

1930

Kenya.

No. 15991

SUBJECT

C0533/394

Segregation in Townships

Previous

15633/29

Subsequent

>/F.A.

(Abdul Kaseem)  
Kaderbhai  
- Kaseem

P.Q 3/f.

17173/31.

~~DESTROYED UNDER STATUTE~~

H.S.L. Polak. ....

1st. August 30.

Enquires if the Govt. of Kenya maintains the  
~~policy~~ policy of residential segregation in  
Nairobi, Nakuru, Eldoret and Mombasa, and other  
places.

ack (A) having further  
info (D 6 10 37) & receive

Signature

5-8 30

Strong

2 To H.S.L. Polak - D/7 to AU

checked

Mr. Allen:

I attach a note showing the position  
as regards this rather complicated matter.

I have ventured to put up a draft reply  
for consn. based on an Answer to a question in  
the Kenya Legislative Council in 1927. (L 23 to  
L 4 14 1927/17)

Kept the to consult the Trade who  
has agreed the revised draft submitted  
recently. It seems that both the  
the reply is what has been stated in  
paper here to the L.

H. Allen

20/8/30

21 8 30

To Polak (Umsa) 26 Aug 30

~~DESTROYED UNDER STATUTE~~

H.S.S. Polak, ..... 1st. August 30.

Enquires if the Govt. of Kenya maintains the ~~same~~ policy of residential segregation in Nairobi, Nakuru, Eldoret and Mombasa, and other places.

ack (L) morning further  
vfy (D 6 - 13) 2 receive  
[Signature]  
18 x  
[Signature]

2 To H.S.S. Polak - D/7 [Signature]  
[Signature]

Mr. Allen:

I attach a note showing the position as regards this rather complicated matter.

I have ventured to put up a draft reply for conson. based on an answer to a question in the Kenya Legislative Council in 1927. (L...)

Keep the to consult the Polak who has given the names of the interested parties. It seems that the House has not yet had a meeting since the last time it met in 1927.

W.H. Allen  
10/8/30

3 To Polak (Umsia) 26 Aug 30

Requests particulars of the restrictive  
avenants, and the exact nature of the legal  
commitment referred to

Dear Sir -

Yours  
20/8/30  
S.L. Polak

Dear Sir, I have the honor to acknowledge the receipt of your letter of the 17th inst. and in reply to inform you that the same has been forwarded to the appropriate authorities for their consideration. I am sorry to hear that you are unable to obtain the information you require for the purpose of your application. I am sure that the authorities will do their utmost to assist you in this regard. I am, Sir, very respectfully,  
Yours faithfully,  
S.L. Polak

When you receive this letter please accept the 27th inst of Justice

we have not (I am) not done  
at the end than associate a principle  
of Application  
necessary

11/2/30  
11/2/30  
(11/2/30)

The information referred to in your letter of the 17th inst. is being furnished to you as a matter of course. I am sure that you will find the information of interest. I am, Sir, very respectfully,  
Yours faithfully,  
S.L. Polak

Also speaking to Mr. Busse I submit  
the following points and I think that of the corre-  
sponding 3 and 4 and also to No. 1 should  
be covered by L.R.

acceptance  
11/11/30 4/9/30

W.S.L. Polak. .... 28th. August 30.

Requests particulars of the restrictive covenants, and the exact nature of the legal commitments referred to

*then B.1. and 2. etc*

*From*

*28/8/30*

*W.S.L. Polak*

*London*

*2. Which has been accepted by Govt of India*

*we would not have not done this and then committed a principle of application*

*13/8/30*

*(1781726)*

... the Government's resolution of ... that results in the principle referred to the set out in No. 4 of the letter to the India Office of the 21 November, 1926.

After speaking to Mr. Buane I submit

... and I think copy of the corres-

... 3 and 4 are reply to No. 4 should

... Governor or L.F.

*acknowledged W.S.L. 28/8/30*

To H.S.E. Polak (4 enclosed)

*Legal Dept*

Gov. 526. .... 28th. August 30.

Submits documents in support of petition from Mr. Abdulla Waajee for the recognition of rights of occupation by Indians of plots in Moolasa Municipality.

*8 to Gov 513 (20, 3, 4, 6) - A/1 - 16 SEP 1930*

*Nov 3/16*

No. 1. The question of principle has recently been raised by Mr. H. Polak, the London Representative of the Imperial Indian Citizenship Association. In answer to Mr. Polak, copies of which have been sent to the Governor, ~~with~~ <sup>material to the</sup> British Legation, his despatch, which might bear the name of the draft herewith.

*Amiller 19/8/30*

*HPS*

*Alf Partridge 28.9.30*

Secretary of State:

*The position is explained as 2*

No. 7 contains a ... I therefore send it on to you. <sup>Quite</sup> briefly, the commitment in the 1927 White Paper against racial segregation in townships was impossible of exact fulfilment because of our previous commitment to persons who had been given sites in particular plots ~~with~~ <sup>on the strength of</sup> segregation.

... has been taken to limit this exception to the actual plots, in regard to which

faith

Requests particulars of the restrictive covenants, and the exact nature of the legal commitments referred to

Dear Sir

Yours

28/8/30

H.S.L. Polak

Amul has been accepted in Govt of India

we shall not (and not) do more than associate a principle of application necessary

13/8/30

(7761786)

Office of the Secretary, 1926.

After speaking to Mr. Buene I submit...

28/8/30

To H.S.L. Polak (4 Amul)

CP to 1/20/30  
1/20/30  
1/20/30

Gov. 826. 1st Aug. 30.

Submits contents of a petition from Abdulla Waheed Sirce regarding rights of occupation by Indians of plots in Madrasa...

Gov. 713 (20/3/4-6) - 4/11/1930

The question of principle has recently been raised by Mr. H. P. ... the London Representative of the Imperial Indian Citizens Association...

Nov 3/16

19/8/30

19/8/30

4/15

Secretary of State

28/8/30

Secretary of State:

19.7 contains a principle... therefore send it on to you. Quite briefly, the commitment in the 1923 White Paper against racial segregation in townships was impossible of exact fulfillment because of our previous commitment to persons who had purchased sites in particular plots on the strength of the segregation...

The position is explained in 2/8/30

exception to the actual plots, in regard to which faith

100-100-100-100

Good

22/1/30

1/2/30

750-720-26/9/30

D. H. ...

Y.H. ...

1/1

... to ...

2000

26.2.21

2/2/22

... the ...

circulated to ...

1/1/31

5/3/31

UNDER STATUTE

Take ... + a copy to be  
attached to this bundle:

f/13  
8/3

with Chamberlain  
with you ... find out where  
copies of the judgment ...  
to a receipt of ...  
available ...  
judgment ...  
with Mr. Chamberlain at P.C.

all of

with Chamberlain  
copies, so the Wallace ... will  
not be back from the printers for five or six  
days ...  
... proof ...

with Chamberlain  
to see ...  
...  
...  
... 3/31

See ...

f/13

Part of ...

When they are sent out ...

The decision with respect to the application of the provisions of the Constitution of the Commonwealth of Australia to the territories is a matter of great importance and has been the subject of much discussion and debate. It is a matter which has attracted the attention of the public and the press and has been the subject of many articles and speeches. The question is whether the provisions of the Constitution apply to the territories and if so, to what extent. This is a question which has been the subject of much discussion and debate and has attracted the attention of the public and the press and has been the subject of many articles and speeches.

13  
 Comments on the  
 situation in  
 Australia  
 in the  
 Parliament  
 1 The Parliament  
 2 XEA  
 March 5

There is really nothing to add to comments already made.

The whole thing seems a bit like a fact of the actual terms of the limiting covenants is to impose restrictions as to ownership and as to occupancy. These ownership restrictions cannot be imposed.

The principle already enunciated explained to the State has not been challenged by the State. It is application of the principle of the State in the light of the

Comments - will the general policy of the Government of course be used.

W. Allen

18/7/71

Yes - The thing is not processed as a State of the Parliament. It is not a State of the Parliament. I think it is not a State of the Parliament.



start special correspondence  
all Parkhurst  
21.3.31

W.S. 21.3.31

This may be a means of  
avoiding "special" correspondence  
which might get troublesome  
on this subject. I shall just let  
it drop unless he raises it  
again. P.W. 25.3.31

*[Handwritten signature]*

13

BY S. L. POLAK

FIFTH FLOOR, DANES INN HOUSE,

TELEPHONE HOLBORN 3686  
TEL ADDRESS KALOPH, STRAND, LONDON  
CABLES KALOPH, LONDON  
BEATLEY'S CODE.

265, STRAND, LONDON, W.C.2

10th March, 1931.

Dr. T. R. Drummond Shiels, M.P.,  
Colonial Office,  
Downing Street, S.W.1.

PRIVATE

My dear Shiels,

I have been laid up with a chill during the week-end, but I am hoping to get out for a lunch to-day and then run back.

