

Kenya.

1930.

No. 16042.

SUBJECT

CO 533/396

Petitions:-

Messrs Davidson + Ryde and

G. A. Johnson

Previous

Subsequent

1. A.A. Ryde. . . . . 23rd Jan. 30. 2

Trs a petition for consideration, on behalf of Messrs Davidson and Ryde.

2. . . . . W.A. Thompson. . . . . 27th Feb. 30.

States as to the receipt of the petition

To. Dir. F.S. Thompson. . . . . (2 areas) 27th Feb. 30.

DESTROYED UNDER STATUTE

W.A. Thompson

I spoke to Mr. Thompson and he  
sent me a copy of the petition  
I also sent it a copy letter for the  
files of the F.S. Thompson

W.A. Thompson  
27.2.30

acknowledged  
27.2.30

sent to Mr. W.A. Thompson 28/2/30  
at copy to Comd 5/3/30

Trn a petition for consideration, on behalf of Messrs Davidson and Ryde.

2. Sir. W.M. Thomson, M.P. 24th. Feb 30.  
States as to the receipt of the petition.

To. Sir. W.M. Thomson. 24th. Feb. 30.

DESTROYED UNDER STATUTE

~~not done~~

not done to you I should a lot to  
come ready a copy out to the  
I should submit a list of letters for the  
of the ... to Sir W. Thomson

W. Thomson  
27/2/30

acknowledged

27/2/30

To Sir W. M. Thomson 20/3/30  
H. O. Gov. 194 - W. C. W. 1 - 20/3/30

Kenya Club 3 Nov

Isabnd off casan

Kenya Club no case 6

act

Communicated with by W. Lee Mitchell Thomson Esq (3A)  
in any case it is better desirable to await a further decision from the Govt before doing so

W Allen

8/9/30

6. C. 2. Sec. 3, p. 2. . . . . with sub. 30.

Trans. copy of the award of the Honat. Magistrate Eldoret, in connection with the Land Acquisition proceedings, which was omitted from No. 5.

Draft review in view of the fact that not even when W Allen & actually located

8/9/30

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

acknowledged  
9/9/30

Secretary of State.

I send on this paper not only because it contains petitions, but also because of Sir W. Mitchell Thomson's note on the matter, and still more because of its interest from the point of view of land matters in Kenya generally.

In each case we have the factor of land held under an agricultural lease having been used for building purposes without authority. Compensation is based on the basis of urban value

value, and although this is not admitted it has been in fact assessed with due regard to the present receipts from the land sub-leased.

Kenya Club  
Kenya Club  
no 5

Mr. O'Shea's protest against the Government's use of its power of acquisition under the applied Indian Act leaves me cold. It was he who took me up to the Bluff at Eldoret to show me how essential for the development of the town was a certain piece of land, which it appeared later was held by Mr. O'Shea on an agricultural lease.

I agree that we should proceed as in draft. Mr. Johnson, as is pointed out, has not resorted to the legal remedy, and although the <sup>use of the</sup> power on the part of the Government to withdraw from the acquisition of land at the last moment must prejudice the other petitioners, they have no grievance until it appears that the award of compensation for withdrawal is inadequate. In another and more important case the Government have withdrawn, and have apparently had no difficulty in settling terms of compensation for withdrawal with the land holder concerned.

W.C.S.

13/9/30



8. Extract from Legislative Council debates  
of 11th April, 1930.

Put  
James  
25-4-30

9. after home 724 \_\_\_\_\_ 17 December  
Katie to Johnson informant as to reply to his petition;  
enclose copy of the award as a result of the inquiry,  
presume Sir Mitchell Thomson will be informed

Subject to legal opinion

I think we may simply put  
this by Mr. R. de la... has already  
been informed by the AG that  
the S/S do not propose to  
intervene: this was perhaps a little  
premature but I think it  
represents the fact -

ix  
The doc was not  
intended to  
preclude this  
1930

I will think it is not  
all necessary to write further to  
Sir Mitchell Thomson. He has

1930

disposed no further interest  
in this since no 2A was sent.

? put by  
G. Davidson  
23.1.31

Mr. Benda has seen. He has no  
comment & agrees that no action  
is called for. I agree that we  
can do nothing & need do nothing  
unless we can do something  
The complainants make some  
further noise.

W. Allen  
4/2/31  
acc. Davidson

Sir Samuel Wilson.

You were away when this question came up  
last summer.

I am sorry that the Government of Kenya  
have informed the Trustees of the Davidson & Ryde  
Estate that the Secretary of State declined  
to intervene, as I certainly thought that there  
would be a further opportunity on the receipt of  
the papers now sent home of considering the merits.

*slight of the "low" award, this is small.*  
There is no doubt that these people took  
a great risk in assuming that their use of the  
agricultural

agricultural land for non-agricultural purposes  
would be approved by the Government. But there was  
really a very bad delay in dealing with the matter  
and I think that Kenya were harsh in withdrawing  
altogether from their idea of expropriating the  
land for public purposes without more consideration  
for these people.

The mere fact that they had the power of  
withdrawal under the Indian Code would have made it  
easy for them to come to terms on a basis of the  
treatment materially less than the award of £2,875.

As things are, I think that, as proposed in  
the previous minutes, we must leave the matter  
alone until it is <sup>settled</sup> resolved by one or other of the  
parties.

[The despatch leaves us to assume that the  
other payments due by the Government have now been  
made, subject in the case of Mr. Johnson to his  
having been prepared to accept the award.]

W. Allen  
5.2.31

Seen  
B.H. G.  
atance  
6.2.31

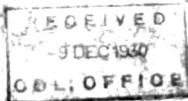
W

KENYA.

No. 72H



GOVERNMENT HOUSES  
NAIROBI.  
KENYA.



November, 1930.

My Lord,

I have the honour to refer to Your Lordship's Despatch No. 784 of the 25th September, 1930, regarding the Petitions from (1) Mr. L.A. Johnson, and (2) Mr. A.A. Ryde, on behalf of Messrs. Davidson and Ryde.

2. Mr. Johnson is being informed of the terms of Your Lordship's reply to his petition.

3. The enquiry under Section 48 of the Indian Land Acquisition Act has now been completed and I enclose a copy of the Award, together with relevant documents.

The final Award made by the Collector is £164. 5. 8, in respect of losses sustained by Messrs. Davidson and Ryde and expenses incurred by them and their agent on account of the acquisition proceedings.

4. Your Lordship will observe that Mr. Forbes-Mangan, the Trustee of Messrs. Davidson and Ryde's bankrupt estate, has claimed £1500 as damages for non-grant of title to Messrs. Davidson and Ryde. This claim was rejected by the Collector. I am advised by the Attorney General that the claim has no merit either in law or in equity. In these circumstances, I have instructed that the amount of the Collector's award be paid forthwith, and that Mr. Forbes-Mangan be informed that his claim for the non-grant of title cannot be entertained.

5.....

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

- 2 -

8. It is presumed that Your Lordship will inform Sir William Mitchell Thomson, M.P. of the result of Mr. Ryde's petition. Mr. Ryde is being informed that Your Lordship does not propose to intervene in the matter.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,



ACTING GOVERNOR.

COPY

KIRKWOOD AND CO.

KITALE.

Kenya.

11th. August, 1930.

THE RESIDENT MAGISTRATE,

Eldoret.

Dear Sir,

In Bankruptcy No.89 of 1928.  
DAVIDSON & RYDE, Insolvents.

-----  
PROPOSED ACQUISITION OF LAND  
AT TURBO BY GOVERNMENT.  
-----

You will remember that you acted as Collector in the matter of the proposed acquisition of property at Turbo by Government, and on the 6th. December, 1929, you found that Messrs. Davidson and Ryde of whose estate I am the Trustee, were entitled to the sum of £2875.

Government subsequently decided not to proceed with the proposed acquisition, and on the 17th. April last the Local Government and Lands Department advised me to this effect and instructed me to formulate my claim for compensation to you.

I now make my claim accordingly, and the grounds are:-

On the 10th. June, 1927, Messrs. Davidson and Ryde purchased from Mr. L.A. Johnson four acres of land at Turbo. Application was duly made to the Land Office by Messrs. Davidson and Ryde for the issue of title, but although continual pressure was made for title, this was never granted.

Meanwhile Davidson and Ryde erected permanent buildings on the four acre plot in question. The argument might be advanced on behalf of Government that they should not have built upon the plot until title had been granted, but they had no reason to anticipate Government would object or had reasons for delaying the grant; it is not unusual for building operations to be carried on pending completion of transfer. In fact Messrs. Davidson and Ryde actually purchased another four acre plot in the same neighbourhood from another owner and easily acquired title.

It is, I submit, quite obvious that title was being purposely held by Government in view of the proposed acquisition of land for a Township.

Davidson and Ryde having erected the buildings became financially embarrassed and endeavoured to borrow money on the property but, owing to absence of title, this could not be arranged, neither could they raise money on mortgage for the same reason, although with

KIRKWOOD AND CO.

KITALA.

Kenya.

11th. August, 1950.

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title they could easily have arranged this at the time they required financial assistance. They, in fact, received inquiries for the sale of the property, and also had offers of loans. Their total expenditure on the buildings and plot as already disclosed at the hearing held by you in connection with the acquisition, was £2600.

In consequence Messrs. Davidson and Hyde were compelled to file their petition in Bankruptcy to preserve their assets for the general body of creditors.

On the 17th. June, 1929, two years after Davidson and Hyde contracted to purchase the plot, Government under Notice 402 given under the Land Acquisition Act (India) 1894, declared fifty acres of land at Turbo (which fifty acres included the plot in question and of course the buildings thereon) was required for a public purpose. You are aware of the subsequent proceedings, and Finding of the 6th. December 1929, and the Government's notice of withdrawal of 17th. April, 1930.

For your information I may add that Davidson and Hyde owned a farm in the Trans Nsoia and, being aware of the award of £2875 in their favour and in order to conserve this farm property, I gave out a contract for ploughing and planting with maize the cultivated portion of this farm, thereby incurring a debt of £224.5.0 for the work besides £70 for a manager and native labour, every penny of which I arranged to pay out of the £2875 awarded by you in your finding of the 6th. December, 1929. The £224.5.0 has not yet been paid.

There has been loss of rents for the period between the 17th. June, 1929, and the 17th. April, 1930, and I submit the Estate of Davidson and Hyde is entitled to at least another month in lieu of notice. I, as Trustee, have appeared before you on three occasions in connection with the proposed acquisition.

### C L A I M.

In consequence of the non-grant of title Davidson and Hyde were compelled to file their petition in Bankruptcy to preserve their assets for the general body of creditors and they have had to bear the stigma of bankruptcy, have lost their ordinary status of free agents and have been compelled to seek occupations as and how they could. I am claiming compensation for this very serious suffering, financial and mental, and damage to their business reputation.

£1500.0.0

Loss of Rents 17th. June, 1929, to 17th. April, 1930:-

Of Bar Premises, 10 months @ £12.10.0.	125.0.0
Of Dance Hall, -do- @ £ 2.10.0	25.0.0
Of store occupied by Jung & Co. - ten months @ £10.	100.0.0
Of Garage occupied by C.C. McGregor - 10 months @ £4.	40.0.0

N.B. These rents have not been collected; One month in lieu of notice in respect of the first two premises.

15.0.0

Carried forward    £1805.0.0

Brought forward £1805.0.0.

Amount incurred in connection with ploughing and planting the farm in the Trans Nzoia, plus overseer's salary and native wages.	294.5.0
Trustee's fee for visit to Turbo in connection with the proposed acquisition - attending before you.	5.0.0
Ditto for two visits to Eldoret attending before you @ £5.	10.0.0
Motor Hire, Kitale to Turbo and return. 80 miles.	4.0.0
Motor Hire, Kitale to Eldoret and return - two journeys, 180 miles.	9.0.0
	<u>£2127.5.0</u>

In addition to the claim of £2127.5.0 (Two thousand one hundred and twenty seven pounds five shillings I desire Government to instruct that a Grant of Title be issued to me as Trustee of Davidson and Ryde to the four acre plot in question.

Yours faithfully,

for DAVIDSON AND RYDE.

(Signed) G. Forbes-Mangan.  
Trustee.



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IN THE RESIDENT MAGISTRATE'S COURT  
at Eldoret.

LAND ACQUISITION PROCEEDINGS FARM 799 - TURBO  
AND

On the application of G. J. Forbes-Mangan Receiver  
of Davidson and Ryde - Bankrupt Estate.

Under Section 48(2) Land Acquisition Act.

4-9-30.

Mr. Forbes-Mangan; applicant.

Messrs. Ryde

Davidson.

ALBERT ARTHUR RYDE Sn.

I was a partner with Mr. Davidson and on behalf of the partnership I entered into negotiation with Mr. L. A. Johnson lessee of Farm No. 799, Turbo, with a view to purchasing 4 acres of land near Turbo Station. On June 10th. 1927 it was completed. Our idea was to purchase it to erect a store and post office (if Post Office Authorities would agree to take it over) and garage, Dance Hall etc. We allowed ourselves financially approximately 18 months without requiring outside financial assistance anticipating that within that time Government would give sanction to the purchase of the 4 acres. It was our intention to withdraw from the stores and garage portion of the business and to sublet these, so that it would give us a definite income from rents. At the time we were running a Railway clearing agency and Shell Oil agency. We meant to maintain our agencies and lease the premises. If that had materialised we should have been in receipt of approximately £40 per month in rental alone. The clearing and other agencies would have been quite a satisfactory living for one of the partners apart from the rents; the other carrying on with our farm in the Trans Nzoia.

On completion of survey in approximately September 1927, Messrs. Nightingale & Co., Surveyors of Nairobi, wrote and asked me if I required the property for residential or commercial purposes. I wrote and stated for commercial purposes. They were acting firms and submitting the survey to Government for subdivision. Early in 1928 I had occasion to go to Nairobi and saw Mr. H. T. Martin (Comr. of Local Settlement, Lands etc.). I asked him if the title deeds could be expedited. If I remember rightly he considered it essential that I should obtain the support of the local District Board. The Eldoret District Board, in or about March, passed a resolution supporting my application and I forwarded copy of it to Mr. Martin. As nothing was heard for some considerable time I went and saw him again and I put it before him that we had acquired the lower 4 acres property in Turbo (apart a mile away) which had already been sanctioned by Government for commercial purposes (hotel etc.). As I considered that the 4 acre plot near Railway Station was far more suitable and far more healthy I expressed to him my opinion that I would be willing to transfer this sanction from the lower plot to the higher one (the one in question here); that was in case the Government did not wish to give the sanction for both the plots. I got no answer. He told

me verbally he would try to get it put through Ex.Co.

I went to see him later as nothing had been heard. Mr. Mortimer had taken his place. I put it to Mortimer that we were suffering considerable financial embarrassment on account of delay on the part of Government. That if title were being held up because it was the intention to acquire 50 acres in Turbo area for township, would it not be possible to enter a proviso in Government sanction to the 4 acre subdivision that we would be willing to incorporate the said 4 acres within township area when at any time it should be declared a township area. This would have avoided any necessity for Government to pay compensation at all if they had agreed. Mortimer said he would put this up to Ex.Co., but Ex.Co. turned it down. This shows that we had no idea in putting up buildings of exacting compensation from Government. In fact we leased premises to Post Office at £2 per month. We put up the buildings between September 1927 and January 1928 when they were completed. We were going on an agreement expressed in letters with Mr. Johnson - no form of legal title. We paid £25 per acre.

In January, 1928, I transferred my store and bar from the lower 4 acre plot, and garage also, to the upper plot (the one in question) and carried on business there. In or about August, 1928, we began to get financially embarrassed when Messrs. Soy Estate were willing to purchase or give us financial assistance, by mortgage on the properties. Unfortunately I could not produce title so that fell through. Having failed for so long to get sanction from Government and thinking it the only fair thing to do on behalf of the creditors, we filed a petition. Receiving Order 28/10, 1928.

In January, 1929, on advice of Official Receiver, we put up a scheme of arrangement to meet our creditors in full plus 8% to cover a year; it was essential to success of this that we should obtain information from Government as to prospects of getting sanction to the 4 acre property. Both Mr. Green (my advocate) and myself went and saw Mortimer of Land Office again who at this interview definitely stated that we could expect sanction to the title at least within 3 months - at latest within 6 months. On this the scheme was based. Sanction never came. No definite answer as to refusal or sanction. Scheme then fell through. The O.R. stepped in and had us declared bankrupts in July 1929.

I carried on business for Davidson and Ryde with hotel and store from January 1928 to August 1928. In August 1928 we arranged to sublet the store (before we filed petition to Juma & Co. that arrangements still going on at £10 p.m. We sublet the bar at £12.10.0, this was done to realise as much as we could to realise our assets; and gave monies to our solicitors to distribute to our creditors. Mr. Mangan appointed Receiver on 20/8/1929. When we went bankrupt the store and garage and Post Office were let. The bar was let up to June 1929. The notice as to Government acquiring the land was published in O.G. June 17th. 1929. Since then we could do nothing with the property.

