

...at Mombasa.

Previous

J.O. 8426/26

Subsequent

...P.O.'s.

...(2 Enclosures)

...

DESTROYED UNDER STATUTE — Colonial Commons ——— 10 March 1927.

Question by Mr. Taylor.

Postage proper on Sub. file A.

(m/3 on Sub-files)

Pub.[illegible]

J.R.Allen

31/3

attach

No. 2 m/3 to Kenya. 17th Mar. 1927. on sub-file "A"

3 ——— India Office ——— 18 March 1927.

Govt. of India consider whole subject requires further enquiry before they can acquiesce in publication of papers. Seek further information on points specified and suggest Govt. be informed of Govt of India's request that sales at Mombasa be postponed pending its receipt.

DESTROYED UNDER STATUTE — Colonial Commons ——— 25 March 1927.

Question by Mr. Rennie Smith.

Postage proper on Sub. file A.

(m/3 not sent: Pub.[illegible])

J.R.Allen

31/3

attach

X 10221/27

3/3

Mr B Gurney
Sir C. Strachey

The attached minute by Mr.Bushe was the result of a reference I made to him as he was on the point of going on leave. The questions I put to him were:-

(i) Is it possible, except on the spot, to judge whether the action in any particular case goes beyond the necessities.

(ii) Is it practicable for the Colonial Government to supply the Government of India with such complete information as would enable their legal advisers to form a useful opinion.

(iii) Would he, on such information as India asked for be prepared to express an opinion, and, if he differed, go so far as to recommend the Secretary of State to overrule the local view.

It is not clear whether the Government of India wish to assert any right of review before any decision is put into effect, but if so, it should, I think in view of Mr.Bushe's opinion be resisted.

I would suggest that the reply to the India Office should be on the following lines, and that a corresponding despatch should be sent to the O.A.G.

Say that a copy of the Colonial Office letter of the 26th November (X.7761/26), of this letter and the reply has been sent to the O.A.G., whose attention is being drawn to the fact that the Government of India cannot at present acquiesce in the publication of papers; that the O.A.G. is also being asked to furnish as far as is practicable the further

information

information desired both as regards Mombasa and Nairobi, and that as regards the latter town his attention is being drawn in particular to para.7 of the Colonial Office letter of the 26th November. Point out that as the Government of India do not challenge the principle the Secretary of State feels that the decision as to its application in individual cases should rest with the authority which is responsible for, and must bear the consequences of, any action that may be taken, and that the Government (see para.7 of the letter to the I.O. of the 26th November on X.7761/26 which referred to Nairobi but is equally applicable to Mombasa) is not called upon to take action which their legal advisers are satisfied would not be sustained in law. While, therefore, the S. of S. is anxious that the Government of India should be informed, he is, so far as he is concerned, [illegible] of action, an opinion which is shared by his legal advisers that it is not possible for him to do more than to [illegible] the principle already enunciated; and that it would be inadvisable to interfere with the discretion of the local authorities in applying the principle in individual cases except for very substantial grounds [illegible] there is no reason to doubt the good faith of the Kenya Government or the competence of its legal advisers. Point out that in the contrary cases reported in X.8[illegible] despatch replying the waiver of the covenant in respect of certain plots at Nairobi, the Secretary of State was not to question the decision taken by the Governor in accordance with the views of his

7761/26. (Maxwell)

Staged

his legal advisers. Point out that for the reasons already mentioned, the Secretary of State stated in the House of Commons on the 14th March (Subfile X.10221) in reply to a question by Mr.Taylor that the Government was not prepared to reconsider the matter with a view to the withdrawal of the consent to sales of plots at Mombasa, and that he sees no reason to vary the discretion given to the Governor in the matter. Add that the Secretary of State has not yet been informed that the plots at Mombasa have actually been sold but the attention of the Colonial Government is also being drawn to the suggestion of the Government of India with regard to the postponement of the sale if it has not already taken place.

Unnecessary J Rank C.P.

It agreed? Draft can run through in Rush who returns 26 instant.

A.W.Allen 25/4/27

For brevity I could, instead of C.J., say "is not intended to interfere with the discretion and the responsibility of the Governor in its application," ~~which would be in effect the view held by the Govt of India~~.

W.J.Bottomley 25.4.27

Yes. We are not trying to make Nairobi do more than Mombasa. We should be as long as possible consistently with fairness, but the principle is in hands of Govt. C.J. 25/4 Noted

Copy sent to C.O.A.S./C.S.