We had a most enjoyable time with you on Thursday. I was sorry that I could not prolong our brief talk on the mortgage question. I rather gathered from you that the Colonial Office viewed the situation differently from myself. I imagine that they base themselves upon a sort of contract between the government and the European community whereby sales of leases of crown lands in the so-called European residential area of mortgage were conditioned upon an understanding that all subsequent sales of leases of plots in the same area would be subject to the same restrictions as to residence. I shall be prepared to meet this argument, but for the moment I do not propose to deal with it, as the point that I am making is entirely different.

There could be no contention that non-Europeans should not be allowed to bid at auction for the sales of the

136

MR. S. L. POLAK

FIFTH FLOOR, DANES INN HOUSE,

TELEPHONE: HOLBORN 3685  
TEL. ADDRESS: KALOPH, ESTERAD, LONDON  
CABLES: KALOPH, LONDON  
BENTLEY CODE.

265, STRAND, LONDON, W.C.2.

10th March, 1931.

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Colonial Office,  
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My dear Shiels,

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We had a most enjoyable time with you on Thursday. I was sorry that I could not prolong our brief talk on the Montesa question. I rather gathered from you that the Colonial Office viewed the situation differently from myself. I imagine that they base themselves upon a sort of contrast between the Government and the European community whereby sales of Leases of Crown Lands in the so-called European residential area of the Embassy were conditioned upon an <sup>under</sup> understanding that all subsequent sales of Leases of plots in the same area would be subject to the same restrictions as to residence. I shall be prepared to meet this argument, but for the moment I do not propose to deal with it, as the point that I am making is entirely different.

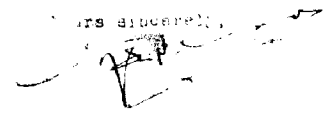
There could be no <sup>real</sup> contention that non-Europeans should not be allowed to bid at auction for the sales of the

... on the subject of Leases in the result  
... to the European community.  
... the investigation that has  
... there has been no  
... invested  
... had occurred.  
... the  
... residence of the  
... the purpose  
... that  
... point has no  
... is wrong in  
... issued Indian  
... of Leases of Brown  
... copies of Leases  
... at such  
... area. These  
... council proceedings  
... to them.  
... that advantage should not be taken  
... result of the Privy Council Appeals to issue a fresh  
... of sale of Leases by auction in the European area  
... repetition of the restriction to bid to Europeans.

only, as this was a not only give form and substance to the  
fresh disability imposed upon the Indian community by the  
Privy Council judgment, but it would also have the effect  
of bringing into existence a fresh claim to a vested right  
in the European community that the Colonial Office, as usual,  
would find it very difficult to resist. It was for that  
reason that I asked you to try to see that instructions were  
sent out to agents not to carry out further plots in this  
area for sale until the matter had been properly dealt with as  
a political issue. It is virtually certain that the Government  
of India will, at an early date, intervene in the matter, and  
no useful purpose would be served, in my opinion, in applying  
the issue to a fair enquiry.

Forgive me for being a little impatient again about this matter  
but it is really really important, and I am sure you will like  
to feel that I am very anxious to see that the solution of this  
is a solution of this.

Yours sincerely,







of receding to the definite and a gross abandonment of  
the policy of segregation as between Caucasians and Asiatics  
as indicated in the White Paper of 1923, published  
by the Government on the 20th of July, 1923, in the Official  
Gazette of the Straits Settlements and F.M.S. 1923, and  
the fact that the policy was recorded in the policy book of which  
the White Paper was an <sup>of</sup> clear part of the decision  
to be taken by the Government on this very subject in 1923.

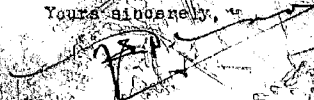
*[Handwritten signature]*

leases, since until the Commissioner for Lands in the present  
case issued his notice restricting bids to Europeans only,  
which formed the starting point of the litigation that has  
just concluded in the Privy Council judgment, there had been no  
such previous prohibition or restriction, and no vested  
interests or rights in the European community had accrued.  
The two questions of title, and the acquisition of the  
ownership of the lease, on the one hand, and the residence on the  
plot so acquired, on the other, must be kept for the purposes  
of this argument quite separate, and the contention that  
they have some support in favour of the second point has no  
application whatever to the first. The judgment is wrong in  
supposing that before the present notice was issued Europeans  
could not bid for and become the purchasers of Leases of Crown  
lands in this area. I have in my possession copies of Leases  
actually issued to Indian bidders and purchasers at such  
auctions, and within what is called the European area. These  
facts could not be brought out in the Privy Council proceedings  
as there was nothing on the record relating to them.

I am most anxious that advantage should not be taken  
of the result of the Privy Council Appeals to issue a fresh  
notice of sale of Leases by auction in the European area  
containing a repetition of the restriction to bid to Europeans

only, as this would not only give form and substance to the  
legal disability imposed upon the Indian community by the  
Privy Council judgment, but it would also have the effect  
of bringing into existence a fresh claim to a vested right  
in the European community that the Colonial Office, as usual,  
would find it very difficult to cancel. It was for what  
reason that I asked you to try to see that instructions were  
sent out to Kenya not to notify any further plots in this  
area for sale until the matter had been properly dealt with as  
a political issue. It is virtually certain that the Government  
of India will, at an early date, interfere in the matter, and  
no useful purpose would be served by my opinion, by complicating  
the issue by a fait accompli.

Forgive my troubling you again about this matter,  
but it is really one of great importance, and I should not like  
to feel that I have left anything unsaid that might contribute  
to a solution of this question.

Yours sincerely,  




8  
11

MR. S. L. POLAK.

FIFTH FLOOR DANBURY INN HOUSE

285, STRAND, LONDON, W.C.2

TELEPHONE: MOLEDAEN 3865.  
TEL. ADDRESS: MOLEDAEN, STRAND, LONDON.  
CABLES: POLAK, LONDON.  
BEATLEY'S CODE.

27th February 1921.

Dr. T. Drummond Shiels, M.B.E.,  
Colonial Office,  
Downing Street, London, W.C.1.

My dear Shiels,

Judgment in the Mombasa Crown Lands case was delivered to-day. I had expected the possibility that the decision would be adverse to the Indian contention on both the appeals, and I anticipated that such a result would be reflected in to-day's judgment.

It has now been laid down by the Privy Council that the Commissioner for Lands in Kenya is entitled to offer Crown Lands for sale at auction in the residential area of Mombasa, not only with a restriction as to residence by Europeans only, save in the locality of domestic servants, but also with the restriction that only Europeans may bid for the leases.

The judgment, however, contains a phrase evidently based upon a misapprehension. It runs as follows: "In the very case in question bidding is to be limited, apparently without objection, to persons who have not already purchased a plot, and if to them why not, if thought desirable, to persons who had not already purchased a similar plot at a previous sale."

The first case evidence refers to the limitation that no  
higher title to the land of more than one plot. The second,  
however, is based upon the belief that no Indian had  
previously purchased land and had become the purchaser of  
land after. This of course is incorrect.  
The fact is, that it was not produced in  
evidence that Indians had been  
purchasing land in various sections, though they  
were subject to other restrictions as to  
land purchased by them. That was  
further its ability  
and it was against  
the law.

The result of these proceedings is now to transfer  
the jurisdiction of the courts to the Forum  
the question of public policy  
involved in this case I intended to raise at an earlier stage.  
of these proceedings, to become the subject of great anxiety to  
the Indian community in East Africa, and in political circles  
in 1923.

I shall probably have to address your department  
verbally in this matter, upon instructions from East Africa of  
the Government of Kenya, in the meanwhile, however,

of recalling to you the definite and express abandonment of  
the policy of segregation as between Europeans and Asiatics  
in townships laid down in the White Paper of 1922, published  
as Government Notice No. 250 of 25th July, 1923, in the Official  
Gazette of the Colony and Protectorate of Kenya. This opinion  
both in Kenya and in India has regarded the policy, but of which  
this litigation has arisen as one clear break of the legislation  
taken by His Majesty's Government on this very subject in 1923.

With kind regards,

Yours sincerely,







The point for decision in this appeal was a very narrow one; indeed, so narrow that I am rather surprised that Kenya thought it worth while to appeal at all. No one contested that the Governor had the right to impose the condition, and the only question was whether the Commissioner of Lands had the power under the Ordinance. The result can do no more than determine the legal point, and has nothing whatever to do with policy.

There is no doubt that any trouble that might arise is attributable to the fact that two members of the majority note of the arguments were not aware what they would be doing. It should be understood from the beginning that the Government were not to be bound by the majority note.

10.5.2.31.

Mr. Justice  
will you please show to Mr. Justice  
the original minutes & the  
other memoranda etc. referred  
to. If he still feels any doubts,  
I hope he will consult  
Mr. Bushe who knows the  
subject & its legal implications,  
which are in fact the governing  
consideration in the judicial  
but strictly limited department  
from the general policy of  
the organization. It is the  
Sut. of the Government  
have had to adopt with  
the assistance of the majority

The conclusion of the Indian Govt. II  
I take it from Mr. Justice's letter  
of the 10 Feb., that the intention of sending questions to  
Mr. Polak. I entirely agree  
that Mr. Polak's letter ought not  
to have been written  
the attempt to impart  
political - vide last page of  
the letter, which Mr. Justice  
characterizes as a misstatement  
It is certainly to be regretted  
& more that Mr. Polak would  
have written the letter.