We were forced in bankruptcy and as a result have undertaken to pay 8% or 6% on all our commitments which is running all the time. Mr. Davidson is reduced to living on £10 p.m. which is barely sufficient to live on. I myself am obliged to work as a road foreman in P.W.D. and have suffered loss of reputation etc. in going bankrupt. We were forced into bankruptcy by Government attitude in not granting sanction of title. Nothing had even been said to discourage us. We were given to understand that sanction would be granted and were given no idea of the scheme being not approved.

H.O.F.C.

(Signed) C.A.G. Lane.

WITNESS:

HARRY CUNNINGHAM DAVIDSON Sn.

I have heard Mr. Ryde's statement and I wish to corroborate it. We were in partnership when the negotiations started and I left most of this to him. I was farming in Trans Nzoia while he was carrying on the Turbo business. I and my partner were declared bankrupt for the reasons that he has given.

Conditions in 1927, 1928 and 1929 were much more flourishing than at present and if our business had been a going concern we could have dealt with it more favourably to ourselves than we could now.

1500 bags of maize unsold on farm which it may now be impossible to sell. If I had had the handling of it I should have been able to dispose of this and this would have gone to payment of creditors.

R.O.F.C./  
(Signed) C.A.G. Lane.

WITNESS:

GORDON JULIAN FREDERICK FORBES-MANGAN Sn.

As stated before in my evidence I am Trustee of the Estate appointed on 30th. August, 1929. £60 for loss of rent of bar was awarded in the original collector's finding in December 1929 and £15 for ditto (Hall).

I am claiming for the same up to 17th. April, 1950, when the Government's decision to withdraw was given. The Government were virtually owners and we could do nothing with the property.

For the bar I had offer of £12.10 p.m. from Col. Easton of Turbo, who came to see me at Kitale 2 or 3 times about it. I said I could do nothing about it on account of the Government's action in acquiring the property. I have a copy of letter Ex. A. My negotiations with him were personal interviews. In September we had wired him in some connection. The Dance Hall, we were awarded £2.10.0.

\* dated  
17/10/50.  
Put in  
Ex. A.

Re. Juma and Co. and Store Premises:-

Juma and Co. have been occupying the store all the time but we have recovered nothing from them. We are claiming for 10 months rent at £10 which is the rent.

Mr. McGregor has been occupying the Garage all the time but has paid no rent for the 10 months, i.e. 10 months June to April from date of notice to notification. £4 is the usual rent. I have not demanded payment from these tenants. If I had pressed them they might have had a course of action against me.

One month in lieu of notice re bar and dance hall claimed because when the Government withdrew I could not find a tenant at a moment's notice. As I said I had a tenant who wanted to keep the premises in 1929. Since then I have not had a tenant. There was licence existing for the premises up to end of year when my negotiations were taking place with Col. Easter but I could not get licence for empty premises.

The award was made on 6th. December, 1929, and naturally I assumed that Government would pay over the amount awarded fairly quickly but nothing happened. Had

17

the amount been paid promptly I should have paid the creditors amount due to them in full and obtained discharge as Trustee and passed property to 2 insolvents who would have been discharged. Nothing eventuated and in January I advertised for tenders for ploughing and harrowing and planting the farm in Trans Nzoia belonging to bankrupt estate. I was justified by reason of the award of the funds which would enable me to do so. I still had nothing from Government and in February I gave out contract as above re farm (L.O.20/76). I gave contract to H. Wreford Smith who asked me who would be responsible for the cost. I told him I would be responsible and not the insolvents. So he carried out his contract. The cost of it was Shs. 4485/- (A/c put in Ex. B). I settled it myself as there were no funds in estate with which to do it. I am losing interest for the money. The work had to be done at the beginning of the year. Mr. Davidson had not been able to work the farm himself as he had no funds. In June, 1929, before my time, all the farming stock, etc. - a few cattle - had been sold and there was nothing with which to work the farm. So work had to be given out to contract. The farm is mortgaged and if it had been neglected the mortgagee would have come down on us. The finding was in December and if I had known there was going to be delay I should have started work earlier. Such work is normally done in December or January. In addition to that contract I kept on Davidson as manager and also employed boys. Expenditure for which was about £70.

Money for that came out of the estate. The Official Receiver paid this. The amount of cultivation was the amount of previous cultivation - not increased. If we had disposition of the property of Turbo we could have had funds at our disposal to deal with the farm and keep it in cultivation. Wreford Smith would not have done the ploughing and planting for bankrupts.

Expenses of journeys as claimed:-

I claim also expenses of Davidson coming from Trans Nzoia - 18 miles from Kitale - 54 miles each way from Eldoret. Mr. Ryde's coming from near Kacheliba - 80 miles each way from Eldoret. He had to stay last night at Eldoret and he will have to stay today. Mr. Davidson has no money. Attendance fee and motor hire, and my own attendance today. I think I am entitled to interest on the amounts due for rent and the ploughing etc. contract. As manager Mr. Davidson was receiving £10 for about 3 1/2 months and a number of boys.

If I had known the Government were not going on acquisition, I should have kept expenses on far down and probably got a neighbour to look after the farm.

R.O.F.C.

(Signed) C.A.G. Lane.

WITNESS:

ALBERT ARTHUR RYDE Sn.

(wishes to amplify his statement).

To the best of my knowledge I being the bankrupt am unable to accept any permanent employment or an agreement, for period of employment with P.W.D. with whom I am now employed. If I were free I could accept a permanent post. Indirectly I am so losing prospect of getting leave, pay and permanent position having already worked for past 18 months for P.W.D.

R.O.F.C.

(Signed) C.A.G.L.

FINDING:-

This is an application for compensation to Messrs. Davidson and Ryde's estate in bankruptcy for damage suffered by the claimants in consequence of Government having notified its intention under sec. 6 of the Indian Land Acquisition Act to acquire a plot of land at Turbe occupied by them; the Government took proceedings to acquire the land but subsequently withdrew from the acquisition. The claim is under sec. 48(2) of the Act, and I have to assess the damages that accrued to the claimants by reason of the notice to acquire, consequent proceedings and subsequent withdrawal, together with all costs reasonably incurred by the claimants in the prosecution of the proceedings. A notice was published in the Official Gazette under sec. 6 of the Act dated 17th June, 1929, as to the intended acquisition of 50 acres of land on Farm 799 Turbe of which the plot in question forms part. The lessee of Farm 799 was Mr. L.A. Johnson and the plot (4 acres) in question had been purchased from Mr. Johnson in June 1927 by Messrs. Davidson and Ryde.

The subdivision had however not been approved by Government and Mr. Johnson had been unable to give transfer to Messrs. Davidson and Ryde. Mr. Johnson's lease was purely agricultural. In fact no transfer has yet been granted and these gentlemen have no title to the land although Mr. Johnson himself does not seek to dispute their right to it as against himself.

- The acquisition proceedings terminated on 8th December 1929 when the finding of the collector (myself) was given. Compensation was awarded separately:
- (1) to Mr. Johnson for 46 acres of land not at present in question,
  - (2) to Messrs. Davidson and Ryde's bankrupt estate for the remaining 4 acres of land, and buildings thereon and also for loss of certain rents, during the period of the acquisition proceedings.

On 17th April 1930 Government notified its decision to withdraw from the acquisition of the 4 acres.

Mr. Forbes-Mangan, the Trustee in bankruptcy for the Davidson and Ryde estate, filed a claim with me for compensation on 11th August. Evidence in support of it was taken on 4th September.

The position, in regard to the plot, of Messrs. Davidson and Ryde as disclosed is as follows :-

Believing that transfer would be obtained from Mr. Johnson and the Government they erected buildings for commercial purposes on the plot and proceeded to carry on business there. In consequence of Railway construction and agricultural development, Turbe became something of a commercial centre. There was no land set aside for commercial purposes except apparently one plot which

Messrs.....

Messrs. Davidson and Hyde already held and from which they moved their commercial undertakings on the score of health and greater convenience, to the plot now in question. In any case they erected their buildings before having any title to the land, on the belief that they would get it.

They say that they received verbal undertakings from certain Government employees that it would be granted. But not having it, when they required money to develop their business and assist in farming operations which they were carrying on in the Trans-Nzoia district, they were unable to raise money upon their plot or buildings. They got into financial difficulties and were obliged to file a petition in bankruptcy from which at present there seems little chance of their discharge.

Their claim may be divided into 4 parts:

- (i) Compensation for damages consequent upon non-grant of title by Government \$1500
- (ii) Loss of rents of premises at Turbo between 17th June 1929 (date of notice of acquisition) and 17th April 1930 (date of withdrawal by Government). £ 305
- (iii) Money spent in ploughing and planting their farm in Trans-Nzoia in the belief that money was coming to their estate, from the first two sources. £ 294.5.0
- (iv) Costs i.e. visits of Trustee and principals to attend the Land Acquisition proceedings.

PART (i)

Clearly does not come under the provisions of the Land Acquisition Act and I can award nothing under this head. At law the claimants would appear to have no claim upon Government but it is possible that some claim might be proved in equity.

The claimants took a very considerable risk in building on the plot before subdivision and transfer had been approved. On the other hand I believe that such subdivisions are usually approved by Government without difficulty and it is possible that the claimants may have been given to understand that this was the position. Further Government took no steps to prevent their occupying the plot and using it for commercial purposes in contravention of the original lease, and it is so used to this day.

PART (ii)

In my award in the original acquisition proceedings I allowed Messrs. Davidson and Hyde a sum for loss of rents of the bar and dance hall at £10 and £2.10 respectively, per month, under section 23(i)(6) of the Act.

They .....

their leasing these premises as they could otherwise have done.

(e) I consider that one months rent in lieu of notice for (a) and (b) i.e. subsequent to withdrawal cannot be allowed. I can find no provision or precedent for such compensation under sec.23(1)(b) of the Act.

As to (c) and (d) in my view the claimants are not entitled to rents of the shop premises and garage occupied by Juma and Co. and Mr. McGregor respectively for the 10 months as claimed or for any period.

Mr. Forbes-Mangan has stated that by reason of the acquisition proceedings the estate was debarred from collecting rents from these people; the premises have been occupied by these tenants throughout and are still so occupied as is admitted, and as I know personally to be the case. I believe also that there is actually a subtenant (a bootmaker) occupying part of the garage premises.

In the notes under sec.16, Beverley's Land Acquisition Act 5th Edn. it is stated :-

"Effect of taking possession" - The land vests absolutely in the Government free from all incumbrances after a bona fide award by the collector and possession have been taken, from the date when the collector takes possession -" Ganga Ram Marwari versus Secretary of State (1905) -I.L.R. 30 Cal. 576.

The effect of this section and the decided cases appears to be that up to the time of taking possession the owner of the property is entitled to his ordinary and normal rights, and that the mere publication of the notice under sec. 6 does not confer on Government the rights of an owner. The taking of possession is the vital step which effects the change of rights. Government can take possession in urgent cases before an award is made, but in ordinary cases an award is made and then possession is taken. In this case no possession was taken and there was no reason why the claimants should not collect the rents themselves. Mr. Forbes-Mangan stated that he had not asked for the rents; he was I think mistaken in not doing so.

In the previous proceedings (regarding compensation for acquisition) Mr. Forbes-Mangan did not claim under these heads at all. In fact in his statement to the collector (myself) he said; "There is also a garage and workshop on the plot I cannot say what the rent is at present. The tenant Mr. McGregor is away and also Mr. Ryde who used to attend to these matters -----

I am getting rents from Juma and Co. and the Post Office "(N.B. a portion of the buildings is let to Government for a post office).

He made a statement again on 31/10/1929 to the effect that the rent for Post Office was £4, Mr. McGregor £5 and Juma £10.

I .....



I presume from Mr. Forbes-Mangan's evidence in the present proceedings that the first statement was incorrect and that he was merely correcting the above when he stated that Juma and Co.'s rent had not been collected.

However in any case for the reasons stated I must disallow the claim for rents under (c) and (d).

PART (iii)

As to Part (iii), the claim for £294. 5. 0 for money spent in connection with ploughing and planting the bankrupt's farm in the Trans-Nzoia etc. This is claimed on the ground that acting on the belief that they would be paid compensation for buildings etc. as in my previous award, amounting to £2875. 0. 0., Mr. Forbes-Mangan was justified in spending a considerable amount on the normal development of their other property, i.e. the Trans-Nzoia farm, in anticipation of their discharge from bankruptcy and generally in execution of his duties as Trustee of the estate.

While he may have been justified in doing this from a business point of view, I cannot see that it is a legitimate ground for compensation under the Act. There is no provision for it under sec. 23. Sec. 24 (7) lays down that the award shall not take into consideration any outlay or improvements on or disposal of the land acquired, commenced or effected without the sanction of the Collector after the publication of the declaration under sec. 6. If this is true of the land itself which is the subject of the award, it would certainly appear to apply with all the more force to other land. I can find no authority for such an award in the English cases. The claim for £295. 5. 0. is not allowed.

PART (iv)

Reasonable costs incurred by an owner in prosecuting proceedings under the Act are allowed under sec. 48(2).

Mr. Forbes-Mangan has applied for £5 for each attendance, by himself, and motor hire at 1/- per mile for himself, and Messrs. Davidson and Ryde.

It seems reasonable to allow a fee of £5 for Mr. Forbes-Mangan's appearance on 14.10.29 at Turbo and £2.10. 0 each for two appearances at Eldoret, and one in the present proceedings on 4.9.30; basing these fees approximately on those allowed to an advocate in the scale under the Rules of Court (shs. 120/- for a full day in Court and 70/- for a half day).

I allow also Mr. Mangan's motor claim 80 miles plus 180 miles and 80 miles - 350 miles at 50 cts. per mile (the rate allowed to witnesses in civil cases) - 175/-

and fees £8.15. 0.  
12.10. 0.  
£21. 5. 0.

Mr. Davidson, fee as witness based on Court scale = 30/-  
Motor Hire = 54/-  
84/- = 4. 4. 0.

Mr. Ryde - fee as witness do. = 30/-  
Motor Hire = 80/-  
110/- = 5. 10. 0.



To sum up therefore the award is:-

Part (i)	allowed nothing	
Part (ii)	allowed	£153. 6. 8.
Part (iii)	allowed nothing	
Part (iv)	allowed costs to Mr. Langar	£21. 5. 0
	do. to Mr. Davidson	4. 4. 0
	do. to Mr. Ryde	5. 10. 0
		<hr/>
		£ 50. 19. 0.

Total £164. 6. 8.

It may be noted that the additional allowance of 15% for compulsory acquisition, vide sec.25(2) of the Act, is only payable on the market value of land acquired and is not payable in respect of an item such as loss of rents.

Sd. C.A.G. LANE.

18.9.30.

## MOTION

## ACQUISITION OF LAND AT TURBO.

THE HON. T. J. O'SHEA: Your Excellency, I beg to move

That the actions of Government in connection with the compulsory acquisition of land and buildings near Turbo Station were not in the best interests and unnecessarily inflicted considerable hardship on individuals.

To enable the House to appreciate the principles involved in this matter, Sir, I must, I am afraid, give a brief review of the facts so far as I have been informed. I shall be as brief as possible. As far back as June, 1923, the owner of the land in question, recognising that the coming of the Railway to Turbo would necessitate the erection of a number of shops and other buildings in the vicinity of the Railway, applied to Government for permission to sub-divide a small portion of his land there for these purposes. Negotiations for permission to do that were continued indefinitely, and never arrived at any finality. In the meantime, the circumstances of the case seemed to justify the owner of the land in entering into arrangements with various people to sell or lease other portions of the land for these purposes, and in the course of time a number of buildings were erected there, some of them on land which he contracted to sell to the parties erecting those buildings, and other portions were just leased on what may be regarded as temporary occupation licences. During the period that the Railway was being constructed from Turbo onwards towards the Uganda border, Turbo was of very considerable importance to the Railway authorities, and it was a real public convenience and a real convenience to the Railway that the premises had been erected there in the meantime, and that the businesses that had been opened were carried on. It is important to note that it was with the full knowledge of Government that these transactions were entered into and that these buildings had been put up and that these businesses were being carried on. I believe I am right in saying that licences were actually issued by Government to these parties to enable them to carry on their businesses.

In the meantime, Sir, it became necessary for the original owner of the property to get Government's consent to transfer the areas so sold, and he found it impossible to do so. Then Government finally, in a difficulty, began to think the best way of meeting the situation was to acquire all this land and embark upon a township of its own, and now, in April, 1930, we still find that Government has not yet definitely made up its mind. The original owner of the land has not been allowed to give transfer, and the Government has not placed itself in a

**His Excellency:** The subject is that the Native Lands Trust Bill as amended by the Committee of the House Council is referred to Council.

The question was put and carried.

*Council resumed its sitting.*

**His Excellency:** Order, order. I have to report that the Bill entitled a Bill to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved has been considered by recomittal by a Committee of the whole Council, and has been reported to Council with amendments.

### THIRD READING.

#### THE NATIVE LANDS TRUST BILL.

**THE HON. THE CHIEF NATIVE COMMISSIONER:** Your Excellency, I beg to move that the Bill to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved be read a third time, and passed.

**THE HON. THE ATTORNEY GENERAL:** Your Excellency, I beg to second the motion.

The question was put and carried by 20 votes to 3.

**Ayer:** Major Brassey, Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Canon Leahey, Messrs. Lynde, Macgregor, Malik, Martin, Maxwell, Montgomery, Moore, Rushton, Scott, Walsh, and Col. Wilkinson.