I hope I shall not be  
thought unsympathetic towards  
Nasirullah's Indian claims  
in the light of the fact  
that Mr. Polak is not a very  
Indian influence. It is  
deal with the matter  
rather apt to give  
as soon as possible  
on this being given to him

Mr. Justice

I don't agree about Mr. Polak who though  
he puts the Indian case always strongly and  
perhaps one-sidedly, is always calm and  
prepared to accept a reasonable decision. In  
any case, we are used to his friendship  
rather than his opposition. I agree that there is not  
much in this case but there is something and I  
think the Indian attitude is natural. I do not intend  
to discuss the matter. The 10.5.2.31

12  
10th February, 1931

My dear Polak,

I have your letter (reference P/II) of the 5th February, and wish to thank you for the information contained therein about the Privy Council case regarding the claim of Mombasa Indians against the Kenya Commissioner for Lands.

With all regards,

I remain,

Sincerely yours,

(Sgd.) T. DRUMMOND SK

By S.L. Polak, Esq.

MR. S. L. POLAK.

FIFTH FLOOR, DANES INN HOUSE,

TELEPHONE: HOLBORN 2008.  
TEL. ADDRESS: KALOPH, STRAND, LONDON.  
CABLES: KALOPH, LONDON.  
BENTLEY'S COSE.

265, STRAND, LONDON, W.C.2.

6th February, 1931.

Dr. T. Drummond Shiels, M.C.,  
Colonial Office,  
Downing Street, S.W.1.

My dear Shiels,

Thanks very much for yours of the 3rd instant enclosing the extract from "The Spectator". I shall make good use of it.

I had to be in the Privy Council this week in connection with connected Appeals in which I appeared on behalf of Mombasa Indians against the Kenya Commissioner for Lands, in which my nominal Client was Respondent in an Appeal by the Commissioner and Appellant in a cross-Appeal. The two points arising for discussion and decision by the Judicial Committee were: (a) whether the Commissioner for Lands in giving notice of the sale of Leases of Crown Lands in the Residential area of Mombasa, by auction, was entitled to restrict bids to Europeans only and to exclude Indians from bidding, and (b) whether he was entitled to insert in the Leases a special covenant restricting residence to Europeans only, and excluding Asiatics and Africans, save in the capacity of domestic servants. The first point was decided by the Appellate Court in East Africa in favour of the Indians and the second point against them. I did not discuss this case with you as it was sub judice, but I happened to meet

MacGregor Ross in court, and he told me that he had mentioned the case to you in a recent talk that he had with you. It is of immense importance to the Indian community.

You will recall that in the 1923 White Paper, the ~~only~~ <sup>only</sup> point that was decided in favour of the Indians in Kenya was the abolition of racial segregation in residential areas. Notwithstanding that decision, the restrictive covenant in the leases in the so-called residential area of Mombasa continued to be insisted upon. Indians were entitled to bid and become owners of the leases. It was provided they did not reside there i.e. they could be landlords and owners but they could not reside in their own houses on their own plots. Not only, therefore, would the segregation provisions existing in 1903 have been retained instead of removed, as it was hoped would be the case after the publication here and in the "Government Gazette" of Kenya in 1923, but when the plots in question were advertised for sale, it was actually proposed to insert in the conditions of auction a clause adding a fresh disability based upon segregation in the residential area of Mombasa.

If the decisions of the Appellate Court are upheld, the Indian community remains exactly where it was before the issue of the White Paper, for the Judicial Committee will have decided that the Commissioner for Lands has the power to impose a special covenant for the purpose of maintaining racial segregation in

14  
in Mombasa. If the Appeal of the Commissioner for Lands is allowed, it will be decided that he has the right to impose a further restriction based upon racial segregation. It is unlikely in that event that the Indian cross-Appeal on the second point will be allowed. The third alternative is that the Indians may win both Appeals. Judgment is reserved and the result is doubtful. If ultimately the Appellate Division's judgments stand, the Indian community is no better off in the matter of racial segregation than it was before the White Paper of 1923, save in the case of a few small townships that have since sprung up or developed, and where these restrictive covenants cannot easily be applied. But as regards Nairobi and Mombasa, which are the principal centres of the Indian population, the position would remain where it then was, since the Government have taken the position that they are under either legal or moral obligations to the then owners of plots of Crown lands in Nairobi and Mombasa, either freehold or leasehold, to sell all other plots in the same areas subject to the same covenants, though there is absolutely nothing in the leases to indicate this. On the other hand, if the decision goes against the Indians on both points, an additional disability of a very serious character will have been imposed upon them.

I may add that both of these conditions have obviously been introduced from South Africa, where in the Transvaal, especially, they are a common form in the titles of many private townships. It was, I believe, a mere accident, but it would be regarded as having some significance in India, where these matters are very



Handwritten initials or signature at the top of the page.

...sincerely,  
...established members of the Indian community  
...They are some  
...and they already  
...would be such  
...which the Kays  
...and would reside  
...there residents  
...that I know the  
...information in anticipation of

...not be silent on the  
...to say to the  
...that the Indian community  
...is favourable to the Indian community  
...or will reverse that  
...decision will either  
...of the former conservative administration  
...were represented by  
...whilst the Indians, who are  
...was represented by the  
...to impose racial  
...that in the City Council proceedings

154

00

Mr. Allen 9/6  
Mr. Burch 20/9  
Mr. Landon 27/9  
Secretary of State

X.15991/30 Kenya

R. 23 SEP  
D. 24  
Downing Street

26 September, 1930

Self

Sir,

DRAFT  
1.6  
K. 15991/30

I have the honour to ack. the receipt of your despatch No. 526 of the 12th August forwarding a letter from Mr. Abdul Wahid Mirza with reference to rights of occupation by Indians of plots in Mombasa Municipality.

2. The question of principle has recently been raised by Mr. H.S. Polak, the London Representative of the Imperial Indian Citizenship Association, and I would refer you to the correspondence with ~~you~~ enclosed in my despatch No. 713 of the 15th September.

3. I ~~am~~ agree that the decision taken ~~in~~ Mr. Hirjee's application was correct, and that similar ~~cases~~ decisions may ~~be~~ taken in any future.

8 on 15991/30

*[Handwritten signatures and initials]*

756  
Gov. Grigg

cases to which the same considerations  
apply.

4. I request that Mr. H. J. Lee, be  
permitted to reply to his representations,  
in the sense of the letter addressed  
to him on the 20th August; and also  
that the Commission see no reason  
to refer the matter to the  
Court of Arbitration.

(No 3)

I have, etc.

(Signed: H. J. Lee)

10th July, 1930.

To  
The Right Honourable,  
His Majesty's Secretary of State for the Colonies,  
Downing Street,  
LONDON W., S.W.1.

Sir,

I respectfully beg to bring to your notice the following facts with a view to having the interpretation of the wording of the White Paper of 1923 which covers the question of the waiver of restrictions as to residence of Asiatics in Township Areas in the Colony and Protectorate of Kenya definitely settled.

I entered into negotiations for purchase by my firm (of which I am senior partner) of a house and plot at Mombasa held under a direct lease from the Crown dated 4th April, 1912, a copy of which I attach hereto.

I would draw your attention to the covenant on the part of the Lessee restricting residence to Europeans and would also draw your attention to Notice of Auction of plots of May 20th, 1912, contained in the Kenya Official Gazette of 1st June, 1912, and more particularly to conditions "7" and "8" in the said notice which are in the following terms :-

7. These plots shall be occupied by persons of European origin only and their domestic servants.
8. A number of plots will be surveyed on the North side of the road which runs at the back of the plots now advertised for sale. On completion of survey these plots will be sold by auction and a notice will be published in the "Official Gazette" giving conditions under which these plots may be leased.

I enclose also herewith correspondence with His Excellency the Governor of Kenya Colony, The Colonial Secretary and the Commissioner of Lands which explains the position.

It is difficult for me to understand why it should have taken from the 8th February, 1930, which is the day of my advocate's letter to His Excellency the Governor to the 29th May, 1930, the date of the first letter from the Commissioner of Lands, definitely answering the letter of 8th February, 1930, to enable the Government of this Colony to let me have a reply to my queries

on a point upon which one would think Government would have already had a settled policy.

The result, as far as I am concerned, is that the plot in question has been sold over my head.

With regard to the reasons adduced by The Commissioner of Lands in his letter above referred to for refusing to allow me to reside on the plot in question, I submit respectfully that they are unsound.

The restrictive clause in the Lease referred to amounts to a prohibition against residence at the instance of the Government. The Government Notice referred to by The Commissioner of Lands does not appear to cover the plot in question but, even if it did, would not create any further obligations on the part of the Lessee from the Crown.

The policy of the Government at the time the Lease in question was issued was that certain township areas should be restricted to residence by Europeans and the reversal of that policy as indicated in the Memorandum presented to Parliament by Command of His Majesty the King in 1923 and published in the Official Gazette (Colony & Protectorate of Kenya) Special Issue of 17th August, 1923, appears to me to amount to a direction to the Government of Kenya to withdraw all restrictions imposed by it as to residence in township on racial grounds as far as Asiatics are concerned.

I am quite aware that cases have arisen in which, owing to restrictions contained in Head Leases, private individuals have entered into covenants in sub-leases and assignments binding themselves not to assign or sublet to others than Europeans and Government could obviously not interfere with the legality of such covenants, but, the facts in such cases are entirely distinct from those applying in the present circumstances.

The parties who were negotiating with me were the direct Lessees from the Crown and the White Paper is either a dead letter or else the restriction as to occupation contained in the Lease in question should be deemed to be withdrawn and there should be no bar to my occupying the premises.

There is no evidence adduced to show that the selling value of adjoining plots would be depreciated by my being allowed to occupy the plot referred to even if the establishment of such a fact would constitute a valid reason for refusing me occupation.

It would appear to me that the opening up of properties in Townships to Asiatics would rather tend to increase their selling value by extending the market.

This reference is not merely academic as far as I am concerned as I am negotiating for the purchase of another plot and do not wish a similar objection to be again raised.

I consider that I have been very unfairly treated in this instance by the Government of this Colony.

My firm is one of the oldest in the Colony and I think I am justified in saying that its owners have always borne a good reputation and I am not aware of any reason why my firm should not have been allowed to complete the purchase or why occupation by me should not have been allowed.

I would further deprecate the unreasonable delay in replying to a very plain query which should have been capable of being answered speedily.

I regret to have to trouble you with this matter but it affects what purports to be a settled policy of His Majesty's Government and the interpretation of the wording of the Memorandum of 1923 placed upon it by the Government in Kenya seems to me not only to be strained, but to be impossible to support if the spirit as well as the letter of the White Paper of 1923 is to be adhered to.

I have the honour to be,

Sir,

Your Obedient Servant,

*Donald McAlister*

F/M

The Hon. The Commissioner for Local  
Government Lands & Settlement,  
No. 10, C.B.I.

Sir:-

RE. WALJI HIRJI &amp; SONS.

We regret apologise for not having acknowledged receipt of your letter of 29/1/1930 of the 28th ultimo earlier. We are obliged for your letter and note the contents.

Whether the matter is laid down in the White Paper to sound or otherwise, we think it covers the present case, as the only restriction in the lease is one laid down by Government.

We are preparing a memorandum to the Secretary of State which should raise the question definitely.

We have the honour to be, Sir,

Yours obedient servants,

30/DAI & PIGOLD

No.S.LND.29/1/44/21.

22th. May 1930.

Gentlemen:-

With reference to your letter of the 26th. March last it is to state that the lease of the plot under reference No. 6/3/A Section VIII, Mombasa, was originally sold by auction in 1912 on conditions similar to those upon which the leases of neighbouring plots were also sold. One of these conditions was that these plots should be occupied by persons of European origin only and their domestic servants and waiver by Government of the racial covenant in the case of this particular plot would, in all probability, cause a depreciation of the sale value of the leases of neighbouring plots.

2. It is considered that the owners of leases of neighbouring plots are justified in looking to Government to maintain the condition of European residence with regard to all the plots mentioned in the notice of auction dated 20th. May 1912 and that Government is therefore definitely committed to fulfilment of the racial covenant in this case.

I have the honour to be,  
Gentleman,

Your obedient servant,  
H.T. Martin.

COMMISSIONER FOR LOCAL GOVERNMENT LANDS  
AND SETTLEMENT.

Messrs. Daly & Figgis,  
P.O. Box 34,  
NAIROBI.



The Hon. The Commissioner for Local  
Government Lands & Settlement,  
N. A. I. R. O. B. I.

Sir:-

RE. PLOT 6/7A. SECTION VIII MOMBASA  
Application for permission to transfer  
to Messrs. Walji Hirji & Sons.

We beg to refer to our letter of the 26th. ult.  
and would be obliged if you would let us have a reply.

Our clients inform us that in the interval  
between our application and our final communication from  
you the plot has been sold.

Our instructions are to refer the circumstances  
of the case to His Majesty's Secretary of State but, before  
doing so, we wish to know what the definite legal commitments  
referred to in your letter LND-29/1/1/44/16 are.

We have the honour to be, Sir,

Your obedient servants,

Sd/- DALY & FIGGIS.

COPY. F/Z

26th March 1930.

22

The Hon. The Commissioner for Local Government  
Lands & Settlement,  
NAIROBI.

Sir:-

RE. PLOT. G/3/A. SEC. VIII, MOMBASA  
Application for permission to transfer  
to Messrs. Walsi Mirza & Sons.

Your letter No. LND.29/1/144/15 of the 24th.  
instant to hand upon which we are taking our clients'  
instructions.

In the meantime we would suggest that your letter  
under reply is somewhat indefinite and would ask you to  
let us know what the "definite legal commitments" therein  
referred to are so that we may be in a position to advise  
our clients.

We have the honour to be,

Sir,

Your obedient servants,

COPEY.

F/Z

26th. March 1930.

22

The Hon. The Commissioner for Local Government  
Lands & Settlement,  
N A I R O B I.

Sir:-

RE. PLOT. 6/3/A. SEC. VIII, MOMBASA.  
Application for permission to transfer  
to Messrs. Walter Hirsch & Sons.

Your letter No. LHD.29/1/1/44/15 of the 24th.  
instant to hand upon which we are taking our clients'  
instructions.

In the meantime we would suggest that your letter  
under reply is somewhat indefinite and would ask you to  
let us know what the "definite legal commitments" therein  
referred to are so that we may be in a position to advise  
our clients.

We have the honour to be,

Sir,

Your obedient servants,

COPY.

THE SECRETARIAT,  
NAIROBI, KENYA.

No. 8. LND. 29/1/1/44/15.

24th. March 1930.

Gentlemen:

RE. PLOT NO. 6/3/A. SECTION VIII MOMBASA.  
Application for Permission to Transfer  
to Messrs. Waji Hirji & Sons.

With reference to your letter of the 8th. February, I have the honour to inform you that Government is unable to approve of a waiver of the covenant in the lease in respect of the above plot restricting the occupation of any buildings erected thereon to Europeans only.

The plot is within an area which Government is advised must, on account of definite legal commitments, continue to be restricted to European occupation only.

I am, Gentlemen,

Your obedient servant,

J. R. MURPHY,

COMMISSIONER FOR LOCAL GOVERNMENT  
LANDS AND SETTLEMENT.

Messrs. Waji & Sons,  
NAIROBI.

WJM/HH.

COPY.

S.IND.29/1/44

THE SECRETARIAT,  
NAIROBI,  
KENYA.

March 5th.1930.

The Commissioner for Local Government Lands and Settlement presents his compliments and has the honour to acknowledge the receipt of your letter No. \_\_\_\_\_ of the 4th March on the subject of plot 33 Mombasa.

To Messrs. Daly & Figgis,  
P.O. Box 84,  
NAIROBI.

COPY.

F/M.

4th March 1930

His Excellency,  
The Governor of the Colony of Kenya in Council,  
Through  
The Hon. The Colonial Secretary,  
NAIROBI.

Your Excellency:-

THE PLOT AT MOMBASA COMPRISING 1,879 ACRES  
WAJID RIJJI & SONS.

We have the honour to refer to your letter  
of the 6th ult. written in regard to the above plot.

We received an acknowledgment No. 374 B/29/100  
dated the 11th ult. but have heard nothing further.

We should be very much obliged if you  
kindly give this matter your consideration as soon  
as possible.

We have the honour to be,

Your Excellency's Obedient Servants,

Sd. DALY & WIGGILL

COPY

S.IND. 29/1/44

26  
THE SECRETARIAT

NAIROBI

KENYA

11th February 1930.

The Colonial Secretary presents his compliments and has the honour to acknowledge the receipt of your letter of the 8th instant on the subject of Plot at Mombasa comprising 1,879 acres - Walji Hirji & Sons.

To Messrs. Daly & Wigg  
P.O. Box 34,  
NAIROBI.

COPY

F/A

27  
8th February 1930.

His Excellency The Governor of the Colony of Kenya  
in Council,  
Through  
The Hon. The Colonial Secretary,  
NAIROBI.

Your Excellency:-

RE. PLOT AT MOMBASA COMPRISING 1.679 ACRES.  
WALJI HIRJI & SONS.

The plot of land above referred to is held at present by the B.E.A. Corporation Ltd. under a lease dated the 24th April 1913, registered at Mombasa, Folio 86, Vol. 11, copy of which we enclose herewith.

The lease contains a covenant by the lessee in the following terms:-

- \* AND will not do or permit the same to be
- \* used as a place of residence for an Indian
- \* or other Asiatic or Native who is not a
- \* domestic servant in the employ of the
- \* lessee.