**Nays:** Lt. Col. Durham, Captain Kenealy, Mr. O'Shea.

**Declined to vote:** Messrs. Bennett, Cobb, Conway, Harvey, Lt. Col. Kirkwood, Major Robertson, Eustace, Lt. Col. Lord Francis Scott, Col. W. E. Tucker.

**CAPT. THE HON. E. M. V. KENEALY:** On a point of order, Your Excellency, is no record made of the names of those who refuse to vote in a matter of this kind? Because I think there should be a permanent record in the archives of this country of such a fact.

**HIS EXCELLENCY:** As far as I am made, I understand. The Bill was read a third time and passed.

*Council adjourned for the usual interval.*

position to enable it to give transfer. Negotiations were carried on by Government with the owner of the land for the purchase of varying areas at varying times. It started off by considering the acquisition of 700 acres, which area is evidence that Government was absolutely unable to appreciate the limits of importance of the place, and eventually worked down to a question of acquiring 50 acres. Now, Sir, had 750 acres been acquired at the price suggested by Government at the time, or something in that neighbourhood, I think the transaction would have been concluded on a reasonable basis, but when Government narrowed down the area to be acquired to a small amount of 50 acres and offered approximately the same price, it was not a reasonable proposition, and the owner of the land indignantly turned it down. In consequence, Sir, the following notice appeared in the Official Gazette of the 25th June, 1929—

Government Notice No. 402.

#### THE LAND ACQUISITION ACT, 1894 (INDIA) DECLARATION UNDER SECTION VI.

It is hereby notified and declared that the land specified in the Schedule hereto is required for a public purpose.

There it specifies those 50 acres.

My motion is based upon Government's having done things that were not in the best public interest, and I should like to justify that assertion of mine by pointing out that this Land Acquisition Act of 1894 of India compels Government, merely by declaration in the Gazette, to say that land is required for a public purpose, and practically to confiscate a man's title. It is not necessary, apparently, under that Act, to hold any court of enquiry or to prove to the satisfaction of anybody that the land in question is really required for a public purpose. Government has absolutely arbitrary power in the matter. It has merely to declare in the Gazette that any area of land subject to a lease from Government is required for a public purpose, and that notice is sufficient to enable Government compulsorily to reacquire that land. That is a very important matter, because it has given rise to grave uneasiness among people who hold titles of this sort from Government. There is a great feeling of insecurity in the minds of those who are familiar with Government's activities in this matter, and I feel it is very necessary that Government should, at an early date, reconsider the position with a view to acquiring powers under local legislation to apply this Act. The Land Acquisition Act may have been good enough for India in 1894, but it is certainly not good enough for the

conditions of this country to-day, and I would strongly urge that that aspect of the case be given immediate and favourable consideration by Government.

Turning, Sir, to the second part of the motion, which contends that considerable hardship has been inflicted unnecessarily on individuals, I would point out that it was the plain duty of Government, when the Railway was going through Turbo, to recognise that the coming of the Railway there had brought about altered conditions that made it necessary either to allow the individual to make provision for such premises as were considered necessary or for Government itself to do so. For it to carry on negotiations over a period of six or seven years was, I contend, a dereliction of duty, and in the neglect of its duty in that respect Government has certainly inflicted considerable hardship on the owner of the property and on the smaller people who acquired land from him in good faith. He was unable to secure to himself the profit of his enterprise, he was debarred from fulfilling the contracts which he had entered into, and in the long run Government's interference in this matter, without doing anything definite itself, was a very contributory factor in his eventually going insolvent. That, to a man who had striven hard in this country for fifteen years, who was one of the pioneers of development in that area, and who has worn himself out in his efforts to make good there, is, I think, a very great injustice.

Then, Sir, in connexion with one of the purchasers of a portion of this land, they entered into a contract with Mr. Johnson to purchase four acres, and, in the belief that Government, recognising the necessity for an hotel in that place, would allow him to have transfer, they erected premises in excess of a value of £2,000. Government would not give transfer, and eventually, last year, under this notice in the Gazette, they held a court of inquiry, with a view to acquiring the whole area compulsorily. The court of inquiry found that this property was worth in the neighbourhood of £2,800, and it seemed to the public and to everybody concerned in the case outside the inner circles that the court of inquiry, having so decided, Government had to purchase this land. Although that court was held in December last, no steps were taken to take over the property and pay for it. In the meantime it was pointed out to Government that there was no real necessity for Government to acquire the property from the public point of view, and so Government took fright and has now repudiated its obligation. In consequence of that, these people who were unable to transfer, had to go insolvent, and are now saddled with a property which they do not know is their or is not theirs.

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The personal factors in the case are more familiar to the hon. Member for Plateau North than to myself, and I shall leave him to elaborate them, but I would urge that the broader aspects of this case merit the very serious consideration of Government. In so far as provisions for compulsorily acquiring the land are concerned, I would strongly urge that Government accept the suggestion that legislation be introduced that will be in keeping with the requirements of the country and that at the earliest possible moment steps be taken to reassure the public that their leases from Government have a value and are not subject to arbitrary continuation under the pretext that the land is required for public purposes.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I have much pleasure in seconding this motion. I will deal as concisely and precisely as possible with the latter part of the motion. I should like to associate myself generally with the remarks passed by my hon. friend the Member for Plateau South.

The latter part of the motion states, "and unnecessarily inflicts considerable hardship on individuals." Now, Sir, Government gave notice on the 23rd June to acquire certain properties to the extent of 30 acres near Turbo Station, and included in that 30 acres was a 4-acre plot, upon which permanent buildings had been erected. They were owned by Messrs. Davidson and Wright, two old farmers in this Colony, who are very highly respected. They have, since June, 1927, when they purchased the plot, been applying to Government to take the necessary action to acquire title. Up to the present time they have not succeeded in getting title to that 4-acre plot. On the 25th June, 1929, the Government Gazette Notice No. 402 appeared notifying Government's intention to acquire. The same Gazette also constituted the necessary authority under the Land Acquisition Act of 1924; that authority eventually met and the magistrate of Eldoret, Mr. Lane, took evidence, sifting the matter, and eventually came to the conclusion awarding £2,575 to be paid in compensation to Davidson and Wright for their 4-acre plot and the buildings thereon.

Previous to that, Davidson and Wright were in financial difficulties, and refusing to pay their creditors. They put their estate into voluntary liquidation with the view and the hope that their creditors would be paid in full. They were complimented by the applicable authority in Nairobi, when their case came before the court here, on the action they had taken, but in consequence of not being able to secure title in the first place, they were debarred from dispensing of that

conditions of this country to-day, and I would strongly urge that final report of the case be given immediate and favourable consideration by Government.

Turning, Sir, to the second part of the motion, which contends that considerable hardship has been inflicted unnecessarily on individuals, I would point out that it was the plain duty of Government, when the Railway was going through Turbo, to recognise that the coming of the Railway there had brought about altered conditions that made it necessary either to allow the individual to make provision for such premises as were considered necessary or for Government itself to do so. For it to carry on negotiations over a period of six or seven years was, I contend, a dereliction of duty, and in the neglect of its duty in that respect Government has certainly inflicted considerable hardship on the owner of the property and on the squaller people who acquired land from him in good faith. He was unable to secure to himself the profit of his enterprise; he was debarred from fulfilling the contracts which he had entered into, and in the long run Government's interference in this matter, without doing anything definite itself, was a very contributory factor in his eventually going insolvent. That, to a man who had striven hard in this country for fifteen years, who was one of the pioneers of development in that area and who has worn himself out in his efforts to make good there, is, I think, a very great injustice.

Then, Sir, in connection with one of the purchasers of a portion of this land, they entered into a contract with Mr. Johnson to purchase five acres, and, in the belief that Government was granting the necessity for an hotel in that place, would allow him to have transfer. They erected premises in excess of a value of £2,000. Government would not give transfer, and eventually, last year, under this notice in the Gazette, they held a court of inquiry, with a view to acquiring the property compulsorily. The court of inquiry found that the property was worth of the neighbourhood of £2,800 and presented to the public and to everybody concerned in the area outside the three circles that the court of inquiry, having so decided, Government had to purchase this land. Although that court was held in December last, no steps were taken to take over the property and pay for it. In the meantime it was pointed out to Government that there was no real necessity for Government to acquire the property from the public point of view, and so Government took fright and has now repudiated its obligation. In consequence of that, these people who were unable to transfer, had to go insolvent, and are now saddled with a property which they do not know is their or is not theirs.

The personal factors in the case are more familiar to the hon. Member for Plateau North than to myself, and I shall leave him to elaborate them, but I would urge that the broader aspects of this case merit the very serious consideration of Government. In so far as provisions for compulsory acquisition of the land are concerned, I would strongly urge that Government accept the suggestion that legislation be introduced that will be in keeping with the requirements of the country and that at the earliest possible moment steps be taken to reassure the public that their leases from Government have a value and are not subject to arbitrary confiscation under the pretext that the land is required for public purposes.

MR. COL. THE HON. J. G. KIRKWOOD: Your Excellency, I have much pleasure in seconding this motion. I will deal as concisely and precisely as possible with the latter part of the motion. I should like to associate myself generally with the remarks passed by my hon. friend the Member for Plateau South.

The latter part of the motion states, "and unnecessarily inflict considerable hardship on individuals." Now, Sir, Government gave notice on the 25th June to acquire certain properties to the extent of 80 acres near Turbo Station, and included in that 80 acres was a 4-acre plot upon which permanent buildings had been erected. These were owned by Messrs. Davidson and Wright, two old farmers in this Colony, who are very highly respected. They have, since June, 1927, when they purchased the plot, been applying to Government to take the necessary action to acquire the plot. Up to the present time they have not succeeded in getting title to that 4-acre plot. On the 25th June, 1929, the Government Gazette Notice No. 402 appeared notifying Government's intention to acquire. The same Gazette also constituted the necessary authority under the Land Acquisition Act of 1924; that authority eventually met and the magistrates of Eldoret, Meru, and Nairobi, took evidence, sitting in rotation, and eventually came to the conclusion awarding £2,875 to be paid in compensation to Davidson and Wright for their 4-acre plot and the buildings thereon.

Previous to that, Davidson and Wright were in financial difficulties, and refusing to pay their creditors. They put their estate into voluntary liquidation with the view and the hope that their creditors would be paid in full. They were complimented by the applicable authority in Nairobi, when their case came before the court here, on the action they had taken, but in consequence of not being able to secure title in the first place they were debarred from disposing of that

property for the benefit of their creditors. Further, the action of the Government under the Acquisition Act has barred them from the duty of collecting rents. I do not know whether Government have collected the rents. They have or not, but I can definitely state that their estate has not been able to collect the rent, and an amount of, I think, £80 for rent was allowed in the award. They are most anxious to settle their affairs, and it will be impossible for them to do so to their satisfaction, or the satisfaction of their creditors, until title has been issued for that property. It is not understandable to me how, under an Ordinance such as the Land Acquisition Ordinance, Government can inflict hardship on individuals by their action and at the eleventh hour withdraw.

On March 24th, 1953, notice to withdraw these proceedings was given by Government to the trustees of this particular estate. I am not aware of the reasons for that notice. I do know, according to the award that was issued to independent valuers, that they made a valuation and submitted their valuation to the court. A third official in the Public Works Department also made a valuation, and that valuation was accepted by Mr. Paine, and on that valuation he has made his award; and I suggest it is only fair and just to the people concerned, and their creditors, that that notice of withdrawal should again be withdrawn. If it is the opinion of Government that the award was too high, then I suggest that Government might in justice negotiate and acquire that property by negotiation. The matter, as it stands, is most unsatisfactory; the estate is held up; it cannot be cleaned up; it can get no further until Government definitely withdraws. I consider that I consider is a moral obligation on their part to carry out the award made by the authority under the Acquisition Act. I consider that it would only be fair and equitable to everybody concerned if that action was taken.

I do not wish to belabour the matter, but, before sitting down, I should like to express the opinion that this Ordinance, as it stands, is not a fair or equitable Ordinance, because measures should be taken either for its repeal or amendment. I do not consider that an Ordinance that will allow such an injustice as has taken place in this particular case as a fair law and it should not be on the statute book. Neither is it fair or reasonable to suppose that Government has the right to carry out negotiations, to complete those negotiations and then withdraw, and not give the same right and privilege to the other people. Your Excellency, I commend the motion for acceptance.



property for the benefit of their creditors. Further, the action of the Government under the Acquisition Ordinance had barred them from the duty of collecting rents. I do not know whether Government have collected the rents as they became due or not, but I can definitely state that their estate has not been able to collect the rent, and an amount of, I think, £50 for rent was allowed in the award. They are most anxious to settle their affairs, and it will be impossible for them to do so until their satisfaction or the satisfaction of their creditors, until title has been issued for that property. It is not understandable to me how, under an Ordinance such as the Land Acquisition Ordinance, Government can inflict hardship on individuals by their action and at the eleventh hour withdraw it.

On March 24th, 1933, notice to withdraw these proceedings was given by Government to the trustees of this particular estate. I am not aware of the reasons for that notice. I do know, according to the award that was issued to independent valuers, that they made a valuation and submitted their valuation to the court. A third official in the Public Works Department also made a valuation, and that valuation was accepted by Mr. Lane, and on that valuation he made his award, and I suggest it is only fair and just to the people concerned, and their creditors, that that notice of withdrawal should again be withdrawn. If it is the opinion of Government that the award was too high, then I suggest that Government might in justice negotiate and acquire that property by negotiation. The matter, as it stands, is most unsatisfactory—the estate is held up, it cannot be cleaned up; it can get no further until Government definitely withdraws its completion, what I consider is a moral obligation on their part to carry out the award made by the authority under the Acquisition Ordinance. I consider that it would only be fair and reasonable for the body concerned if that action was taken.

I do not wish to belabour the matter, but, before sitting down, I should like to express the opinion that this Ordinance, as it stands, is not a fair or equitable Ordinance, because the measure should be taken either for its repeal or amendment. I do not consider that an Ordinance that will allow such an injustice as has taken place in this particular case is a fair one and it should not be on the statute book. Neither is it fair or reasonable to suppose that Government has the right to go into negotiation, to complete those negotiations and then withdraw, and not give the same right and privilege to the other people. Your Excellency, I commend the motion for acceptance.

14th April, 1930

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His Excellency: The question is—

That the actions of Government in connection with the compulsory acquisition of land and buildings near Turko Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, there are a certain number of issues, some of particular and some of general nature, which have been raised in the last two speeches. There is one issue, however, which I will not attempt to tread on myself, but which I will leave to the hon. the Attorney-General, that is, of course, the question which is more closely connected with matters of law—the legal interpretation of the facts given.

Now, Sir, I think it will probably save time and save Members a better picture of this particular transaction if I very shortly detail—and follow the lead of the hon. member of the motion—the occurrences in the sequence of time from the beginning to the present day. Now, Sir, it is quite true, as the hon. Member stated, that there were actual negotiations so far back as 1928 in relation to the needs, possible needs, of the township of Turko, but, Sir, it was not, I think, till the 9th November, 1925, that matters came to a head and a definite application to sub-divide was put in by the owner. Two months later, Sir, and thus, I think, is a question of great importance—the owner, in asking Government to purchase and abandoning his application to sub-divide, stated that he did not wish to negotiate in the private township itself, but he wished Government to buy back the land granted to him. That attitude, Sir, had a great influence on all the subsequent history of the case. I will refer to it therefore in another connexion later. I may say also, Sir, that on the 26th September, 1928, that statement of preference to purchase by Government, rather than himself form a township, was repeated.

The next salient point, I think, was early in 1928 when the district committee, who had been considering the matter for some time, definitely recommended to the Government that an area of land should be acquired by Government, and that Government should develop it for township purposes.

Now, Sir, I think, from that point onwards the subsequent history flows on, one might almost say, inevitably. What was the position of Government in the matter in developing a township on land which the owner himself would not develop, which the owner himself had no intention of



property for the benefit of their creditors. Further, the action of the Government under the Acquisition Act had debarred them from the duty of collecting rents. I do not know whether Government have collected the rents as they are due or not, but I can definitely state that their estate has not been able to collect the rent, and an amount of, I think, £200 for rent was allowed in the award. They are most anxious to settle their affairs, and it will be impossible for them to do so to their satisfaction, or the satisfaction of their creditors, until title has been issued for that property. It is not understandable to me how, under an Ordinance such as the Land Acquisition Ordinance, Government can inflict hardship on individuals by their action and at the eleventh hour withdraw it.

On March 24th, 1930, notice to withdraw these proceedings was given by Government to the trustees of this particular estate. I am not aware of the reasons for that notice. I do know, according to the award that was issued to independent valuers, that they made a valuation and submitted their valuation to the court. A third official in the Public Works Department also made a valuation, and that valuation was accepted by Mr. Paine, and on that valuation he has made his award, and I suggest it is only fair and just to the people concerned, and their creditors, that that notice of withdrawal should again be withdrawn. If it is the opinion of Government that the award was too high, then I suggest that Government might in justice negotiate and acquire that property by negotiation. The matter, as it stands, is most unsatisfactory; the estate is held up; it cannot be cleaned up; it can get no further until Government definitely withdraws it completely, and I consider it a moral obligation on their part to carry out the award made by the authority under the Acquisition Act. I consider that it would only be fair and just if Government should be concerned if that action was taken.