Our clients have been in negotiation with the lessee with a view to purchasing the plot in question for the purpose of residence by Mr. Abdulla Walji, who is a senior member of the firm of Messrs. Walji Hirji & Sons, who is a firm of very long standing in the Colony.

The White paper has of course been issued since the granting of the lease in question, but our clients feel that they would not be safe in completing a purchase without the assurance that residence by Mr. Abdulla would be sanctioned by the Government.

Various difficulties have, we are aware, arisen in the past, in connection with occupation by non-Europeans where the plots in question have been the subject of assignment to third parties who would be affected by such occupation but, in the present instance, the lease to the B.E.A. Corporation Ltd. is a direct lease from the

Colon.



-2-

We would deem it a favour if you would let us have a reply setting out your views on the matter, as soon as you conveniently can.

We have the honour to be,  
Your Excellency's Obedient Servants,  
Sd/- DALY & FIGGIS.

1NCL/

COPY.

Registration fee Rs. 8/-  
Stamp Duty. Rs. 50/-  
Rs. 50/-

29

THIS INDENTURE made the twenty fourth day of April One thousand nine hundred and thirteen BETWEEN HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH of the one part and THE BRITISH EAST AFRICA CORPORATION LIMITED an Incorporated Company having their registered Offices at 96 Gresham House in the County of London England (hereinafter referred to as the Lessees) of the other part WITNESSETH that in consideration of the payment of Rupees four thousand and fifty as stand premium and of the rent hereinafter reserved and of the covenants by the Lessees hereinafter contained or implied by virtue of the provision of the Crown Lands Ordinance One thousand nine hundred and ~~thirteen~~ HIS MAJESTY doth hereby demise unto the Lessees All that piece or parcel of land situate in the Township of Bombay in the Bombay District of the Seyidie Province of the East Africa Protectorate comprising one decimal eight seven nine acres or thereabouts which said piece or parcel of land is more particularly delineated and described on the plan annexed hereto and thereon bordered red TO HOLD the same unto the Lessees for the term of Ninety nine years from the date hereof subject save where expressly herein otherwise provided to the provisions of the said Crown Lands Ordinance One thousand nine hundred and two and especially the provisions contained in Article fifteen thereof and to the rules for the time being in force under the said Ordinance YIELDING and PAYING therefor for the said term the yearly rent of Rupees Four hundred and fifty in advance payable on the first day of January in every year and so in-proportion for any period less than one year AND the Lessees do hereby covenant with His Majesty his Heirs and Successors that they the Lessees will erect and build upon the said piece or parcel of land a dwelling house of not less than the value of Rupees Thirty thousand to be

KENYA.

No. 526



GOVERNMENT HOUSE  
NAIROBI  
KENYA

RECEIVED  
11 SEP 1930  
COL. OFFICE

18<sup>th</sup> August, 1930.

My Lord,

I have the honour to forward herewith a letter from Mr. Abdulla Wazir Mirjee, a leading Indian resident of Nairobi, with reference to rights of occupation by Indians in plots in Mombasa Municipality.

1. Complaint is made of the delay in securing a reply to the original application. It will be observed that an official reply to Messrs. Dain & Pignatelli's letter of the 5th February was despatched on the 24th March. A certain amount of delay was inevitable as the inquiry had to be referred to Mombasa for information as to the locality of the plot and the conditions of the title to that plot and others in the vicinity, and also to the Attorney General for his advice on the legal position. The further inquiry for a precise definition of the legal commitments to which reference was made in the first reply was delayed in the office of the Attorney General which was at that period seriously understaffed.

2. The plot which was the subject of the original application is within the area which it has been agreed must, on legal grounds, continue to be reserved for ownership and occupation by Europeans only. In this connection I would refer to the correspondence between the Under-Secretary of State for the Colonies and the Under-Secretary of State for India, terminating with India Office letter N. 2. 2 Q. 525/25.

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W.1

*20/9/30*  
*20/9/30*

31

No 2  
15079/29

(forwarded to this Government under Colonial Office despatch No.142 of the 21st February, 1928). In the course of that correspondence it was stated that the Government of India had no further remarks to offer as regards the continuance of restrictions in the area east of Central Road, within which the plot now under reference lies. I attach a plan showing the plot in relation to the area shown in red on the plan attached to Sir Edward Denham's despatch of the 10th Aug. at, 1925, and in relation to Central Road.

4. The plot was one of a group of 7 sold by auction on the 11th June, 1912. One of the conditions of sale was that these plots shall be occupied by persons of European origin only and their domestic servants. A covenant to that effect was embodied in the lease of the plot, as will be seen from the copy of the lease attached to the petition. This covenant will, of course, run with the title to the land and be an obligation upon any successor in title of the original lessee. This matter is not one of policy, but is concerned only with legal commitments in respect of which this Government has been advised, with the concurrence of the legal advisers to Your Lordship, no breach can, with safety, be permitted. In consequence I have felt compelled to reject all applications from Indians for permission to acquire or occupy land within the areas in which such commitments exist.

5. I trust Your Lordship will agree that the action taken in respect of the present application was correct and that any further applications of a similar kind should, in like manner, be rejected.

I have the honour to be,  
My Lord,  
Your Lordship's most obedient, humble  
servant,

Edward King  
GOVERNOR

the same vendor sells to a number of  
persons plots of land parts of a  
larger property and exacts from  
each of them covenants imposing  
restrictions on the use of the plots  
which will be meant by the vendors,  
and intended by the buyers to be  
for the common advantage of the several  
purchasers, the restrictive covenants  
are for the benefit of the purchasers,  
and create legal rights not only against  
the vendor, but inter se; and these  
rights are enforceable in respect of the whole  
property to be sold as a part of the  
scheme.

I am, &c

4 35

HV. S. L. POLAK.

FIFTH FLOOR, DANES INN HOUSE,  
265, STRAND, LONDON, W.C.2.

TELEPHONE: HOLBORN 3085  
TEL. ADDRESS: KALOPH, STRAND, LONDON  
CABLES: KALOPH, LONDON  
BERTLEY'S CODE

28th August, 1930,

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

RECEIVED  
29 AUG 1930  
COL. OFFICE

2c

Sir,

I thank you for your letter 1899/30 of the 26th instant relative to the maintenance of the principle of residential segregation in certain places in Kenya Colony. Notwithstanding the statement made in the White Paper of 1923.

In paragraph 2 of your letter you quote the reply made on the 10th June, 1926, to a question by Colonel Wedgwood, in which it was alleged that "in certain cases the land was legally subject to restrictive covenants entered into under the former system", and in paragraph 3 you state that "Racial restrictions therefore continue but only in areas in which such previous legal commitments exist". I shall be greatly obliged if you will kindly favour me with particulars of the restrictive covenants to which the land in any of the cases referred to was subject, and the exact nature of the legal commitments

Copy to I.O on 17/13/31

Answered 1 SEP 1930

Created D/17 2. 18 SEP 1930  
COPY - 408 713

suggested in paragraph 3 of your letter under reply.  
Thanking you in anticipation of a reply in due

course.

Very truly,  
Yours,

Imperial  
Citizenship Association

*V. N. ...*

~~Imperial~~ Imperial  
Citizenship Association

60 36

X.15991/30 Kenya.

100

Mr. Allen *2/18*  
Mr. *Busle 2/18*

Mr. Sir C. Bolton *26-8/30*

Sir J. Shackleton

Sir G. Grindle

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

21 Downing Street.  
23

26 August, 1930.

Sir,

for consen:  
**DRAFT.**

HENRY S.L. POLAK, ESQ.

(U)

copy to I.O. on 17/12/31 5 MAY 1931  
copy - Gov 7/13 - 16 SEP 1930

I am etc. to refer to your letter of the 1st August in which you enquired whether it is a fact that the Governmen<sup>t</sup> of Kenya maintains the <sup>principle</sup> policy of residential segregation in Nairobi, Elaolet, Mombasa and other places in Kenya Colony notwithstanding the statement of policy on the subject made in the White Paper of 1923, and if so, whether His Majesty's Government propose to direct the Govern<sup>ment</sup> of Kenya to enforce that policy.

2. His Majesty's Government in the United Kingdom are in full agreement with the declaration contained in the White Paper "Indians in Kenya" (Cmd. 1929) to which you refer: but I am to invite your attention to the statement in the

Following



VIOLATIONS

... in which such-919-

3. Partial restrictions on stores

restriction in

it would be necessary to obtain the

to be in violation against the government

proceeding against the person

is not possible to maintain

is not possible to maintain

is not possible to maintain

is not possible to maintain

is not possible to maintain

is not possible to maintain

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is not possible to maintain

is not possible to maintain

is not possible to maintain

Very truly

1967 in reply to a question by Colonel

case of persons on the 10th June,

following terms which was made in the

7/10/67

vious legal commitments exist, and the Secretary of State cannot admit that the recognition of an existing legal position in any way trespasses upon the principles of the White Paper of 1923.

No. 10 of 10221/27.

*Revised*

I am, etc.

*Edw. A. C. Parker*

2a 38

MEMORANDUM.

On page 15 of the White Paper "Indians in Kenya" published in 1923, His Majesty's Government stated: "They have therefore decided that the policy of segregation as between Europeans and Asiatics in the townships must be abandoned".

The Governor of Kenya, on being notified of the White Paper decision, pointed out that a legal question of considerable importance was involved. ~~and that~~ He was advised by his Attorney-General that the revocation by the Crown of restrictive covenants relating to transfer or occupation of plots or buildings by persons of different race from <sup>other persons</sup> those to whom the premises have been leased, could not fail to prejudice the interests of parties who purchased in the knowledge of these restrictions and that the Government might expect heavy claims for damages.

On receipt of these representations, and of similar representations from Uganda, the matter was fully gone into in the Colonial Office. The opinion of the Legal Advisers was <sup>as follows:—</sup> that in the case of areas sold or leased by the Crown in plots at auction where only Europeans were allowed to bid, and the leases contained covenants against transfer to, or residence by, other than Europeans, the Crown could not waive the covenant without rendering itself liable to legal proceedings. Similarly, in the case of areas sold or leased by the Crown in plots at auction where only Europeans were allowed

For details  
See memo in  
46-145724  
Haggie

... sold by auction under the Crown Lands  
 ... Europeans only when township plots are being  
 (1) There no power exists to limit the bidding to  
 Court of East Africa decided;  
 case regarding registration at Mombasa. The Supreme  
 Judicial Committee of the Privy Council in a recent  
 At the moment, an appeal is before the  
 large claims for compensation against the Government  
 result in a crop of complicated lawsuits involving  
 affect Uganda as well as Kenya, as it could only  
 after this policy (which it may be pointed out would  
 presumably, it will not be held now to

... account to refer under 200  
 ... in any particular area of a township that  
 decided. In view of this legal opinion, it was  
 In view of this legal opinion, it was  
 ... in any particular area of a township that  
 decided. In view of this legal opinion, it was  
 ... in any particular area of a township that  
 decided. In view of this legal opinion, it was

... to did, and subject to underlying restrictions  
 transferred, the Crown could not without equally  
 The result liable to legal proceedings, transfer  
 transfer to a non-European, it in any particular  
 area a practice exists amounting to custom, then be  
 absent to transfer be allowed to other land

Handwritten notes and signatures on the right side of the page, including a large signature at the top right and several smaller ones below.

U. I. nana; and

(11) That a condition that a township plot sold by auction shall be occupied by Europeans only may lawfully be inserted in the lease giving effect to the result of the auction.

It is in regard to the second point that an appeal has been made to the Privy Council. It may be added that even if the decision of the Supreme Court of East Africa as to (11) is reversed, this will not affect the power of the Government to continue segregation in practice, as the case only applies to sales by auction, and it will still be within the Government's power to offer plots for sale by tender subject to segregation restrictions.

3222.

ordinance; and

(ii) That a condition that a township plot sold by auction shall be occupied by Europeans only may lawfully be inserted in the lease giving effect to the result of the auction

It is in regard to the second point that an appeal has been made to the Privy Council. It may be added that even if the decision of the Supreme Court of East Africa as to (ii) is reversed, this will not affect the power of the Government to continue segregation in practice, as the case only applies to sales by auction, and it will still be within the Government's power to offer plots for sale by tender subject to segregation restrictions.

pp. 22.

ordinance; and

(ii) That a condition that a township plot sold by auction shall be occupied by Europeans only may lawfully be inserted in the lease giving effect to the result of the auction

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B-22.

The following *Willy Anduta* summarizes the history of the Indian question in the Kenya Protectorate and sets out the general policy which has been laid down by the British Government together with the *Kenya* Government's views on the practical points involved.

DEVONSHIRE

MEMORANDUM

23rd July 1952

(b 3-518)T



## INDIANS IN KENYA.

The question of the status of Indians in Kenya has come before successive Secretaries of State for the Colonies at intervals of many years - but with the recent change in the constitutional and political position of India it has become a matter of Imperial policy to which His Majesty's Government have given prolonged and anxious consideration in order to bring to an end the existing difficulties.

The position of Indians in Kenya up to the end of the war may be summarised briefly. There have been Indian settlements established along the East African coast for a long time, and comprising up of Uganda and Kenya and particularly in the management of British administration in those countries during the last thirty-eight years. Indian traders have penetrated into the interior. Many Indian artisans and business employed in the management of the Uganda Railway, ceased to engage in commerce on the opening up of the present century, the number of Indians in Kenya was greatly increased by the arrival of artisan workers and small traders. There is a varied number also of professional men and traders, many of whom may have come from India or the East Indies. The agricultural Indians, however, almost unknown in

Kenya, were concentrated in the swamps and in the Highlands. The latter were reserved for European interests in conflict with the interests of the natives of that region reserved for Africans. The Agricultural Lands in the Highlands of the Colony and Protectorate were reserved for the benefit of the natives of the Colony and Protectorate and the agricultural lands in the great belt of Tropical Forest were reserved for the benefit of the natives. There were a few European settlements in the Highlands, but the management of their immigration was left to the natives and their policy may be dated from 1902. From that time onwards the immigration of Europeans increased steadily. The number of European settlers in the Highlands of Kenya was definitely increased by the decision of Lord Elgin, then Secretary of State for the Colonies, in 1902.

At the time of the first election to the Legislative Council was entirely nominated and in 1909 the experiment was tried of adding an Indian nominated member. This experiment did not prove entirely satisfactory and the appointment was not renewed when the term of office of the Indian concerned came to an end.

In 1913, a distinguished sanitation expert, Professor (now Sir William) Simpson, furnished a report on sanitary matters in Kenya in which he advocated strongly a system of racial segregation, both in the residential and in the commercial areas of the large towns. His views were accepted, and when the time came for applying them after

the war, this question of segregation formed one of the main points at issue between the European and the Indian communities.

At the end of the war it was decided to give effect to the longstanding desire of the European community for representation on the Legislative Council by means of elected members. The grant of elective institutions was approved by Viscount Milner in 1919 and took effect at the beginning of 1920. The number of European elected unofficial members of the Council was fixed at eleven, but provision was made for maintaining an official majority in the Council.

In 1918, the report of a local Economic Commission of Enquiry into post-war development was published. This contained disparaging references to the Indians then in Kenya, and advocated strict control of future immigration from India. Although the passages in question were repudiated by Lord Milner as not representing the view either of His Majesty's Government or himself, the report undoubtedly added to the feeling of bitterness among the Indians.

At the same time Indian sentiment, both in India and Kenya, was becoming more and more articulate, and a large number of claims was put forward by the Indian community in Kenya, including a demand for representation on the Legislative Council on an equality with Europeans. After full consideration and discussion, Lord Milner addressed a despatch on the 21st May, 1920, to the Governor of Kenya, conveying decisions on the various points at issue. That despatch has already been published locally in the "Official Gazette." The decisions may be summarised as follows:—

- (a) Arrangements to be made for the election of two Indian members of the Legislative Council on a special franchise.
- (b) Arrangements to be made for elective representation of Indians on Municipal Councils.
- (c) No restriction on Indian immigration which would place the natives of India at a disadvantage as compared with other immigrants.
- (d) Lord Elgin's decision in regard to the reservation of the Highlands for Europeans to be maintained, but reasonable opportunity to be afforded for Indian agricultural settlement in areas of adequate extent and good quality which could be set apart for that purpose without infringement of native rights.
- (e) The principle of race segregation to be adhered to in residential areas and, whenever practicable, in commercial areas also.

Other matters were dealt with, but these were of minor importance and need not now be recapitulated.

The Government of India reviewed the whole position in a despatch of the 21st October, 1920, which has been published as Command Paper 1311.

This despatch reopened the whole question and led to protracted discussion between the Secretary of State for the Colonies and the Secretary of State for India, in which the points at issue were

# INDIANS IN KENYA.

The question of the status of Indians in Kenya has come under the consideration of successive Secretaries of State for the Colonies in one form or another for many years, but with the recent change in the constitutional and political position of India, it has now become a matter of Imperial policy to which His Majesty's Government have given prolonged and anxious consideration.

The position of the Indians in Kenya up to the end of the late war may be summarised briefly. There have been Indian settlements established along the East African Coast for a long time, and with the opening up of Uganda and Kenya and particularly with the commencement of British administration in those countries during the last thirty-eight years, Indian traders have penetrated into the interior. Many Indian artisans and mechanics employed on the construction of the Uganda Railway continued to engage in commerce after the beginning of the present century, the number of Indians in Kenya was greatly increased by the arrival of artisan mechanics and truck drivers. There is a limited number also of professional men, and a few lawyers, who have come from India to the colony. The bulk of the Indian population, however, almost unknown in

Kenya before the war, was concentrated in the Highlands. The Highlands were reserved for European interests, and the conflict between the interests of the natives reserved for Africans and the interests of the European settlers in the great belt of Tropical Africa, which was the theatre of the operations of the great bulk of the Indian population, was a few European agriculturalists, who were the agents of their immigration into the Highlands. The Indian population increased steadily from 1902. From 1918 onwards the immigration of Indians into the Highlands was definitely restricted, and the Secretary of State for the Colonies in 1917

At that time the Hon. member of the Legislative Council was entirely nominated, and in 1919 the experiment was tried of adding an Indian nominated member. This experiment did not prove entirely satisfactory, and the appointment was not renewed when the term of office of the Indian concerned came to an end.