I do not wish to belabour the matter, but, before sitting down, I should like to express the opinion that this Ordinance, as it stands, is not a fair or equitable Ordinance, because measures should be taken either for its repeal or amendment. I do not consider that an Ordinance that will allow such an injustice as has taken place in this particular case is a fair one and it should not be in the statute book. Neither is it fair or reasonable to suppose that Government has the right to carry into negotiation, to complete those negotiations and then withdraw, and not give the same right and privilege to the other people. Your Excellency, I commend the motion for acceptance.

Mrs. EXCELLENCY: The question is—

That the actions of Government in connection with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, there are a certain number of issues, some of particular and some of general nature, which have been raised in the last two speeches. There is one issue, however, which I will not attempt to tread on myself, but which I will leave to the hon. the Attorney-General, that is, of course, the question which I must closely concern with matters of law—the legal consideration of the facts given.

Now, Sir, I think it will probably save time and give Members a better picture of this particular transaction—described very shortly in detail—and follow the lead of the hon. member of the motion—the occurrences in the sequence of time from the beginning to the present day. Now, Sir, it is quite true, as the hon. Member stated, that there were actual negotiations so far back as 1923 in relation to the needs, possible needs, of the township of Turbo, but Sir, it was not, I think, till the 9th November, 1925, that matters came to a head and a definite application to sub-divide was put in by the owner. Two months later, Sir, and this, I think, is a question of great importance—the owner, in asking Government to purchase and abandoning his application to sub-divide, stated that he did not wish to negotiate in the private township itself, but he wished Government to buy back the land granted to him. That attitude, Sir, had a great influence on all the subsequent history of the case. I will refer to it therefore in another connection later. I may say also, Sir, that on the 26th September, 1928, that statement of preference to purchase by Government rather than himself for a township, was repeated.

The next salient point, I think, was early in 1928 when the district committee, who had been considering the matter for some time, definitely recommended to the Government that an area of land should be acquired by Government, and that Government should develop it for township purposes.

Now, Sir, I think, from that point onwards the subsequent history flows on, one might almost say, inevitably. What was the position of Government in the matter of developing a township on land which the owner himself would not develop, which the owner himself had no intention of

developing but wanted Government to purchase and develop on behalf of the town-country itself? The Government's responsibility in the matter is naturally a great one; the Government's responsibility in the matter surely must very largely depend on the terms on which it can obtain the material it is going to use. It must be remembered that this land was held under an agricultural title and Government therefore had no power to force the owner to develop it as a township. On the other hand, it has been stated quite truly that the owner had taken certain steps in regard to this land by entering into arrangements with other parties, arrangements which could not be regularised except by the consent of Government and by the conversion of Government of the change of user. Government therefore was in the position that, instead of having to repurchase a straightforward agricultural title, they had to take into consideration proceedings which were, in fact, irregular. It was natural therefore that they took the shortest cut and the only cut possible; and that was to go for outright purchase. Well, Sir, the point has been made that first of all they decided to purchase 750 acres, and that subsequently that was reduced. I can only say about that, Sir, that if they found 50 acres would do where 750 acres was thought necessary before Government would not have been justified in buying a larger area, and that this smaller area was sufficient was endorsed by the suggestion of the district council itself in May, I think, 1928.

Now, Sir, there are certain points of principle—one particular point of principle, which I think should be dealt with; and that is the rights of Government in respect of compulsory acquiring land for such purposes as townships. I think the challenge almost has come to this: that it is doubted whether the creation of a township is really a public purpose. I would ask hon. Members just to think of the position Government is put in when the necessity for a township is admitted, when the land required does not belong to Government, and when the owner has no wish to develop it as such. There is only one course of action, surely, open to Government, and that is to acquire it; if it cannot acquire it by agreement to acquire it by using the existing law.

A further point has been made, and that is that the two owners—or, I can hardly call them owners—the two occupiers of this land were debarred from the rightful profits of their enterprise. Well, Sir, I do not want to say anything which suggests that enterprise in every reasonable form should not be encouraged, and I am very sorry if the circumstances of this case have, as it seems, hardly rewarded the enterprise of these gentlemen, but, strictly speaking, it must be remembered that these profits, or rather, that that enterprise, strictly

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Now, Sir, there are certain points of principle, one particular point of principle, which I think should be dealt with, and that is the rights of Government in respect of non-purchaseable land for such purposes as townships. I think the challenge almost has come to this, that it is doubted whether the creation of a township is really a public purpose. I would ask hon. Members not to think of the position Government require when the necessity for a township is created, when the land required does not belong to Government, and when the owner has no wish to develop it as such. There is only one line of action surely open to Government, and that is to acquire it, if it cannot acquire it by agreement, to acquire it by using the existing law.

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speaking, was hardly regularised. They took certain risks—the risk of spending money without proper title. The fact that they were not given proper title was not dependent on any attitude of Government. If anybody was in fault over it, well, I should say it was the vendor of the land from whom they wanted title.

Now, Sir, I do not want specifically to answer the doubts which have arisen as to the propriety of taking advantage of the existing Ordinance, the Indian Acquisition Act, because I imagine the hon. the Attorney General will deal with that himself, but I will ask hon. Members to remember that some such law is necessary, that it has been used in this country for some time, it is very efficient and that, in point of fact, it is the only law dealing with the matter which enables Government to obtain land when it is required for public purposes and the vendor is not willing to sell on reasonable terms.

As to the ease of hardship on the part of these two owners of four acres, I can only say that their losses and the question of any compensation which may be due to them is a matter which, in connexion with this withdrawal and the objection to the compulsory acquisition proceedings, is a proper one, and I believe it is recognised by Government that it should be examined.

CAPT. THE HON. B. M. V. KANBIA: Your Excellency, it moves upon a certain amount of pain to support a motion of this kind, because it implies criticism of Government policy and activities, and that always—no matter how delicately it is expressed—does hurt one to a certain extent. But there are principles involved in this motion which must receive the support of this side of the House, and that is not evidenced in arguments—in the acceptance of this motion in the minds of Government. I am sorry that the comments made from the outset on the subject by the hon. the Commissioner for Local Government, Lands and Settlement are still being maintained.

The primary point, Sir, that demands support in this is Government's inconsistency in the application of its policy and practice. While Sir, we find that Government is exceedingly inconsistent, it is consistent in one thing, in that all its activities are directed to the destruction of development. There it is consistent, and its consistency is manifest in nearly all of its activities. But, Sir, it is not consistent inasmuch as it will not tolerate a change of user which is beneficial to the development and progress of this country, but will tolerate a change of user inasmuch as it does not insist on the user originally granted being maintained; inasmuch as it will not allow agricultural land to be put to a

more intensive purpose for the benefit of the country at large by a change of user, but it will allow an individual who has a title to land consistently to fail to carry out his agreement as a lessee of the Crown.

One of the excuses made by my hon. friend the Commissioner for Local Government, Lands and Settlement—perhaps it will not be called an excuse; it may be called a reason—was that the owner suggested the use of this land for township purposes. Now, Sir, that is an admission of failure. It is the State's duty to recognise that a township was required there before the owner did. Again, it has been suggested that the owner did not want to develop that land. Why? Because he knew of the obstructive tactics and the procrastination which would follow any attempt to regain the necessary rights to exploit or develop that land. That, as my hon. friend comments, is a plain statement of fact.

We have passed some legislation this morning which makes it impossible for ordinary public purposes to acquire land from the natives, and yet here we have instances of the existence of legislation which may be arbitrarily and harshly imposed and in this case, Sir, I think that these powers have possibly been harshly imposed upon individuals. I feel, Sir, that we have a reasonable claim for demands for an alteration in the Land Acquisition Act, and there should undoubtedly be an alteration in regard to the definition of "public purposes." Government was in a position to coerce this user and to tell him down in regard to what he considered a fair price by refusing to grant a change of user, and I regret to see that Government utilised that coercive power which it held, and I think that was a little undignified for Government to do. There is no doubt, Sir, that it was the delay that caused the loss, and the delay was due to the inactivities of Government and the lack of principle that governed Government's action.

**THE HON. THE ATTORNEY GENERAL:** Your Excellency, in listening to the speeches from hon. Members on the other side of the House I could not help feeling that they had strayed rather far from the exact terms of the resolution before the House, which is that the use—if I may paraphrase it—of the Indian Land Acquisition Act in this case was an improper one. It does not seem to me that the merits of the existing land system have very much to do with the issue which is primarily before us, Sir, if I may

**THE HON. J. G. KISSWOOD:** On a point of explanation, Your Excellency, I am not questioning the delay in passing the Bill of the Acquisition Act. It is the methods that were applied under it.



more adequate purpose for the benefit of the country, as large by a change of user, but it will allow an individual who has a title to land consistently to fall to carry out his agreement as a lessee of the Crown.

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**THE HON. THE ATTORNEY GENERAL:** Your hon. friend, in listening to the speeches from hon. Members on the other side of the House, I could not help feeling that they had strayed more far from the exact terms of the resolution before the House, which is that the use—if I may paraphrase it—of the Indian Land Acquisition Act in this case was an improper one. It does not seem to me that the merits of the existing land system have very much to do with the issue which is primarily before us. Sir, if I may.

**THE HON. J. G. KENNEDY:** On a point of procedure, Sir, I am not questioning the desirability of justifying the date of the acquisition Act. It is the Act itself which is to be applied, under it.

**THE HON. THE ATTORNEY GENERAL:** On a point of explanation, I did not attach any fault to the hon. Member who has just explained himself. I spoke of the speeches generally on the other side, Sir.

There is at least one hon. Member on the other side of this House who is at one with me that what we have to deal with is whether or no the Government was justified in using the Act, with the possible further point as to whether the Act is one which ought to be on the Statute Book. Now, Sir, let me remind hon. Members of what my hon. friend the Commissioner for Local Government, Lands and Settlement said a few moments ago. There were very long and protracted negotiations indeed, and every opportunity was given to the owner to develop the area as a township himself. The need for a township at Turbo has been contended by everybody who has spoken, and that offer was in fact made. Sir, in 1928; the owner's reply is one of the most delightfully laconic communications that I have ever read. It consists of three lines, Sir.

The minimum of land I am prepared to sell is 750 acres. The price is 15 per acre.

I do not contemplate starting a private township. There follows his signature.

The Hon. J. G. Kennedy: An Excellent example of a point of information, the date of that letter?

The Hon. J. G. Kennedy: The Hon. Sir, is the 26th September, 1928.

Well, Sir, let me repeat that the necessity for a township was unequivocally conceded. We have been told by one hon. Member that the Government is at fault in not having started a township as early as when the Railway reached Turbo, as the need for a township was daily becoming more acute. Opportunity was given to the owner to make a township of his own, and he emphatically and very tersely declined to do so. What could Government do?

Every Colony, every civilised country, has a measure which enables land to be compulsorily acquired for public purposes. The necessity for a township at Turbo was paramount, the necessity for a township of definite, sanitary, clean lay out was obvious to everyone. If the owner would not do it, and he would not sell less than 750 acres when all requirements were 50 acres, can it conceivably be argued that that is an impossible use of statutory powers?

The statute, if I may now turn to the more strictly legal aspects of it, has been in force in the East African Protectorate (as it was then) since 1896. Its scope was extended as far back as 1902 to the whole of that Protectorate. This so far as I am aware, is the first occasion on which it has been alleged that the Act creates any undue hardship. Let me remind hon. Members what the procedure under the Act is. I do that, Sir, because we have had words such as "coercion" and "confiscation" and terms of that sort hurled at our heads. The procedure is, Sir, that a notice is published and a collector is appointed. The collector takes evidence. There is no star chamber procedure about it. He takes evidence publicly—evidence was, in fact, taken in this case. He heard the evidence of expert witnesses on the value of the land. He published his award, and under the Act, Sir, there was a right of appeal against that award if any of the persons affected by it were of opinion that the award was insufficient. That right, Sir, has not been exercised by any of these persons.

Then I come to the second part of the motion—the undue hardship caused to the two gentlemen who took a chance—a quite illegitimate chance—in respect of the four acres on which they risked erecting buildings. The Government is withdrawing from the acquisition of that portion, Sir; the Government is being pilloried for arbitrarily refusing to pay the sum awarded, and further pilloried because grave inconvenience, hardship and loss have been caused to those gentlemen by the Government's so doing. I can only recommend that hon. Members should obtain from some source or other a copy of the Act, and devote a little time to a perusal of it. In that respect the second part of the motion does seem to me as completely premature. When notice of withdrawal is given, Sir, the matter has again to go to the collector. With your leave, Sir, I shall read the second portion of section 48 of the Act which deals with withdrawal.

Whenever the Government withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land.

From these proceedings also there is a right of appeal. I hardly think that in view of that section words like "coercion" are either justified or dignified.

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Whenever the Government withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land.

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On the matter of confiscation, Sir, let me conclude by reminding hon. Members that not only the market value of the land had to be paid under proceedings such as this, a value which is arrived at by a judicial officer after hearing expert evidence (as was done in this case), but on top of that, Sir, the Government, by virtue of evoking the assistance of the Act, has to pay a further 15 per cent. If that is confiscation, Sir, it is a form of confiscation which I wish would come my way occasionally.

His EXCELLENCY: If no other Member of Council wishes to address the House I will call on the Member for Plateau South to reply.

THE HON. T. J. O'BRIEN: Your Excellency, I would draw the particular attention of the House to the fact that the hon. the Commissioner for Local Government, Lands and Settlement was entirely silent as to what transpired between 1925, when Mr. Johnson offered to sell the land to Government, and September, 1928, when they turned down his offer to sell the acres.

In the first place, Sir, in 1925, when he was contemplating doing something to meet the public demand for plot sites in Turko, he was perfectly willing to go on with a scheme of his own, and for a considerable time later was prepared to go on with a scheme of his own if only he had the consent of Government. It was only because of the way in which he was misled about by Government between that period, 1925 to 1928, that he decided, very largely on my advice, not to attempt to do anything of the sort but to let Government take the responsibility. I acted as an intermediary in these negotiations more than once or twice, and it was because I saw it was hopeless for him to try and get any reasonable attitude out of Government that I personally advised him not to make the attempt.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: On a point of explanation, Your Excellency, I should like to remind the hon. Member that I mentioned the year 1926, and the particular case in that year on which Mr. Johnson had stated his willingness to make a withdrawal himself.

THE HON. T. J. O'BRIEN: I feel I have been foolish in regard to the facts of this case, and so, in consequence, I have weakened my case. The owner of the land did, in fact, want to divide up certain portions of land near the Turko Railway Station as were required for public purposes, and it



was only when he had found out the commitments he would have to enter into and the difficulties Government was placing in the way that he decided the only thing to do was to compel Government to buy, and the explanation of his refusing to sell less than 750 acres, so the offer quoted by the hon. the Attorney General dated May, 1928—September, 1928, George—was that negotiations had been under discussion for some time on the basis of a 700-acre purchase, and when that was suddenly dropped to 50 acres he very naturally resented it. I would emphasize also that no explanation has been given on the other side of the House as to what would have been done by Government to provide the necessary sites for the Railway buildings and private enterprise had the owner of the land not done so. Government itself was a party to the illegal use of that land under the terms of the lease. The Railway authorities and the Railway contractors made considerable use of portions of that land for purposes other than agriculture during that period, and it was during that period that the place had a value as a township site. To-day it has practically none. Mr. Johnson met the needs of the hour and he has now been penalised for his action in doing so. Enghemore, Sir, I would like to draw the attention of the House to the fact that no evidence was forthcoming to show that Mr. Johnson had not rights to sell on reasonable terms. It is true that in the findings of the Court it was pointed out that he was asking a very high price for the land, based on the price at which he had been able to sell some of his plots, but at the time of the negotiations the price he asked for the land was very much more reasonable and more based upon its value as an agricultural holding; and no evidence whatever has been produced to show that Mr. Johnson had refused to sell at the price at which he offered to sell the land.

Frankly, Sir, I am much more concerned with the broader aspects of this case than with the personal. It is a source of pleasure to me to find that these people have not heard the last of this, and that under the law as it exists there is a possibility of their receiving some further consideration in the matter. But the general application of this Act is what has worried me quite a lot, and although it may be true to point out that it has been in operation in this Colony for many years and that this is the first case we have heard of of its harsh application, I would point out that the use of this Act has been very sparing indeed and I cannot recollect any attempt to apply it until comparatively recently. I am very sorry indeed, Sir, that there has been no evidence from the other side that the Government is itself aware that the continued use of this Act is inadvisable when one considers the

was only when he had found out the big commitments he would have to enter into and the difficulties Government was placing in the way that he decided the only thing to do was to compel Government to buy, and the explanation of his refusing to sell less than 750 acres in the letter quoted by the hon. the Attorney General dated May 1938—September 1938, sorry—was that negotiations had been under discussion for some time on the basis of a 750 acre purchase, and when that was suddenly dropped to 50 acres he very naturally resented it. I would emphasize also that no explanation has been given on the other side of the House as to what would have been done by Government to provide the necessary sites for the Railway buildings and private enterprise had the owner of the land not done so. Government itself was a party to the illegal use of that land under the terms of the lease. The Railway authorities and the Railway contractors made considerable use of portions of that land for purposes other than agriculture during that period, and it was during that period that the place had a value as a township site. To-day it has practically none. Mr. Johnson met the needs of the hour and he has now been punished for his action in doing so. Fughermere, Sir, I would like to draw the attention of the House to the fact that no evidence was forthcoming to show that Mr. Johnson had no rights to sell on reasonable terms. It is true that at the findings of the court it was pointed out that he was asking a very high price for the land, based on the price at which he had been able to sell some of his plots, but at the time of the negotiations the price he asked for the land was very much more reasonable and more based upon its value as an agricultural holding, and no evidence whatever has been produced to show that Mr. Johnson had refused to sell at the price at which he offered to sell the land.