In 1913, a distinguished sanitation expert, Professor (now Sir William) Simpson, furnished a report on sanitary matters in Kenya in which he advocated the adoption of a system of racial segregation, both in the residential and in the commercial areas of the large towns. His views were accepted, and when the time came for applying them after

the war, this question of segregation formed one of the main points at issue between the European and the Indian communities.

6. At the end of the war it was decided to give effect to the longstanding desire of the European community for representation on the Legislative Council by means of elected members. The grant of elective institutions was approved by Viscount Milner in 1919 and took effect at the beginning of 1920. The number of European elected unofficial members of the Council was fixed at eleven, but provision was made for maintaining an official majority in the Council.

7. In 1918, the report of a local Economic Commission of Enquiry into post-war development was published. This contained disparaging references to the Indians then in Kenya, and advocated strict control of future immigration from India. Although the passages in question were repudiated by Lord Milner as not representing the view either of His Majesty's Government or himself, the report undoubtedly added to the feeling of bitterness among the Indians.

8. At the same time Indian sentiment, both in India and Kenya, was becoming more and more articulate, and a large number of claims was put forward by the Indian community in Kenya, including a demand for representation on the Legislative Council on an equality with Europeans. After full consideration and discussion, Lord Milner addressed a despatch on the 21st May, 1920, to the Governor of Kenya, conveying decisions on the various points at issue. That despatch has already been published locally in the "Official Gazette." The decisions may be summarised as follows:-

- (a) Arrangements to be made for the election of two Indian members of the Legislative Council on a special franchise.
- (b) Arrangements to be made for elective representation of Indians on Municipal Councils.
- (c) No restriction on Indian immigration which would place the natives of India at a disadvantage as compared with other immigrants.
- (d) Lord Elgin's decision in regard to the reservation of the Highlands for Europeans to be maintained, but reasonable opportunity to be afforded for Indian agricultural settlement in areas of adequate extent and good quality which could be set apart for that purpose without infringement of native rights.
- (e) The principle of race segregation to be adhered to in residential areas and, whenever practicable in commercial areas also.

Other matters were dealt with, but these were of minor importance and need not now be recapitulated.

9. The Government of India reviewed the whole position in a despatch of the 21st October, 1920, which has been published as Command Paper 1311.

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the qualifications for admission to the voters' roll would not necessarily be the same for the two communities; and while Europeans would vote in the European constituencies for European candidates, Indians would vote in the Indian constituencies for Indian candidates.

As a variant of the former system, there is the common electoral roll with reservations of seats. This arrangement would involve the setting apart of a certain number of seats in a given constituency for candidates of a certain race, for example, in a constituency returning three members, with two seats reserved for Europeans and one for Indians. The two European candidates and the one Indian candidate highest in the poll would be elected, irrespective of the position in the poll of other candidates of either race.

The common electoral roll for all British subjects and British subjects with reservation of seats was proposed in the Wood Winterton report, and it was further suggested that the qualification for the roll could be such as to include the present European voters and the registered voters of the Indian community.

The common electoral roll was suggested as it would enable the voters to be the same for both races, thereby giving a candidate of either race the opportunity of being elected by the voters of the other race. It was also suggested that the common electoral roll should be based on the same qualifications for both races, and that the common electoral roll should be based on the same qualifications for both races.

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These considerations were weighed before the Wood Winterton report was drawn up. The recommendation then made turned largely on the desire to meet Indian feeling so far as conditions in Kenya should admit. The result of the reference to opinion in Kenya of the recommendation that a common electoral roll should be adopted, even though combined with a reservation of seats, was to show that the advantages of a common electoral roll would in practice

have been illusory. In the special conditions existing in Kenya it is clear that no candidate, European or Indian, could stand as an advocate of the interests of the other race without sacrificing the support of his own. If elections were to be fought on racial lines, as they undoubtedly would have been in Kenya, the main advantage claimed for the common electoral roll, namely, the bringing of the races nearer together, would be lost.

Having regard to all the circumstances, His Majesty's Government have decided that the interests of all concerned in Kenya will be best served by the adoption of a communal system of representation.

(b) *Qualifications for Voters.* It is not intended to effect any alteration in the qualifications for admission to the register of European voters as laid down in Ordinance No. 22 of 1911; that is to say, a full suffrage shall be given to certain European and customary reservations. Under the communal system His Majesty's Government are prepared to grant to Indians the same franchise. It will be a matter for the Governor of the Colony to ascertain the views of the Indian community and to submit the necessary legislation to give effect thereto. The same procedure will be followed in the case of the Arab community.

(c) *Qualifications for Candidates.* His Majesty's Government are prepared to adopt a similar principle as regards the qualifications for candidates, except that there must be a test which will ensure that candidates have such a knowledge of the English language as will enable them to take their part in the proceedings of the Legislative Council. No system which would involve the use of two or more official languages in the Council will be contemplated; but His Majesty's Government have no ground for supposing that the representation of the necessary candidates will create difficulties or have any effect on the election of candidates.

(d) *Members of Legislative Council.* The question then remains of the number of seats on the Council to be allocated to each community. At present stand, there are eleven elected officials (Europeans) on the Council, and as a provisional measure authority was given in 1921 for the substitution of four nominated Indian members for the two elected Indian members contemplated in Lord Milner's despatch of the 21st May, 1920.

After full consideration, His Majesty's Government have decided that provision should be made for five elected Indian unofficial members on the Council, while for the Arabs, it has been decided that there shall be one elected member in addition to the nominated Arab official member for whom provision already exists. The Europeans will continue to return eleven elected representatives. The number of nominated official members will be fixed so as to maintain an official majority on the Council.

In the opinion of His Majesty's Government adequate representation of the interests of each community will be secured by this allocation. It is desired, however, that the views of the Indians in Kenya

should be ascertained before a decision is taken upon the actual arrangement of the constituencies to be represented by the five Indian members.

No articulate expression of opinion can be yet expected from the African tribes in Kenya, and the time has not come to consider what should be their representation on the Council. The educational development of individual natives will undoubtedly precede the political education of the general body of natives; there are, indeed, signs of this already.

In present circumstances, the Governor has the advice of the Chief Native Commissioner in all matters affecting the African population and with the official majority can ensure the enactment of any measures for the betterment of the natives which may be approved by His Majesty's Government. It has, however, been suggested that a nominated unofficial member chosen from among the Christian Missionaries in Kenya specially to advise on such matters should be added to the Council until the time comes when the natives are fitted for direct representation. His Majesty's Government see no objection in principle to this arrangement, and they agree that provision should be made accordingly. It will be for the Governor to select a suitable person for nomination from time to time. It will, of course, be understood that there is no question of the representation of the Missionary Bodies as such, and that consideration of religious denominations will not affect the selection. Nor will the nomination of this member relieve the Governor and his advisers of their full responsibility for representing the native interests.

#### 5. Representation on Executive Council.

As regards the Executive Council, the present position as set forth in the Wood-Wharton report will be maintained, except that the Governor will be given authority to nominate as an additional unofficial member a suitable person, preferably a Missionary, whose advice on matters affecting Africans will, in the opinion of the Governor, be of value.

#### 6. Representation on Municipal Councils.

The only municipality which has been set up in Kenya is that of Nairobi.

The Municipal Corporations Ordinance No. 33 of 1922 provides for Municipal Councils to consist of so many Councillors as the Governor shall determine, and the appointment of these Councillors rests with the Governor.

It was not desired to suspend the enactment of various amendments to the existing law which are included in this Ordinance until the policy as to elections for Municipal Councillors had been determined; consequently, the provision for the constitution of Municipal Councils was re-enacted generally in the form in which it appeared in the Municipal Corporations Ordinances of 1904.

Lord Milner contemplated in 1920 elections in lieu of nomination of Municipal Councillors, but no concrete scheme was submitted by the Colonial Government for giving effect to that policy. The matter is one requiring careful examination, but in principle, if an elective basis is now introduced, it follows from the decision in regard to the Legislative Council that municipal representation must also be on a communal basis, due provision being made for the protection of the interests of the Africans until such time as they are fit to exercise a franchise.

It will be an instruction to the Governor to put forward proposals for consideration of the Secretary of State for the Colonies after he has been able to consult his advisers in Kenya.