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circumstances of the Colony to-day. Despite the failure of the other side of the House to give an indication that Government would later reconsider its position in this matter, I would spike one last appeal to them to do so.

HIS EXCELLENCY: The question is—

That the actions of Government in connection with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.

## BILLS

### THE CRIMINAL PROCEDURE CODE

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this House go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 10th April.

THE HON. C. F. G. DOVAN, Acting Solicitor General: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 19th April.

The question was put and carried.

### The Council went into Committee

#### In Committee

#### THE CRIMINAL PROCEDURE CODE

Clause 30.—Refusal to give name and residence.

CLERK: THE HON. E. M. V. KIBAZILE: Your Excellency, I beg to move that the clause be amended by the deletion of the words "or residence" and the substitution thereof of the words "taken before" in sub-clause (3).

This makes the sense better.

The question was put and carried.

Clause 31.—Detention of persons arrested without warrant.

CLERK: THE HON. E. M. V. KIBAZILE: Your Excellency, I beg to move that clause be amended by the deletion of the words "shall be" where they appear in the fourth line of the clause, and the substitution thereof of the words "shall have been".

Accordingly is a matter of chronological sense.

The question was put and carried.

was only when he had found out the big commitments he would have to enter into that the Honorable Government was placing in the way that he decided the only thing to do was to compel Government to buy, and the explanation of his refusing to sell less than 750 acres, in the letter quoted by the hon. the Attorney General dated May, 1928—September, 1928, sorry was that negotiations had been under discussion for some time on the basis of a 750-acre purchase, and when that was suddenly dropped to 50 acres he very naturally resented it. I would emphasize also that no explanation has been given on the other side of the House as to what would have been done by Government to provide the necessary sites for the Railway buildings and private enterprise had the owner of the land not done so. Government itself was a party to the illegal use of that land under the terms of the lease. The Railway authorities and the Railway contractors made considerable use of portions of that land for purposes other than agriculture during that period, and it was during that period that the place had a value as a township site. To-day it has practically none. Mr. Johnson met the needs of the hour and he has now been penalised for his action in doing so. Furthermore, Sir, I would like to draw the attention of the House to the fact that no evidence was forthcoming to show that Mr. Johnson had no rights to sell on reasonable terms. It is true that in the findings of the Court it was pointed out that he was asking a very high price for the land, based on the price at which he had been able to sell some of his plots, but at the time of the negotiations the price he asked for the land was very much more reasonable and more based upon its value as an agricultural holding, and no evidence whatever has been produced to show that Mr. Johnson had refused to sell at the price at which he offered to sell the land.

Frankly, Sir, I am much more concerned with the broader aspects of this case than with the personal. It is a source of pleasure to me to find that these people have been on the list of this, and that under the law as it exists there is a possibility of their receiving some further consideration in the matter. But the general application of this Act, as it has worked me quite a lot, and although it may be true to point out that it has been in operation in this Colony for many years and that this is the first case we have heard of of its harsh application, I would point out that the use of this Act has been very sparing indeed and I cannot recollect any attempt to apply it until comparatively recently. I am very sorry indeed, Sir, that there has been no evidence from the other side that the Government is itself aware that the continued use of this Act is inadvisable when one considers the

circumstances of the Colony to-day. Despite the failure of the other side of the House to give any indication that Government would later reconsider its position in this matter, I would make one last appeal to those on these

HIS EXCELLENCY: The question is—

That the actions of Government in connection with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.

## BILLS

### THE CRIMINAL PROCEDURE CODE

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this House go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 10th April.

THE HON. C. F. G. DORIS (Acting Solicitor General): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 19th April.

The question was put and carried.

### The Council went into Committee

#### In Committee

#### THE CRIMINAL PROCEDURE CODE

Clause 2.—Repeal to give name and residence.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause be amended by the deletion of the words "forwarded to" and the substitution thereof of the words "taken before" in subclause (3).

This makes the sense better.

The question was put and carried.

Clause 3.—Detention of persons arrested without warrants.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause be amended by the deletion of the words "shall be" where they appear in the fourth line of the clause, and the substitution thereof of the words "shall have been".

This is a matter of chronological sense.

The question was put and carried.

circumstances of the Colony to-day. Despite the failure of the other side of the House to give any indication that Government would later reconsider its position in this matter, I would make one last appeal to them to do so.

**HIS EXCELLENCY:** The question is:—

That the actions of Government in connection with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.

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**HIS EXCELLENCY:** The question is that this Council go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 10th April.

The question was put and carried.

### The Council went into Committee.

#### In Committee.

### THE CRIMINAL PROCEDURE CODE.

Clause 3.—Refusal to give name and residence.

**CAPT. THE HON. E. M. V. KENEALY:** Your Excellency, I beg to move that the clause be amended by the deletion of the words "forwarded to" and the substitution therefor of the words "taken before" in subclause (3).

This makes the sense better.

The question was put and carried.

Clause 34.—Detention of persons arrested without warrants.

**CAPT. THE HON. E. M. V. KENEALY:** Your Excellency, I beg to move that clause 34 be amended by the deletion of the words "shall be" where they appear in the fourth line of the clause, and the substitution therefor of the words "shall have been".

Again, this is a matter of chronological sense.

The question was put and carried.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg further to move that the same clause be amended by the deletion of the words "he was" where they appear in line 1 of the clause, and the substitution thereof of the words "he has been."

The question was put and carried.

Clause 66—Power of Supreme Court.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg to move that clause 66 be amended by the deletion of the word "of," where it appears in the first line of the clause, and by the substitution thereof of the word "into."

The question was put and carried.

Clause 75—Transfer of case where offence committed outside jurisdiction.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg to move that clause 75 (1) be amended by the deletion of the words "out of" where they appear in the second line of the clause, and the substitution thereof of the word "outside."

This is to make it clearer.

The question was put and carried.

Clause 78—Power of Supreme Court to change venue.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg to move that clause 78 (2) be amended by the deletion of the word "either" because it does not mean anything.

The question was put and carried.

Clause 101—Inquiry by court as to sanity of accused.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg to move that clause 101 (1) be amended by the insertion after the word "Governor" of the words "or satisfied by medical certificate."

I do not feel, Sir, that it is a fair responsibility to be thrust upon the Governor of this country unsupported by such medical certificate which is required to support expert opinion.

The question was put and carried.

Clause 107—Mode of delivering judgment.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg to move that clause 107 (1) be amended by the deletion of the words "brought up" and the substitution thereof of the words "brought before the Court."

This is better sense.

The question was put and carried.

Clause 140—Power of Chief Justice.

CAPT. THE HON. E. M. V. KENNELLY: Your Excellency, I beg to move that clause 140 be amended by the deletion of the word "Governor" and the substitution thereof of the words "Governor or Council."

This accords with the ordinary procedure in having this submitted to the Council, or persons other than the Governor, that Government of the Republic being the Government in Council.

His Majesty, I do not care that suggestion, it is not the sense.

CAPT. THE HON. E. M. V. KENNELLY: The Government of the country.

HIS EXCELLENCY: It is not true that the Government of the country is the Government in Council.

CAPT. THE HON. E. M. V. KENNELLY: It is a fact, it is a fact.

HIS EXCELLENCY: It is a fact, it is a fact.

C.O.

16042/1930 Kenya.

7

Mr. Allen 78

Mr. [unclear] 41 [unclear] 39

Mr. [unclear] 9.9.30

Sir G. Balfour 139

Sir J. Shackleton

Sir J. [unclear]

Perms. U.S. of S.

Party U.S. of S.

Secretary of State

*[Handwritten signature]*

Downing Street,

August, 1930.

23 Sept.



Sir,

DRAFT.

KENYA

No. 734

Gov.

*Revised in view of  
the receipt of the  
all findings in  
the [unclear]  
[unclear]*

*6/9/30*

I have, etc., to ask, the receipt of your despatch No. 367 of the 31st of May, regarding the petitions from: (1) Mr. H.A. Johnson; (2) Mr. A.A. Ryde on behalf of Messrs Davidson and Ryde.

2. In his petition Mr. Johnson asks "Not only that the necessary directions may be given to rectify the injustice which has been done to me personally, but that His Majesty's Government should seriously consider the taking away from the Local Government of this Colony powers, which the facts of the present case would appear to prove, cannot safely be left in its hands."

3. On the former point, I note that

Mr.

Mr. Johnson has not seen fit to  
~~exercise the right of a lease conferred~~  
~~by Section 54 of the Indian Land~~  
~~Acquisition Act of 1904, and as regards~~

[The is a letter  
please as well  
for lease has  
not seem to cover  
r. of. Section 18  
and]

the latter point, I see no reason to  
dissent from your view that the  
exercise by the Government of its  
compulsory powers of acquisition ~~is~~  
necessary, and in order, and I request  
that Mr. Johnson be so informed in  
reply to his request, and also that in  
the circumstances I see no justification  
for intervention in the matter.

As regards the petition of Messrs  
Davidson and Ayle, ~~there~~ some difficulty  
in appreciating the position <sup>has</sup> ~~in terms~~  
~~of your report it is stated that it will~~  
~~be observed that the Collector's award~~  
~~is in fact not only the value of~~  
~~the land occupied by Messrs Davidson and~~  
~~Ayle at a high rate, but the value of the~~  
~~buildings which had been erected in contravention~~

~~of the uses conditions of the title,  
making a valuation in all, including  
the 1% prescribed by the Indian Land  
Acquisition Act, of 22,875.~~

~~cannot, however, find any reference to~~  
*absence of the full*  
~~in the finding of the Magistrate of  
the 6th December, 1929; the copy~~

~~which was enclosed in your despatch  
appears to be incomplete since it  
only refers to the first of the items  
with which it purports to deal  
seriatim; and the account of the  
award of this case is not mentioned  
at the end of the finding.~~

The full finding has  
been read with the note  
of the 8 August (S/ F/  
Lad. 464 (1/29))

The petition, while <sup>States</sup> stating that no  
~~payment on account of the award had  
been made, does not ask for a revision  
of the award; but in any case this  
question appears to be academic in  
view of the fact reported in para. 2  
of your despatch, that the Government  
is exercising, in regard to the <sup>land</sup> ~~the~~~~

in



in question, the right of withdrawal  
~~prescribed~~ <sup>48</sup> / by Section of the Act.  
~~described~~ /  
~~not~~  
and enquiry is being made into the  
question of what, if any, compensation  
should be paid on account of losses  
alleged to be incurred as a result of  
the initial proceedings.

The actual prayer of the  
petitioners is that "at least something  
be done to reimburse us for the  
expenses which we have been forced to  
meet." In paragraph of your despatch  
it is suggested that Messrs. Davidson and  
Sons' difficulties are of their own  
making, and have been due to their precipitate  
action in erecting buildings on land leased  
for agricultural purposes before securing

Government's approval to <sup>a</sup> change of use.  
~~and as at present advised I do not see~~  
~~any reason to intervene in the matter.~~  
~~There is no justification for any intervention~~  
~~but I should be glad if you will~~  
~~report the result of the consideration of~~  
~~the petition. I shall therefore~~  
~~be glad if you will report the result of the~~  
~~consideration of the petition.~~  
Acquisition of ~~the~~ Indian land  
consideration of the petition.

1601/30-34

6



THE SECRETARIAT,  
NAIROBI,  
KENYA.

WHEN REPLYING  
PLEASE QUOTE  
No. S. P. LND.  
AND DATE

46/18/1/59.

RECEIVED  
21 SEP 1959  
COL. OFFICE

3 August, 1959.

105

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies, and with reference to despatch No. 357 of the 21st August, 1959, has the honour to transmit the copy of the report of the Resident Magistrate, Eldoret, in connection with the land acquisitions proceedings, No. 79, Turbo, which appears to have been omitted from the despatch under reference.

in question, the right of withdrawal  
~~prescribed~~ <sup>48</sup> by Section 4 of the Act,  
~~that~~ and enquiry is being made into the

question of what, if any, compensation  
should be paid on account of losses  
alleged to be incurred as a result of  
the initial proceedings.

5. The actual prayer of the  
petitioners is that "at least something  
may be done to reimburse us for the  
expenses which we have been forced to  
meet." In paragraph 8 of your despatch  
it is suggested that Messrs. Davidson and  
Ryne's difficulties are of their own  
making, and have been due to their precipitate  
action in erecting buildings on land leased  
for agricultural purposes before securing

Government's approval to change of user;

*as at present advised I do not see  
~~any reason to intervene in the matter &~~  
~~there is no justification for any intervention~~  
~~but I should be glad if you will~~*

*on my part, I should wish to be further  
informed as to the result of the Commission of  
the Justice & the Board of Compensation  
be clear if you will report the result of the  
order section 48 & the ~~provisional~~ <sup>land</sup> acquisition <sup>1867</sup> ~~act~~ <sup>consideration</sup>*

*I have &c*



1602/30 34  
6  
THE SECRETARIAT.  
NAIROBI.  
KENYA.

WHEN REPLYING  
PLEASE QUOTE  
No. S/P.L.N.D.  
AND DATE

16/18/1/59

RECEIVED  
21 SEP 1950  
COL. OFFICE

A  
8 August, 1950

1605

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies, and with reference to despatch No. 507 of the 31st May, 1950, has the honour to transmit the copy of the award of the Resident Magistrate, Aldoret, in connection with the Land Acquisitions Proceedings, Para 799 Turbo, which appears to have been omitted from the despatch under reference.

*[Signature]*

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IN THE RESIDENT MAGISTRATE'S COURT  
AT ELDORET.

LAND ACQUISITIONS PROCEEDINGS.  
FARM 799 - TURBO.

FINDING.

The Government decided to acquire compulsorily a piece of land of approx. 50 acres near Turbo Station forming part of Farm No. 799 the lessee of which is Mr. L.A. Johnson .

A notice under section 6 of the Land Acquisition Act 1894 was duly published on 17th June, 1929, in the Official Gazette and I was appointed to act as Collector under the Act by a notice of the same date. The proceedings were first fixed for 7th October at Turbo but by Mr. Johnson's request were adjourned till 14th October. Since then there have been other adjournments to suit persons interested. Mr. Johnson had filed a statement under section 10 (1) of the Act giving particulars of those persons having interests in the land as mortgagees and tenants. There were two mortgagees and several tenants.

It had been shown that the area in question comprises 50 acres, one plot of 4 acres having been disposed of by Mr. Johnson to Messrs. Davidson and Ryde, although he has not been able to give title to the latter; Mr. Johnson does not however claim any compensation in regard to this plot and it has to be considered apart

from the remainder of the land in question.

There are then (1) a portion of 36 acres in which Mr. Johnson alone (apart from the mortgagees) is interested.

(2) Messrs. Davidson and Ryde's plot with buildings and improvements.

(3) A building upon Mr. Johnson's land belonging to Mr. J.W. Newton, as to which compensation has to be assessed separately.

To take these items serially:-

(1) Mr. Johnson's piece of land is to be acquired for a township. I have had the opportunity of reading the correspondence on this subject in the past and have also heard evidence. From these sources I gather that an unofficial township having sprung up at Turbo with the building of the Railway and the development of the district, it was considered desirable to convert it into an official township, so that there might be a means of controlling the population from the point of view of law and order and also of health.

The land is held on an agricultural lease and Mr. Johnson is not legally justified in using the land for any other purpose. Nevertheless he has for some years been letting off plots on a temporary form of tenure to tenants who have used the plots chiefly for commercial purposes.

- 3 -

There are 8 Indian shops used for native trade, 2 houses occupied by Indians, one native butcher's shop, 10 native houses whose owners engage in trade of some kind and a bungalow rented to tenants; also a plot leased to Mr. Newton.

All the plots leased to Indians and natives are on a monthly tenancy on the understanding that the tenants are liable to notice at any time which would entail their removing the buildings put up.

The bungalow is Mr. Johnson's property and the building on the plot leased to Mr. Newton, Mr. Newton's property.

Mr. Johnson claimed compensation at £108 per acre; his arguments were as follows:-

The rents which he is receiving amount to £218/10 per annum including Mr. Newton's rent; he says that he has been charging only  $\frac{1}{2}$  of the rents which he could have done as he wished to encourage trade and to foster the growth of Turbo township; on that basis his receipts should be £432 per annum. Capitalized at 8% this equals £5,400, which equals £108 per acre. He argues that the land has a special value for township and commercial purposes which has been gradually increasing of recent years. In giving evidence a second time, he said that he had been offered £150 per acre for that plot adjoining Messrs. Davidson and Ryde, nearest to the Station, and for another plot also. He states that he did not sell at this figure as he did not

want to complicate the position as to the laying out of the township in the future. He thought that within the next five years he would be able to sell all this land at £150 per acre. In other words he had great confidence in the development of Turbo as a business centre. The highest figure at which adjoining land had changed hands was £25 per acre for 4 acres (Davidson and Ryde's plot) which is opposite the station i.e. the best position commercially. Next in order of value was the purchase by Mr. Spenser of a site for a flour mill at the westerly end of this piece of land at £15 per acre.