#### 7. Segregation in Townships.

The next matter for consideration is that of segregation of the European and non-European races. Following upon Professor Simpson's report, a policy of segregation was adopted in principle, and it was proposed by Lord Milner to retain this policy both on sanitary and social grounds. So far as commercial segregation is concerned, it has already been generally agreed that this should be discontinued. But in regard to residential segregation, matters have been in suspense for some time, and all sorts of township plots have been held up pending a final decision on the question of principle involved. It is now the view of the competent medical authorities that as a sanitation measure, segregation of Europeans and Asiatics is not absolutely essential for the preservation of the health of the community; the rigid enforcement of sanitary, police and building regulations, without any racial discrimination, by the Colonial and municipal authorities, will suffice. It may well prove that in practice the different races will, by a natural affinity, keep together in separate quarters, but to effect such separation by legislative enactment except on the strongest sanitary grounds would not, in the opinion of His Majesty's Government, be justifiable. They have therefore decided that the policy of segregation as between Europeans and Asiatics in the townships must be abandoned.

But for the present, at any rate, it is considered desirable, as in other native dependencies, to keep the residential quarters of natives, so far as may be practicable, separate from those of the immigrant races. In the case of individual natives, such as servants, strict segregation would be unworkable; but it is important, that when areas have been fixed in townships for native residence, those areas should be regarded as definitely set aside for the use of natives, and no encroachment thereon by non-African races should be permitted.

#### 8. Reservation of Highlands.

As early as 1906 the question of the grant of land in the Highlands to non-Europeans had arisen for consideration, and Lord Elgin, who was then Secretary of State for the Colonies, informed the Commissioner (now styled Governor) that it would not be in accordance with

should be ascertained before a decision is taken upon the actual arrangement of the constituencies to be represented by the five Indian members.

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the policy of His Majesty's Government to restrict any section of His Majesty's subjects from holding any land in British Protectorates; but he thought, in view of the comparatively limited area of the East Africa Protectorate suitable for European cultivation, that a reasonable discretion should be exercised in dealing with applications for land from natives of India or other non-Europeans. The principle which had been acted upon by the previous Commissioner, namely, that agricultural land in the Highlands should be granted only to Europeans, was approved.

Lord Elgin confirmed his decision in 1908, stating that, while it was not consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the upland area should not, as a matter of administrative convenience, be made to Asiatics.

It has been claimed on the side of the Indians, first, that Lord Elgin's decision only related to the initial grant of Government land in the Highlands, and that it has since been stretched so as to preclude the transfer of land from Europeans to Indians in that area, and further, that Lord Elgin's statement that no legal restrictions should be imposed has been varied by the terms of the Crown Lands Ordinance of 1915.

At the time of Lord Elgin's decisions, Government land in the East Africa Protectorate was allotted by allotment by the Commissioner and the Commissioner had no power of veto on all transfers between private holders. In view of this general view, it was necessary for Lord Elgin to deal specifically with the question of land, although no public statement was made on the point, that the question of land in the East Africa Protectorate was decided by his successors and the local authorities in the case of the reservation of the Highlands to Europeans must cover the original grant from the Crown.

The consideration of land policy which led to the Crown Lands Ordinance of 1915, it was decided

- To substitute for the system of selling land a system of selling leases at public auction
- To abolish the Governor's general power of veto which was found to interfere with the ability to deal with his land by more

In order to apply these decisions in a manner consistent with the principle of the reservation of the Highlands to Europeans, it was found necessary to provide that, in announcing the conditions of the sale of particular farms, the Land Officer should state (in cases where the point arose) whether the bidding at the auction was limited to Europeans or not. To deal with the case of transfers it was necessary to retain, in a modified form, the Governor's power of veto, and this matter was very fully considered by Mr. Harcourt (the late Assistant Secretary of State at the time). He refused to agree to a veto on transfers between Europeans and Asiatics, involving

a definite racial discrimination; but, in order not only to deal with the particular case of the Highlands, but at the same time to secure protection for non-European land-holders (particularly in the coast strip which now forms the Kenya Protectorate) against their being victimized by commission hunters, he approved of provision being made to retain the power of veto on transfers between persons of different races.

It will be observed that the passages in the Crown Lands Ordinance of 1915 which have been complained of raised no new principle, but merely maintained the practice of past practice. Nor can it be claimed that they amounted to a reservation against Indians, for it would be possible for the Government to grant land in the Highlands to an Asiatic or to a European, or to transfer land from a European to an Asiatic, without any violation of the existing law.

The objection to the Ordinance adopted by his predecessors in this matter, the Secretary of State, made it clear that the reservation of land for Europeans implied that a similar reservation should be made for Indians who wished to take advantage of the same. It is contended that the reservation of such land to Europeans is not, on the understanding that the land should be reserved for the benefit of the Indian Government, an exclusive privilege in favour of the Indian Government.

The history of this question and taking into consideration the fact that during the last fifteen years European British subjects have been endeavouring to develop the Highlands and that the Government have taken up land in the Highlands on behalf of the Indian Government, the Government have decided that this reservation should be maintained in so far as regards both the original grants and the transfers of land.

The reservation of the Highlands which can be set aside without any prejudice to the interests of the Indian Government is reserved in order that it may be available for the benefit of the Indian Government, and it is contended that the demand there is for agricultural land in the Highlands is such that the Indians who will give suitable guarantees of their ability to develop the land themselves. After the expiration of a limited period the reservation of this area in the Lowlands will be reconsidered in the light of the experience so gained.

9. Immigration.

Finally the question of immigration into Kenya has been canvassed both by the Europeans and by the Indians. It is sufficient to say that the line has been varied with the point of view, and it is not necessary to present the arguments which have been advanced.

It may be stated definitely that only in extreme circumstances could His Majesty's Government contemplate legislation designed to exclude from British Colony immigrants from any other part of the British Empire. Such racial discrimination, in immigration regulations, whether specific or implied, would not be in accord with the

policy of His Majesty's Government, and they cannot counter-act the introduction of any such legislation in Kenya.

The existing Immigration Regulations of the Colony are of quite general application. It is clearly of importance in the general interests of Kenya to prohibit the entry of undesirable persons from Europe or America as from Asia. There is no reason to suppose that the Regulations in present circumstances are inadequate for this general purpose. But the consideration which must govern immigration policy in Kenya is purely economic, and the chief regard must be paid to the interests of the African. When these are examined from this standpoint, it is evident to His Majesty's Government that some further control over immigration in the economic interests of the natives of Kenya is required. The primary duty of the Colonial Government is the advancement of the African, and it is incumbent upon them to protect him from an influx of immigrants from any country that might tend to retard his economic development.

In course of time, as the natives progress intellectually, they will no-doubt take the place which Africa has held in other parts of British Tropical Africa in mechanical and clerical work and in small trade, and it must be the aim of the British administration to further this development by all possible means. With this object in view, the Colonial Government must weigh, so far as may be practicable, the effect on native interests of the admission to the Colony of would-be immigrants of any race. No information is available to show what number of immigrants following a particular occupation the Colony can absorb. The problem is complicated by the existence of the separate dependency of Uganda, to which a substantial influx lies through Mombasa and the Kenya Colony, and this necessitates careful consideration before any scheme is definitely decided upon. Further, some arrangement must be devised for securing a strictly impartial examination of applications for entry into Kenya, possibly by a Board on which the various communities, including the natives, would be represented. It will therefore be an instructor to the Governor of Kenya to explore the matter further on his return to the Colony, and, in concert with the Governor of Uganda, to submit proposals to the Secretary of State for the Colonies for giving effect to that amount of control of immigration which the economic interests of the natives of both dependencies require.

Conclusion

In conclusion, His Majesty's Government desire to record that the decisions embodied in this memorandum have only been taken after an exhaustive review of the several complicating factors which have led to the present unhappy controversy. Their constant endeavour throughout their deliberations has been to relate the principles which must govern the administration of a British Colony in Tropical Africa to the wider considerations of general Imperial policy as enunciated in the Resolution of the Imperial Conference of 1921. It is regretted that on certain material points it has not been possible

to meet the wishes of the Government of India, whose views have received the fullest consideration from His Majesty's Government at the instance of the Secretary of State for India. It is not to be expected that issues so grave can be postponed to the immediate execution of the scheme now contemplated, but His Majesty's Government believe that the issues now taken, pending as they do the final decision of His Majesty's Government on the African, provide a satisfactory means of safeguarding those interests. It is a confident expectation of His Majesty's Government that, if the whole matter is viewed in the light of the principles on which it is based, will be accorded general acceptance, and it is with the earnest hope that a sincere effort will be made to secure the best terms of co-operation and good-will so that the economic and social development of the Colony may be advanced.

July, 1925.

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to meet the wishes of the Government of India, whose views have received the fullest consideration from His Majesty's Government at the instance of the Secretary of State for India. It is not to be expected that issues so grave can be postponed to the immediate reaction of the Government of India, but His Majesty's Government believe that the steps now taken, pending as they do the final decision of His Majesty's Government, will provide a fair and equitable basis for the African, and will be consistent with those interests. It is no accident that the Government of India have now taken action, pending as they do the final decision of His Majesty's Government, which is based on the general acceptance of the principles of the Government of India. It is earnestly hoped that a sincere effort will be made by the Government of India to meet the spirit of co-operation and good-will which has been shown by the Government of Kenya.

July, 1923.