In the past the Government apparently desired to meet Mr. Johnson and offered to purchase first 750 and later only 50 acres at £5 per acre, which he refused; in his evidence he characterized this as a ridiculous offer. He considered that negotiations should have continued and that to resort to compulsory acquisition was an unnecessary and objectionable course.

Nevertheless it would appear that there was little chance of an agreement being reached as Mr. Johnson's idea of the value of the land differed materially from that considered by the Government and others to be fair. The evidence of Mr. Woods and Mr. Mc. Nab Mundell, who are both well-acquainted with land values and local conditions and are experts in valuation shows that this piece of land is practically valueless for



agricultural purposes but that it has some value for speculative and commercial purposes. They agreed in thinking that as a commercial centre there was little chance of Turbe developing to any extent. They quoted sales of land in the immediate vicinity i.e. near the station and the river, varying from £3 per acre to £ 4/10. They both considered £5 an acre for this land quite a fair price and £7.10.0 the maximum that should be paid. Mr. Mundell considered that this should include the percentage of 15% which has to be added in these cases, and to be taken as a figure to cover the whole area, some of which would be worthless on account of the lie of the land.

These witnesses showed that there is a slump at the present moment. Trade at Turbe is not brisk and there is no great demand for plots. There would not be a demand for more than twenty shop-plots for native trade. The trade would be practically entirely local native trade i.e. to provide for the wants of natives working on farms in the vicinity. Mr. Johnson himself admitted this and agreed that the only requirements which could be foreseen at the moment were for native trade possibly one shop to supply European needs and in the future possibly a coffee factory. But at the moment the only demand is for plots for approximately ten Indian dukas (for native trade).

I personally am of opinion that Turbo will not become an important centre; it is but 20 miles from Eldoret on a good road and with a Railway connection; experience shows that with these conditions and with modern transport, Eldoret will be the centre and Turbo merely a small hamlet with a few shops for native trade. Native trade itself is not likely to assume any important dimensions as there is no local native produce and the native population non-permanent except for Kandi squatters who deal very little with shops. The non-native population goes and will go to Eldoret for its purchases. The Railway itself is not likely to bring trade to Turbo but rather to assist in distributing it to other centres.

It would appear to me <sup>that</sup> when Turbo was a centre for Railway construction with a comparatively large temporary population, business naturally sprang up, but that it has subsequently gradually declined. One may say there was a boom in Turbo for a time which was merely temporary and gave rise to somewhat mistaken ideas as to values.

Mr. Johnson has quoted figures of £150 and £108 per acre but his actual capitalized income from the land works out at a great deal less.

There is also to be taken into consideration that before he could subdivide and sell for commercial purposes he would be obliged to spend a great deal of money on survey fees, stamp duty, making roads and drains and other incidentals so that even if he did receive a fairly high figure from the land his net receipts would not be nearly so great. He himself has admitted that he did not wish to go in for a private township. All this reflects upon the market price of the land at the present moment. Bearing in mind that Turbo near the station is definitely unhealthy and the land has no river frontage from the evidence at my command I find that the fairest way will be to value the land as follows:-

Mr. Johnson's area of 46 acres, taking the plots near the station as the most valuable, and falling in value in proportion to the distance therefrom:-

8 acres at £20 per acre	= £ 160
8 acres at £15 per acre	= £ 120
8 acres at £10 per acre	= £ 80
8 acres at £7.10 per acre	= £ 60
14 acres at £5 per acre	= £ 70
<u>46</u>	<u>£ 490 say</u>
	£500

which works out at rather more than £10 per acre. I therefore assess the value of the 46 acres at £500.

Mr. Johnson has claimed £50 for a bungalow upon the land. Although Mr.

Wilkinson of the P.W.D. valued it at £150  
I am not able to award Mr. Johnson more than  
he claimed in view of section 25 (1) of the  
Act.

I assess the compensation to Mr. Johnson  
as follows:-

46 acres	£500
Bungalow	<u>50</u>
	£550
Plus 15%	<u>82- 10- 00</u>
	<u>£632- 10- 00</u>

2. The compensation payable to Messrs.  
Davidson and Ryde's bankrupt estate, of which  
the Receiver is Mr. Forbes-Mangan, has now to  
be considered in respect of the plot and  
buildings opposite the station.

The plot is 4 acres; the value may  
be taken as £25 per acre, this being the purchase  
price; I do not think it has improved in value  
since it was bought; bearing in mind conditions  
generally in this area £25 is a generous  
estimate.

Assessment.

(a) £190

The land then is worth £100.

Mr. Forbes Mangan's other claims  
are as follows:-

(b) £60

Rent for bar premises since July  
at £12. 10 per month lost on  
account of the proposed acquisition  
July-December - 6 months @ £12/10  
afterwards reduced £10 - £60.

This appears reasonable and allowable under section 23 (1) (6) of the Act.

(c) £15. Rent for Dance Hall £2 per month.

This figure appears somewhat excessive in view of the conditions at Turbo; there is nothing to prove it correct. I find it at £2/10/0 per month 6 months -- £15.

(d) Buildings (1) Hotel claimed at £2,600 with land with outbuildings.  
 And Land £2,600 (11) Dance Hall.  
 (111) Garage.  
 (IV) Bungalow.

Mr. Wilkinson of the P.W.D. was good enough to value them and his valuation was :-

(i) Hotel with bungalow and out-buildings.	£ 1,400
(iv)	
(ii) Dance Hall	450
(111) Garage	440
(v) Roads	6
	2,296

say £2,300.

Mr. Forbes Mangan produced the sworn statement of affairs made by Messrs. Davidson and Ryde showing cost price of land and buildings at £2,600; they paid £100 for the land and £19 extra to Mr. Johnson; the buildings therefore cost them £2485 according to their own reckoning.

Since then the buildings have naturally deteriorated especially as none of them are of very solid construction. I propose therefore to follow Mr. Wilkinson's figure and allow £2,300 for the buildings.

My assessment of compensation for Davidson and Ryde's plot is that :-

(a) Land	£100	
(b) Loss of rent of bar	60	
(c) Loss of rent of hall.	15	
(d) Buildings	<u>2300</u>	
Total	£ 2475.	
say	£ 2500	to which
must be added 15%		
for compulsory acquisition	<u>375</u>	
Grand Total	£ 2875.	

(3) We now come to the claims for compensation put forward by Mr. Newton in respect of his building which is situated upon Mr. Johnson's land.

(i) He has claimed compensation for loss of rent for one year at £7. 10. 0.	=	£90 - 00
(ii) Cost of removing building	=	£50
(iii) Damage on removal	=	£20
		<u>£160.</u>

Er in case the Government wish to purchase the building as it stands its value which he says is £400. 9. 6.

I do not think that the latter contingency need be considered as Mr. Newton is perfectly willing to remove the building and only requires to be compensated for doing so.

(1) The first part of Mr. Newton's claim could not I think be allowed in its entirety. By sec. 25 (1) (6) of the Act there would be a claim to compensation for the damage bona fide resulting from diminution of the profits of the land between the time of publication of the declaration under sec. 6 of the Act (i.e. the notice in the Gazette) and the collector's taking possession of the land.

Mr. Newton says that on account of rumours which started at least a year ago that Government was about to acquire the land one or some of his tenants moved away from his premises and went to others which they considered would be better situated in case this area did become a township and that he lost £7. 10. 0 per month in consequence.

The notice of the acquisition under section 6 was published on 17th June, 1929, in the Official Gazette.

The move on the part of the tenants took place before this by months on Mr. Newton's own showing. I think this section should be strictly interpreted. If there had been a genuine demand for these premises I do not think the tenants would have moved. They simply went to other premises to suit themselves. On a strict interpretation I do not think Mr. Newton is entitled to any compensation for loss of rents. He has been drawing rents for a part of his premises and the remainder is empty and was empty before 17/6/29.



The valuation of the whole premises given by Mr. Wilkinson is £120: even allowing for the fact that he did not go inside as the place was locked and possibly overlooked a few items such as cedar boarding. I do not think it with its outbuildings could be worth more than £180 to £200 at a maximum.

It appears to me that to allow £50 for cost of removing and re-erecting the building and £20 from damage to the material, total £70 is a very fair estimate of the compensation to be awarded and this is what I allow Mr. Newton plus 15% = £10/10/0 - £80/10/20. Under section 23 (1) (4) of the Act Mr. Newton would be entitled to loss of rents i.e. his earnings from the plot for the period from the time of the collector's taking possession until the end of his lease which is a yearly one and appears to be up on 31/12/29. It is not clear that he will have suffered any loss in this respect and on the evidence I cannot find that he is entitled to any compensation.

Although section 23(2) speaks of 15% to be added to compensation for acquisition of land I take it that compensation for buildings should be included in this category.

Mr. Johnson has agreed that the compensation for Davidson and Ryde's plot and buildings be paid direct to their bankrupt estate i.e. to the Receiver Mr. Forbes-Mangan, and I consider this should be done.



And similarly that compensation found due to Mr. Newton be paid direct to Mr. Newton.

Mr. Shaw for the mortgagee has asked that what is due to Mr. Johnson be paid to the mortgagee for whom he acts. But I do not think that this is so and the proper course is to pay Mr. Johnson himself.

The awards then are:-

- (1) Mr. Johnson £632. 10.0.
- (2) Messrs. Davidson and Rydals Estate in Bankruptcy 22,875.
- (3) Mr. Newton 80.10

SD. C.A.G LANE.

6/12/29.

KENYA

No. 367



GOVERNMENT HOUSE  
NAIROBI  
KENYA

RECEIVED  
23 JUN 1930  
COL. OFFICE

3/8 May, 1930.

My Lord,

I have the honour to refer to Your Lordship's despatch No. 194 of the 5th March, transmitting a copy of a petition from Mr. A.A. Ryde on behalf of Messrs. Davidson and Ryde.

2. The petition refers to compulsory acquisition-proceedings instituted by this Government in respect of a four acre plot (part of L.R. No. 799, Turbo) on which Messrs. Davidson and Ryde had erected a trading store. This four acre plot was part only of fifty acres in respect of which proceedings under the Indian Land Acquisition Act were taken, and in view of the fact that Mr. L.A. Johnson, who is the lessee of the land in question, has submitted a petition to Your Lordship which is enclosed with this despatch, it will be convenient in the first instance to deal with the larger issue.

3. Mr. Johnson, who is an American subject, is the lessee of L.R. No. 799, an area of 3267 acres, which he holds on the usual agricultural lease for 999 years. Shortly after the Railway reached Turbo, Mr.

Johnson,

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

2607 787 20630

Johnson applied for permission to sub-divide a portion of his land for township purposes and, while negotiations in this matter were going on, various trading stores were erected on the land, chiefly by Indians, and rent was collected by Mr. Johnson on account of this occupation.

4. The proposal made by Mr. Johnson was that Government should acquire 750 acres at £5 an acre for the purpose of forming a township. This proposal was considered, but Government took the view that 750 acres was not required and ultimately decided, after taking the advice of the Local District Committee, that fifty acres would suffice. Mr. Johnson was asked if he would be willing to sell fifty acres, but this he definitely refused to do in the following terms:-

"The minimum area of land I am prepared to sell is 750 acres. The price is £5. per acre. I do not contemplate starting a private township".

In order to regularise the position and make proper sanitary and other provisions for the establishment of the small township required at Turbo, it was necessary, in view of Mr. Johnson's attitude, to acquire this land by compulsory methods. Proceedings were therefore commenced under the Indian Land Acquisition Act for the acquisition of fifty acres of the land in question, and the Resident Magistrate, Eldoret was appointed Collector under the Act. His award was issued on the 6th December, 1929, and a copy of this is enclosed. No protest was raised/

Johnson applied for permission to sub-divide a portion of his land for township purposes and, while negotiations in this matter were going on, various trading stores were erected on the land, chiefly by Indians, and rent was collected by Mr. Johnson on account of this occupation.

4. The proposal made by Mr. Johnson was that Government should acquire 750 acres at 25 an acre for the purpose of forming a township. This proposal was considered, but Government took the view that 750 acres was not required and ultimately decided, after taking the advice of the Local District Committee, that fifty acres would suffice. Mr. Johnson was asked if he would be willing to sell fifty acres, but this he definitely refused to do in the following terms:-

"The minimum area of land I am prepared to sell is 750 acres. The price is 25. per acre. I do not contemplate starting a private township".

In order to regularise the position and make proper sanitary and other provisions for the establishment of the small township required at Turbo, it was necessary, in view of Mr. Johnson's attitude, to acquire this land by compulsory methods. Proceedings were therefore commenced under the Indian Land Acquisition Act for the acquisition of fifty acres of the land in question, and the Resident Magistrate, Ellore was appointed Collector under the Act. His award was issued on the 6th December, 1929, and a copy of this is enclosed. No protest was

raised/

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raised at the time by Mr. Johnson, nor indeed until the 13th December last, one week after the award had been given. Under section 54 of the Act, Mr. Johnson had the right to appeal, but this right he did not see fit to exercise. I trust you will agree that, in view of the impossibility of reaching an agreement with Mr. Johnson by negotiation, the exercise by Government of its compulsory powers of acquisition was necessary and in order.

5. Mr. Johnson further complains that his land was valued by the Collector at too low a rate, the agricultural value of the land only having been considered. It will be observed from the Collector's award that this is not the case. Although the Collector had before him valuations by Mr. McNab Mundell, a professional valuer, and the District Surveyor, Eldoret, which valuations were based on the agricultural title to the land, these were not taken in his finding as the basis of the award, but rather the revenue derived by Mr. Johnson from the sub-letting of plots on the estate. This is, of course, a point on which Mr. Johnson could have appealed had he so wished, but as I have already stated, he has not adopted that course.

6. In regard to the statements made by Mr. Johnson, in the second and third paragraphs of his petition, I am advised that there is no legal substance for his contention. The Indian Land Acquisition Act, 1894 was applied to the East African Protectorate, as it then was, by

- 4 -

Article 11 of the East African Order in Council, 1897 which was replaced by the East African Order in Council, 1902. A few months ago it was discovered that the reference to the Indian Land Acquisition Act, 1894, in the Schedule of Indian applied Acts published in the Revised Edition of the Laws, was incorrect, and a notice correcting this reference was published in the Official Gazette. I am advised that the Schedule of applied Acts in itself forms no part of the statute law of the Colony, and that Mr. Johnson's statement therefore that the proceedings were ultra vires is not legally correct.

7. As regards Messrs. Davidson and Ryde, these gentlemen purchased from Mr. Johnson in 1927 a four acre plot near the railway station and within the area which it appeared would probably be adopted as a township. Without securing Government's approval either of the subdivision or of the change of user, they created business premises and commenced trading on the plot. On the 5th October, 1927, after the buildings had been erected, they applied for permission for this plot to be excised from the farm but, inasmuch as negotiations were already in progress with Mr. Johnson, consideration of this application was deferred. When the decision to acquire fifty acres of Mr. Johnson's farm was made by Government, it was further decided that the boundaries should be adjusted in such a way as to include the four acre plot occupied by Messrs. Davidson and Ryde, it being intended that, when the acquisition proceedings were

completed, a grant of the plot would be made direct to this partnership on reasonable terms. It will be observed that the Collector's award took into account not only the value of the land occupied by Messrs. Davidson and Ryde at a high rate, but the value of the buildings which had been erected in contravention of the user conditions of the title, making a valuation in all, including the 15% prescribed by the Indian Land Acquisition Act, of £2,875. As, since the institution of proceedings under the Act, Messrs. Davidson and Ryde had gone into liquidation and there was therefore no probability that this amount could be recovered from either the trustee of Messrs. Davidson and Ryde's estate or any other prospective purchaser, I decided, with the advice of Executive Council, that Government should exercise the right of withdrawal prescribed by section 48 of the Act in regard to the acquisition of this portion of the property. Steps are being taken towards this end, and the Collector has been instructed to enquire into the question of what, if any, compensation should be paid on account of losses alleged to be incurred as a result of the initial proceedings.

8. I think Your Lordship will agree that Messrs. Davidson and Ryde's difficulties are of their own making and have been due to their precipitate action in erecting buildings on land leased for agricultural purposes before securing Government's approval to a change of user. Pending Your Lordship's answer to the two petitions no payments are being made to any of

- 6 -  
the parties involved and I shall be grateful  
if an early reply may be sent to me as, besides  
the award to Mr. Johnson, there is a sum due  
to a Mr. Newton, who states that he is per-  
fectly willing to abide by the award.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

Edward G. G. G.

G O V E R N O R .



54

To the Rt. Hon. His Majesty's Secretary of State  
for the Colonies,  
10, Downing Street,  
LONDON, S. W. 1.

Through

His Excellency The Governor of the Colony of Kenya,  
NAIROBI.

Sir,

I regret to have to place before you certain facts in connection with the action of the Government of the Colony of Kenya in attempting to compulsorily acquire a portion of my land under the cloak of The Land Acquisition Act (India) and thereby to obtain profits which might otherwise have come to me without adequately compensating me for my loss.

The Land Acquisition Act (India) was applied to the Coast area of the then East Africa Protectorate in the year 1894 and was, I believe, applied to the Highlands of the Protectorate in 1927.

In the Revised Laws of Kenya which were issued a few years ago, the application of the above Act to the Colony of Kenya was omitted, either advisedly or through inadvertance and as Section VII (2) of the Revised Edition of the Laws Ordinance provides that the Law as laid down in that Ordinance must be taken as the sole authentic edition of the Statute

... of the Colony it would appear that, the proceedings under which Government purported to acquire my land were "ultra vires" and consequently they should be set aside.

The above objection is, however, a technical objection and I quite appreciate that by rectification of the Laws, Government can again apply the Act above referred to, to the Colony of Kenya.

The main objections which I desire to lay before you for your consideration are:- (1) the misuse of the Act in question by applying it to purposes for which it was never intended, and (2) the totally inadequate provision for estimation of compensation on an equitable basis.

The facts with regard to my particular case are as follows:- I am a Farmer residing in the Turbo Valley

district, and possess a certain amount of land which is eminently suitable for business and residential purposes. Said land being the only available land near Turbo Railway Station suitable for a Township.

I have contemplated the development of this property for building purposes for some time, and even went so far as to suggest the idea of a private township some years ago but, for various reasons, it was not convenient for me to elaborate the building scheme at the time.

A. It is undoubtedly a fact that my title was issued to me in the form of an agricultural lease but it has been the

practices of Government to sanction the use of portions of land held under such leases for other purposes for which the land is proved to be particularly suitable and I know of no case in which there has been any suggestion that a holder should be debarred from making profit out of his land which were not contemplated when his lease was granted to him though I admit that where there has been a variation of the terms of the lease there may be a variation as to the amount of rent to be paid to Government.

With regard to the particular farm in question I may say that, notwithstanding the fact that my lease is an agricultural one, I have erected a number of business premises and there has not been the slightest difficulty in obtaining the sanction necessary to enable me to do so.

Subsequently the Government of the Colony approached me as to the starting of a public township on my land, and I offered to deal with the Government on the basis of purchase and sale at a reasonable price, and suggested that if the price could not be mutually agreed upon, it could be fixed by arbitration.

After certain negotiations Government refused to agree to any purchase and sale on the basis suggested by me, and eventually gave me notice in the year 1929 to the effect that it intended to acquire a portion of my land by virtue of the provisions of the Land Acquisition Act. As a result, I was

directed to appear before the Resident Magistrate for the purpose of assessment of valuation. Government had authorized Mr. Russell to make a valuation without any direction as to the basis upon which such valuation should be assessed, and he accordingly made a valuation without any enquiries from me, on the basis of the agricultural value of the land.

This gentleman has since informed the Magistrate who adjudicated that, had he been fully alive to the circumstances of the case, his valuation would have been very materially different. My contentions seem to have been entirely disregarded by the Resident Magistrate, and I submit that the routine occupation of a Resident Magistrate renders him a remarkably unsuitable person to deal with valuations of this kind. There is of course the right of appeal on valuation

only, but the powers of the Court of Appeal are limited, and its decision could not affect what I contend to be a gross mis-use of the Act in question.

B. I would further point out that if the opinion of the Magistrate that a township is not urgently required be sound - then there is all the less reason for the injustice done to me as there could be no "legitimate public purpose" as the acquisition would be merely for sale by private treaty to individuals

directed to appear before the Resident Magistrate for the purpose of assessment of valuation. Government had authorized Mr. Mendell to make a valuation without any direction as to the basis upon which such valuation should be assessed, and he accordingly made a valuation without any enquiries from me, on the basis of the agricultural value of the land. This gentleman has since informed the Magistrate who adjudicated that, had he been fully alive to the circumstances of the case, his valuation would have been very materially different. My contentions seem to have been entirely

disregarded by the Resident Magistrate, and I submit that the routine occupation of a Resident Magistrate renders him a remarkably unsuitable person to deal with valuations of this kind.

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B. I would further point out that if the opinion of the Magistrate that a township is not urgently required be sound - then there is all the less reason for the injustice done to me as there could be no "legitimate public purpose" as the acquisition would be merely for sale by private treaty to individuals

For the purpose of acquiring profits which should have gone to me.

The total amount of compensation assessed as payable to me by the Resident Magistrate was £632-10-0 whereas I have an independent valuation of a Col. Stitt who is a well-known settler in the district, at the figure of £9,000.

Apart from the above valuation, I may add that I have had a definite offer of £200 per acre for portion of the land in question. The material difference between the valuation of Mr. Mundell and that of Col. Stitt is that the former was assessed on an agricultural basis, and the latter on the basis of the value of the land for building purposes, and my contention shortly is that, Government is not entitled to acquire land which is suitable for building purposes on an agricultural valuation, and thus deprive the owner of the profits which would be derived by him, and put those profits into the Treasury. Surely such procedure should not be described as acquiring land for "public purposes", but rather as misappropriation of the property of private individuals.

With regard to the equity of my case, I would draw your attention to the dissimilarity in procedure in

dealing with the acquisition of my land and that followed in the acquisition of certain land at Mbaraki, Mombasa, from Major Grogan some years ago. In the case of the purchase of the land from Major Grogan there was no invocation of the use of the Land Acquisition Act, although the land in question was acquired for Government Wharfrage purposes, which would seem to be "public purposes" and a price amounting, I understand, to over a quarter of a million pounds was paid for that land to Major Grogan.

It is difficult to understand why I should not be given the same consideration as Major Grogan.

I am also informed that in December last an attempt was made to acquire certain lands at Nairobi, then in the form of swamp used for the purposes of growing vegetables, owned by Major Grogan. The procedure in this case was instituted under the provisions of the Land Acquisition Act, but upon its being discovered that Major Grogan was putting forward a similar contention to mine i.e. that although his land was not at the time built upon the valuation must be on the basis of value as a building area, the valuation hearing was adjourned, and has not since been brought before the Court.

I submit that there has been an attempt at a gross misuse of the Act above referred to, and that the provisions

of the Act if allowed to remain as a weapon in the hands of the Government of this Colony are a danger to the public whether it be through inexperience or inability to appreciate the principles of equity, or with a full knowledge of the absence of equity and an utter disregard for equitable principles, the fact remains that the action of the Government in regard to my property has been most inequitable, and would tend to result in very heavy losses on my part, and I respectfully ask, not only that the necessary directions may be given to rectify the injustice which has been done to me personally, but that His Majesty's Government should seriously consider the taking away from the Local Government of this Colony powers, which the facts of the present case would appear to prove, cannot safely be left in its hands.

I have the honour to be, Sir,

Your obedient servants,

Tom A. Johnson



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N O T I C E.

RANM NO. 799 TURBO, HAIN GISHI DISTRICT.

In accordance with the terms of Section 9 of the Land Acquisition Act 1924 it is hereby notified that the Government of the Colony of Kenya intends to take possession of a portion of RANM No. 799 Turbo in the District of Hain Gishu, of the area of approximately 50 acres for the purpose of establishing a township.

1. A plan showing the situation of the land required as aforesaid may be inspected at the Office of the Resident Commissioner Eldoret.

2. Claims to compensation for all interests in the said land may be made to me.

3. All persons interested in the said land are hereby required to appear before me, either in person or by agent, at the Turbo Police Station at 10-30 a.m. on the 7th day of October 1929, there to state their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements already made of the land.

(signed) Col. Lane.

RESIDENT MAGISTRATE  
Eldoret.

Collector appointed under the above  
act.

12th September, 1929.

RESIDENT MAGISTRATE'S COURT, ELDORET.

The Resident Magistrate,  
KIDDEBT.

Sir,

TURBO TOWNSHIP.

VALUATION.

8 Indian dukas, at 30/-	per month	Sh.	2880	pr. yr.
1 Somali butcher .. 35/-	.. ..		420.	
2 Indian houses .. 10/-	.. ..		280.	
10. Native houses .. 50-	.. ..		600.	
1. Bungalow ..	.. ..		180.	
			<hr/>	
			4320.	

The above income is derived from approximately half rates. The present rate has purposely been put very low so as to gradually build up a justification for a Township. The present income should really be Sh. 8640/- per annum.

This amount capitalized at 8% makes the present value of Turbo Township Shs. 108000/- not including Ryde and Davidsons plot of four acres.

FIRST MORTGAGE.

A first mortgage of £10000. plus £1600. interest, is held by Percy Smuts of Cape Town.

SECOND MORTGAGE.

A second mortgage for £5000. is held by the Standard Bank of South Africa.

Yours sincerely,

(sgd) Louis A. Johnson.

25th November, 1936.

The Resident Magistrate,  
Kidoret.

Sir,

I beg to submit a further statement bearing upon the value of the fifty acres which is proposed to be taken over by Government at Turbo Station.

In 1925 I gave Mrs. McCallum an option to purchase two acres at £ 50 per acre (agreement attached hereto). Subsequently we found out that Government could not give transfer upon any portion less than four acres. I then offered two additional acres without charge, so as to allow transfer.

Messrs. Ryde & Davidson bought Mrs. McCallum's option and paid me an additional £ 15 to secure my consent.

About two years ago Mr. W.A. Spencer purchased a portion of Mr. Harris's farm upon which to start a posho mill. This land is at least half a mile from Turbo Station. He paid £ 15 per acre.

I have lately been offered £ 150 per acre in four acre blocks, but have refused such offers on account of my unwillingness to complicate the position in regard to the future laying out of a proper Township.

I consider that this land ought to be valued upon its actual face value. If this land is acquired by Government at less than actual face value, I shall be the loser according to the difference in the valuation, and the population of Kenya will gain pro rata. I have spent £ 20,000 pioneering in the Turbo District and therefore cannot see why the population of Kenya should benefit instead of myself.

A few years ago Major Grogan owned a block of land near Kilindini Harbour. He built a wooden pier upon the property to accommodate shipping. About this time Government looked into facilities for loading and unloading ships. Government then entered into negotiations with Major Grogan with the object to purchase the property, culminating in Major Grogan selling to Government for approximately £ 1 million.

Seeing the large sum involved, why was not the Land Acquisition Act made use of, whereas in my case the amount involved is only 1/50 of the amount.

I very strongly protest against the Land Acquisition Act being used in my case as there is no necessity or justification. At no time have I refused to consider a reasonable offer and have suggested arbitration. I have nothing against the Land Acquisition Act as it stands upon the Statute Books, but strongly object to the way it is being made use of.

The Land Acquisition Act was not intended to be used whereby Government could acquire cheap land and sell same at a high profit; but was intended to be used in cases where land was required for public purposes and the owner refused to sell or asked an exorbitant price.

Whoever conceived the idea of using the Land Acquisition Act in this particular case must have an infantile mentality.

As a European I consider the procedure is an injustice to my self respect.

I have the honour to be,  
Sir,  
Your obedient servant.

(sgd) Louis A. Johnson.

In the DISTRICT REGISTRAR'S COURT  
at Eldoret  
LAND ACQUISITION PROCEEDINGS  
FARM X 799 - TURBO

FINDINGS:

The Government decided to acquire compulsorily a piece of land of approx. 50 acres near Turbo Station forming part of Farm No. 799 the lessee of which is Mr. L.A. Johnson.

A notice under section 6 of the Land Acquisition Act 1894 was duly published on 17th June 1929 in the Official Gazette and I was appointed to act as Collector under the Act by a notice of the same date. The proceedings were first fixed for 7th October at Turbo but by Mr. Johnson's request were adjourned till 14th October. Since then there have been other adjournments to suit persons interested. Mr. Johnson had filed a statement under section 10 (1) of the Act giving particulars of those persons having interests in the land as mortgagees and tenants. There were 2 mortgagees and several tenants.

It had been shown that the area in question comprises 50 acres; one plot of 4 acres having been disposed of by Mr. Johnson to Messrs. Davidson and Ryde, although he has not been able to give title to the latter; Mr. Johnson does not however claim any compensation in regard to this plot and it has to be considered apart from the remainder of the land in question.

There are then (1) a portion of 46 acres in which Mr. Johnson alone (apart from the mortgagees) is interested.

(2) Messrs. Davidson and Ryde's plot with buildings and improvements.

(3) A building upon Mr. Johnson's land belonging to Mr. J.W. Newton, as to which compensation has to be assessed separately.

To take these items separately:-

(1) Mr. Johnson's piece of land is to be acquired for a township. I have had the opportunity of reading the correspondence on this subject in the past and have also heard evidence. From

these accounts I gather than an unofficial township having sprung up at Turbo with the building of the Railway and the development of the district, it was considered desirable to convert it into an official township, so that there might be a means of controlling the population from the point of view of law and order and also of health.

The land is held on an agricultural lease and Mr. Johnson is not legally justified in using the land for any other purpose. Nevertheless he has for some years been letting off plots on a temporary form of tenure to tenants who have used the plots chiefly for commercial purposes.

There are 8 Indian shops used for native trade, 2 houses occupied by Indians, one native butcher's shop, 10 native houses whose owners engage in trade of some kind and a bungalow rented to tenants; also a plot leased to Mr. Newton.

All the plots leased to Indians and natives are on a monthly tenancy on the understanding that the tenants are liable to notice at any time which would entail their removing the buildings put up.

The bungalow is Mr. Johnson's property and the building on the plot leased to Mr. Newton, Mr. Newton's property.

Mr. Johnson claimed compensation at £108 per acre; his arguments were as follows:-

The rents which he is receiving amount to £238/10 per annum including Mr. Newton's rent; he says that he has been charging only  $\frac{1}{2}$  of the rents which he could have done as he wished to encourage trade and to foster the growth of Turbo township; on that basis his receipts should be £432 per annum. Capitalized at 8% this equals £5400, which equals £108 per acre.

He argues that the land has a special value for township and commercial purposes which has been gradually increasing of recent years. In giving evidence a second time, he said that he had been offered £150 per acre for that plot adjoining Messrs. Davidson and Ryde, nearest to the Station, and for another plot also. He states that he did not sell at this figure as he did not

want to complicate the position as to the laying out of the township in the future. He thought that within the next five years he would be able to sell all this land at £150 per acre. In other words he had great confidence in the development of Turbo as a business centre. The highest figure at which adjoining land had changed hands was £25 per acre for 4 acres (Davidson and Hyde's plot) which is opposite the station i.e. the best position commercially. Next in order of value was the purchase by Mr. Spencer of a site for a flour mill at the westerly end of this piece of land at £15 per acre.

In the past the Government apparently desired to meet Mr. Johnson and offered to purchase first 750 and later only 50 acres at £5 per acre, which he refused; in his evidence he characterized this as a ridiculous offer. He considered that negotiations should have continued and that to resort to compulsory acquisition was an unnecessary and objectionable course.

Nevertheless it would appear that there was little chance of an agreement being reached as Mr. Johnson's idea of the value of the land differed materially from that considered by the Government and others to be fair. The evidence of Mr. Woods and Mr. McNab Mundell who are both well-acquainted with land values and local conditions and are experts in valuation shows that this piece of land is practically valueless for agricultural purposes but that it has some value for speculative and commercial purposes. They agreed in thinking that as a commercial centre there was little chance of Turbo developing to any extent. They quoted sales of land in the immediate vicinity i.e. near the station and the river, varying from £3 per acre to £4/10. They both considered £5 an acre for this land quite a fair price and £7-10-0 the maximum that should be paid. Mr. Mundell considered that this should include the percentage of 15% which has to be added in these cases and to be taken as a figure to cover the whole area, some of which would be worthless on account of the lie of the land.

These witnesses showed that there is a slump at the present moment. Trade at Turbo is not brisk and there is not great demand for plots. There would not be a demand for more than twenty shop-plots for native trade. The trade would be practically entirely local native trade i.e. to provide for the wants of natives working on farms in the vicinity. Mr. Johnson himself admitted this and agreed that the only requirements which could be foreseen at the moment were for native trade, possibly one shop to supply European needs and in the future possibly a coffee factory. But at the moment the only demand is for plots for approximately ten Indian dukas (for native trade).

I personally am of opinion that Turbo will not become an important centre; it is but 20 miles from Eldoret on a good road and with a Railway connection; experience shows that with these conditions and with modern transport, Eldoret will be the centre and Turbo merely a small hamlet with a few shops for native trade. Native trade itself is not likely to assume any important dimensions as there is no local native produce and the native population non-permanent except for Mandi squatters who deal very little with shops. The non-native population goes and will go to Eldoret for its purchases. The Railway itself is not likely to bring trade to Turbo but rather to assist in distributing it to other centres.

It would appear to me that when Turbo was a centre for Railway construction with a comparatively large temporary population business naturally sprang up, but that it has subsequently gradually declined. One may say there was a boom in Turbo for a time which was merely temporary and gave rise to somewhat mistaken ideas as to values.

Mr. Johnson has quoted figures of £150 and £108 per acre but his actual capitalized income from the land works out at a great deal less.

There is also to be taken into consideration that before he could subdivide and sell for commercial purposes he would be



obliged to spend a great deal of money on survey fees, stamp duty, making roads and drains and other incidentals so that even if he did receive a fairly high figure from the land his net receipts would not be nearly so great. He himself has admitted that he did not wish to go in for a private township. All this reflects upon the market price of the land at the present moment. Bearing in mind that Turbo near the station is definitely unhealthy and the land has no river frontage, from the evidence at my command I find that the fairest way will be to value the land as follows:-

Mr. Johnson's area of 46 acres, taking the plots near the station as the most valuable, and falling in value in proportion to the distance therefrom -

8	acres at £ 20	per acre	=	£ 160.
8	acres at £ 15	per acre	-	£ 120.
8	acres at £ 10	per acre	-	£ 80.
8	acres at £ 7.10	" "	-	£ 60.
14	acres at £ 5.	" "	-	£ 70.
<u>46</u>			-	<u>£ 490. say £500.</u>

which works out at rather more than £10 per acre. I therefore assess the value of the 46 acres at £ 500.

Mr. Johnson has claimed £ 50 for a bungalow upon the land. Although Mr. Wilkinson of the P.W.D. valued it at £ 150 I am not able to award Mr. Johnson more than he claimed in view of section 25 (1) of the Act.

I assess the compensation to Mr. Johnson as follows:-

46 acres	£ 500
<del>46</del> Bungalow	50
	<u>£ 550</u>
Plus	<u>82-10-00</u>
	<u>£ 632-10-00</u>

Mr. Shaw for the mortgagee has asked that what is due to Mr. Johnson be paid to the mortgagee for whom he acts. But I do not think that this is so and that the proper course is to pay Mr. Johnson himself.

The awards then are

- (1) Mr. Johnson £ 632.10.0.

Ed. C. A. G. Lane

6.12.29.

*Cl. Date of order entered*

*632 10 0*

COPY

Resident Magistrate,

Midorot.

Dear Sir,

I am in receipt of your finding re compensation for the 46 acres taken by Govt. near Turbo Station for Township purposes.

I consider the compensation you have allowed is grossly inadequate, and that practically it amounts to confiscation of private property by Govt. for speculative purposes, as Govt. intend to subdivide and resell this property to private interest by public auction.

Again I protest against the Land Acquisition act being in such cases as this. I understand that I am the first person in Kenya against whom this act has been made use of, and I consider the whole proceeding unfair, autocratic and creating a feeling of inferior complex.

For these reasons I intend to carry this case to higher authority.

Sincerely yours,

(sgd) Louis A. Johnson.

TURBO,

KENYA COLONY.

Case

J. McNab Mundell  
Approved Valuer, Real Estate,  
Commission & Insurance Agent,  
Auctioneer.

P.O. Box 56.

Eldoret.  
Kenya Colony.

December 11th, 1928.

The Resident Magistrate, Eldoret.  
Copy to L.A. Johnson Esq., Turbo.

Sir,

Re my valuation of portion of Farm No. 799 Turbo.

Having to-day read your finding with reference to the acquisition by Government of the above land and also Mr. Johnson's letters to you of the 10th October and 26th November I wish to make quite clear my interpretation of the first paragraph of your letter to me of the 16th October last, and which reads as follows:-

"Acquisition of portion of Farm No. 799, Turbo, by Government.  
Lessee Mr. L.A. Johnson.

I shall be glad if you will kindly inspect and report upon the value of the portion of the above farm which Government proposes to acquire."

I inspected and valued this land as a portion of farm 799 and did not take into consideration income derived by the owner from rents nor did I see Mr. Johnson on the matter either before or after my valuation until today.

Had I done so and had Mr. Johnson produced proof that he had a genuine offer of so much per acre for this land the amount of this offer would naturally very materially affect my valuation.

I am, Sir,  
Yours obediently,  
(s.d) J. McNab Mundell.

COPY

KAPIPTOI,  
P.O. TURBO VALLEY.  
KENYA COLONY.

12th December 1929.

---

Dear Johnson,

I have been over the 50 acres you are selling to Government for a township at Turbo, and I think a very fair value is £100 per acre - and have based my valuation on Government getting 300 plots in the 50 acres, and that the up shot price per plot will be a minimum of Shs. 600 per plot -- 29000/- and think that the price per plot is a very low estimate of the price Government will get when selling - and think a very fair and equable valuation is £100 per acre - £5000.

Yours faithfully,

(signed) Alan W. Stitt.

COPY

TURBO.

15. 3. 30.

L. A. Johnson.

Dear Sir,

I am prepared to pay £200 for one acre of  
land in Turbo Township, providing such land can be  
obtained adjacent to my present store.

FOR JUMA & Co.,

(sgd ) Juma Mohamed.

WITNESSED BY.

(sgd) P.H. Vyas,  
Sub-Postmaster,  
Turbo.

COPY

TURBO.

74

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FOR JUMA & Co.,

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WITNESSED BY.

(sgd) F.H. Vyse,  
Sub. Postmaster,  
Turbo.

15th March 1930.

L.A. Johnston Esq.,  
P.O. Turbo.

Dear Mr. Johnston

Acquisition by Government for  
Township purposes of a portion  
of your farm at Turbo.

I have no hesitation in putting on paper my opinion that Government's action in applying the Compulsory Acquisition Act in connection with the re-acquirement of a portion of your land adjoining Turbo Railway Station was based upon a wrongful interpretation of the Act.

The purpose of the Act as understood by me - and by I believe all the other Elected Members of Council - is to enable Government to re-acquire privately held land necessary for a definite public purpose, but it is not - we hold - intended to cover the compulsory acquisition at agricultural value of land which Government does not want for a specific purpose but which it means to hold for re-sale at a later date at an enhanced value. To give it such an interpretation we contend jeopardises the value of all agricultural leasehold titles in the country as it means that they can be annulled at any time by Government holding an enquiry under the Compulsory Acquisition Act merely on the excuse that the land is required for public purpose.

Government's action in connection with the re-acquisition of this land at Turbo is also open to strong criticism on another ground; that it has expended public money on re-acquiring land that was not necessary for State purposes and that the development of a township area at Turbo could have been encouraged on sound lines under existing legislation without the necessity of confiscating your land. Had you been allowed to carry out your original idea of developing the land around the Station as a township area existing Public Health Acts would have enabled Government to compel you to do so according to modern ideas of sanitation and road and drainage construction so that in fact there was no real necessity for the compulsory acquisition of this land.

To avoid any misunderstanding as to my attitude in the matter I hold that the ~~State~~ have power to - if necessary - re-acquire land at a fair price if it is necessary in the public interests but on the other hand I hold equally strongly that private interests must also be protected against the predatory instincts of an autocratic Government and I regard Government's action in connection with your land at Turbo as an unwarrantable exercise of powers to which it is not properly entitled.

Yours sincerely,

(sgd) T. J. O'Shea.



P.O. Box 32.  
Kildare.  
15th March 1930.

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P.O. Turbo.

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Yours sincerely,

(sgd) T. J. O'Shea.

C. O.

X 1604230 k

76  
4

Mr. Eaton 27/12

Mr. Allen 27/12

Mr. Bottomley

Sir J. Shuckburgh

Sir G. Grindle

Permt. U.S. of S

Parly. U.S. of S

Secretary of State

R 17-1111  
B 3

5 March 1914

am  
5  
Sir

I have ste. to transmit to you a copy of a petition <sup>from the</sup> ~~Project~~

~~I have received from~~ A

A. A. Ryde ~~writing~~ for & on behalf of Messrs ~~Ryde~~ Davidson, and Ryde

I shall be glad to receive of persons in this petition, & I ~~should~~ ~~be~~ ~~glad~~ ~~to~~ ~~have~~ ~~to~~ ~~request~~ ~~that~~ in the meanwhile you will

cause the writer to be informed that I have received the petition & in accordance with Col: Reg<sup>ts</sup> no 199 have forwarded it to you for ~~your~~ report.

2 DRAFT: for cont

Key  
No 1914  
for press

Which has been referred to me by Sir William Mitchell Thomson, M. P.

~~for Ryde~~  
no. 1-1

C. O.

X1634730

71  
A.

Mr. Easton 29/2

Mr. Allen 28/2

Mr. Parkin 27.2.30

For the 1930 signature

~~Mr. ...~~ Mr. Edgecumbe Es.

25 Feb 1930

Sec. of State

Perm. U.S. of S.

Part. U.S. of S.

Secretary of State

28/2

**DRAFT**

*original*

28/2

Mr. William Mitchell

Thomas Bent ~~1888~~ MP

1888

Gen. Mitchell Thomson,

My Private Secy

has already ackd your letter of  
the 24<sup>th</sup> Febr regarding <sup>the</sup> petition  
which a constituent of yours,  
Mr Arthur Ryde, of Kitale,  
Kenya, has ~~forwarded~~ <sup>addressed</sup> to me.

The matter has now been  
~~looked into~~ <sup>looked into</sup>, but there is no info  
with regard to it as recorded in the  
Colonial Office. <sup>in my report,</sup>  
~~to me direct~~ <sup>to me direct</sup> under the

Colonial Regulations all <sup>Commonwealth</sup> petitions  
to the Secretary of State  
from a person in a Colony must

be sent through the Governor,

~~and~~ <sup>the</sup> ~~copy~~ <sup>copy</sup> of the petition <sup>by official report</sup>  
the Govt <sup>for his comments</sup> ~~concern~~  
~~reference~~ <sup>reference</sup> & ~~in~~ <sup>in</sup> ~~case~~ <sup>case</sup> you

words that they may  
be duly verified as well  
as reported as you  
will appreciate  
that such a  
regulation is essential

C.O.

X16042730

TH  
29

Mr. Easton 29/12

Mr. Allen 29/12

Mr. Parkin 27.2.30

For the 1930's signature

~~Mr. ...~~ Mr. E. G. ...

25 July 1930

St. ...

Post, U.S. of S.

Party, U.S. of S.

Secretary of State.

28/12

DRAFT figures

28/12

Sir William Mitchell

Thames Bank ~~less~~ mp  
KASE

Gen. Mitchell Thomson,

My Private Secy

has recently added your letter of  
the 24<sup>th</sup> Feb<sup>r</sup> regarding the petition  
which a constituent of yours,  
Mr Arthur Ryde, of Kitale,  
Kenya, has forwarded to me.

The matter has now been  
~~looked into~~ looked into,  
but there is no info  
with regard to a record in the  
Colonial Office. In any event,  
I am directed to

Colonial Registrar all petitions  
to the Secretary of State

from a person in a Colony must  
be sent through the Governor,

and I am therefore sending a  
copy of the petition to the  
Secretary of State for his comments  
before it is presented to you

words that they may  
be duly verified & sent  
certificates as you  
will appreciate  
that such a  
regulation is essential

that when I get there I will

~~go to the [unclear] [unclear]~~

go carefully & ~~avoid the~~ ~~water~~  
to the water.

you may

~~avoid the~~

(3d) Sanfield

that, when I get there, I will

~~give the <sup>the papers</sup> ~~papers~~ ~~papers~~ it~~

go carefully & sympathetically ~~into~~  
into the matter.

Yours  
truly,

~~W. D. Howland~~

(Sd) Sanford

I have told him that I can only ask you to

- give his petition careful and sympathetic consideration, and I am sure you will do this.

Yours sincerely,

*W. Richard Thomsen*

---



RECEIVED  
OFFICE  
COL. OFFICE

Kitale.

23.1.30.

80

From A.A. Ryde.  
(For & on behalf of Messrs Davidson & Ryde)  
P.W.D. Kitale.

Kenya Colony.

To His Excellency,

The Secretary of State for the Colonies.

London.

Your Excellency,

We petitioners, Harry Cunningham Davidson and Albert Arthur Ryde, do hereby request your very kind consideration of this accompanying Memorandum.

Both Davidson and myself joined The Forces on outbreak of War in 1914, and eventually ended together in the same Regiment of The Indian Army, i.e. The 1/56th Rifles. F.V., and were demobilised in September 1922 under the General Demobilisation Scheme for Officers, which was in vogue at that time.

Whilst we were awaiting demobilization, we got into touch with a certain Mr Barham, who at that time, was acting as a Company Promoter, for Messrs The Kenya Coffee Plantations Ltd.

To be precise, their scheme was, to sell developed & undeveloped farms, at varied prices, Farms situate in The Usin Gishu, of The Province, Naivasha, Kenya Colony. As Mr Barham's scheme was by some means or other, published in Brigade orders in India, we ventured to consider, that Government lent its Moral Support to such a venture, and partly on account of this, and partly from the prospects offered, we placed the whole of our Gratuity in this concern.

Copy sent 194 5/3/30

This scheme was an undoubted swindle, and acknowledged to have been such, by the Official Receiver in The Nairobi Law Courts, at the time of our Public Examination in Bankruptcy. In this venture, we lost approximately from 7 to 800 Pounds, out of the 3000 pounds we had invested.

Both Davidson & myself, still believed in the prospects of this Country, and proved same, by purchasing other property in The Trans Nzoia, but owing to the very severe setback given us by our first investment, it was necessary for me to keep in employment and on the first opportunity, Davidson also to obtain employment, if obtainable near the Farm.

In 1925, I commenced in a small way in Turbo, which became fairly successful and tempted me to invest in 1927, in a Four Acre Plot there, opposite The Railway Station.

I considered I could quite reasonably and with safety, erect upon this property, good buildings in the furtherance of my business prospects, and anticipating that there would not be any unreasonable delay on the part of Government in the sanctioning of my Title for business purposes, I did so. In this respect, I allowed myself financially, to be able to carry on for at least 1 Year, then on receipt of Title, I would raise a mortgage upon the property. Arrangements for mortgaging I had already made so that there was no difficulty as to being able to Raise the money.

Very much to my surprise and mortification, my Government did not give sanction to Title, despite my many visits to The Land Department and The Secretariat, and fulfilling all requirements set out by them, even to obtaining full support of the Local District Committee, still further, I pointed out to The Government Officials, the impossible position that they were placing me in financially, and that unless something was done, it would necessitate my filing a Petition in Bankruptcy. It was pointed out to me that the matter would be placed before His Excellency The Governor for consideration shortly, whereupon, I mentioned to them, that if the reason for withholding Title was on account of the possibility of proclaiming a

Township in that Area, would not a proviso, to the effect that, "Should a Township be declared, we, Messrs Davidson & Ryde would be willing to incorporate this same property, within The Township limits" be sufficient, to expedite matters.

I was obliged to file a Petition in Bankruptcy on behalf of my Partner and myself in September 1928.

As by The Statement of Affairs submitted, the Estate was by no means a Bankrupt Estate, Dr Keatinge laid emphasis on the fact, I should submit a Scheme of Composition.

It was essential under the circumstances, that as The person who was willing to allow me a Mortgage was still agreeable to allowing me same, despite the position affairs had taken, for me to obtain some information with regard to My Title for The Turbo Property, so I at once accompanied by my solicitor proceeded to The Secretariat. The Government Official interviewed there, stated that at the least we might expect Title in Three months at the latest Six Months.

I left satisfied that I could place before my Creditors a scheme which would assure them of Payment in Full plus 8% interest, needless to say on account of no information being received from Government in respect of this Land, my scheme of Payment fell to the Ground, after having paid 25% plus interest of my debts to my Creditors, and we were adjudicated Bankrupt in July of 1929.

Whilst I am willing to admit, I should quite possibly not have erected the valuable buildings I did erect, upon property I had not received the entire sanction of Government, at the same time, I do not recollect that at any time, throughout the long period that I was in communication with the Authorities, was I given to understand that Government refusal to sanction Title would be eventuate, further from the present case, it would appear a very poor thing for the Colony if every settler who was desirous of assisting the Colony to go ahead, should have to wait as I have waited 3 long years for my support from Government.

In the Year 1929, Turbo was proclaimed a Township, and my property was inspected by Officials appointed by The Government, and a valuation of the same was made, sometime in September. In December an award was made in The Eldoret Courts, but at the time of writing this letter to you, no payment has as yet been made by The Treasury Department.

On account of this slackness, it has prejudiced my and my partners position entirely, necessitating the sale immediately of the Farm Crops, which owing to the very depressed state of the market, means that our crop of 1500 bags of maize or more will not fetch more than about 400 pounds, if that, possibility of the sale of the Farm at a ridiculous figure, eventuating in complete loss of everything with the exception of a Vote of Thanks possibly from our Creditors for the honourable amends we shall have made.

I am taking the liberty of submitting this petition to you, trusting that same may receive your sympathy, and although I do not anticipate compensation, I shall be very grateful if at least something may be done to reimburse us for the expenses we have been forced to meet.

I am sure, had we the very least little support, of a sympathetic Government during the period referred to above, we should never been forced to undergo, such anxious times, nerve racking periods, and our names besmirched in The Bankruptcy Courts of The Colony, apart from the facing of the Burden of heavy Expenses.

Should you communicate at all with The Trustee appointed by The Creditors, Mr Forbes-Mangan, of Kitale, I am certain he will reply that our Position was caused entirely through Lack of Support and sympathy from an unsympathetic Government.

I have the honour, to be,

Your Loyal Servant,

1. Copy to The Rt Hon Sir William Mitchell Thompson.  
M.P. for Croydon.

1. Copy To Capt H. C. Davidson, Kitale.