

1930

Kenya.

No. 16258.

SUBJECT

C 0533/401

Bills to amend:—(1.) The Employment of Natives Ordinance.  
(2.) Native Registration  
(3.) Resident Native Labourers

Previous

15346/28

Subsequent

17186/31

17217/31 (Native Registration)

1. H.M.M. Moore for Gov. 457 ... 7th July 30.

Transmits a memorandum relating to certain points in connection with the three draft Bills regulating the relations between employers and native servants in the Colony, with a copy of a question and answer and copies of the three Bills embodying the alterations which it is now proposed to effect.

Mr. Allen.

1a  
I attach a memorandum. I go on leave tonight and have not had quite as long in which to polish it as I should have liked but I think it covers most of the ground.

The S. of S. may reply to the Governor approving the introduction of all three Bills in the amended form now sent, subject to observations on the following points:-

1. Any legal points, especially Clause 31 of the Employment of Natives Bill.

2. The existence of the Penal Sanction in the Employment of Natives and Resident Native Labourers Ordinances. The Bills do not affect these provisions, but it may be thought desirable to press the Governor to take the opportunity of making some amendment to meet the point. If however this is done it will inevitably delay the passage of the Bills still further. This would be a pity.

3. An alteration of the penalties in the Employment of Natives Ordinance, as suggested on pages 5 and 6 of my memorandum. This again is not touched by the Bill, but it seems desirable that the opportunity should be taken to make alterations.

4. The omission of clause 9 of the

Pages 3 - 5 of  
Memorandum.

x except clause  
11 of the Employ-  
ment of Natives  
Bill and that  
only indirectly.

(Intld) H.T.A.

Resident

Resident Native Labourers Amendment Bill, as suggested on pages 8 and 9 of my memorandum.

5. The omission of subsection 7 of the new § 10 which typed clause 12 of the Resident Native Labourers Amendment Bill inserts in the principal Ordinance - see page 10 of my memorandum.

? It would also be desirable that the S. of S. should see the Bill again after it has been thro' the Select Committee stage (presumably there will be a Select Committee).

(sd) C.G. Eastwood. 4.8.30.

I have dealt with this in the form of marginal comments to Mr. Eastwood's memorandum. As regards the penal sanctions in the existing Ordinances it would only seem necessary to refer to paragraph 4 of the Circular of 6th August 1930 saying that the Governor should consider what action can be taken prior to the introduction of these Bills.

(sd) H.T. Allen.

29.8.30.

I have also dealt with these Bills in the margin of Mr. Eastwood's Note. I agree with Mr. Allen that the Governor's attention should be specially drawn to paragraph 4 of the Circular despatch of 6.8.30. That, I suppose is all we can do at the moment in the matter of penal sanctions.

(sd) H. Duncan.

13.9.30.

This can wait: the next stage seems to be as in para. 5 of my draft.  
(Intld) A.C.C.P.

Sir C. Bottomley.

These three Bills to amend the Employment of Natives Ordinance, the Native Registration Ordinance and the Resident Native Labourers Ordinance, have been on the stocks a long time, but the delay has been at the other end.

When they were submitted in 1928, we found that they contained a number of desirable provisions: the objects are fully set out in the Governor's despatch in 15346/28: but in the course of very detailed examination here, we found also certain objectionable clauses or provisions. A full reply was sent to the Governor (No. 4 in 15346/28) and the Governor has now met practically all the objections either by revision of the Bills or by satisfactory explanation; but on one point - clause 9 of the Bill to amend the Resident Native Labourers Ordinance - we think that the S. of S. should remain firm - that is really the only point of importance among these previously canvassed upon which there is now difference between the Governor and the Colonial Office.

Mr. Eastwood's note attached covers all the ground: Mr. Duncan, Mr. Allen and I have made marginal minutes; and in view of the agreement among us, I have - in order to crystallise matters - drafted for consideration - In the draft I have included the important new point which has come up since the Bills were first examined in 1928, and - entirely for consideration - given the Governor (or, in fact, Mr. Moore, the O.A.G., who takes

over

over in a week or so) an opportunity to get on with these Bills without delaying them for the more difficult - and, in Kenya, contentious - proposal to eliminate (or reduce to an absolute minimum) penal sanctions for labour engagements. It is hardly fair to <sup>make</sup> expect an O.A.C. to deal with such a matter in Kenya in present circumstances; and besides it would be a pity to risk serious delay with the Bills.

As to penalties (assuming that penal sanctions stay for the present), some revision as suggested by Mr. Eastwood seems justified; but it must be borne in mind that if penalties are abolished for the servant, penalties must equally disappear for the employer - so far, that is, as they relate to the enforcement of labour contracts.

(sd) A.C.C. Parkinson.

20.9.30.

Secretary of State.

Mr. Parkinson's minute, with the flags which he has affixed to previous papers, will give assistance to you in following this correspondence. You will observe that the draft despatch, while giving authority for the Bills to be passed into law, leaves the question of further alteration of the labour law, especially to meet international commitments, quite unprejudiced.

The

4  
The most difficult question is that of penal punishment for breach of contract. I feel sure that the removal of these penalties cannot be hurried, and that until the native labourer has a clearer idea of the nature of the contract it is not desirable to go further than is proposed in the draft despatch, namely to adopt the Tanganyika arrangement by which the native has the option of a fine.

You will observe from paragraph 2 (a) of the draft that we propose to resist the idea that a "resident native" may be turned off the estate without legal proof of misconduct.

W.C.B.  
23.9.30

Jagoe  
P. 23/9  
3/9

2 To Gov. 750. 1 and Cons. 25/9/30. 25/9/31

B. 29/8/30 IT when this H is next circulated

Mr. Eastwood

to reply to his 2 yet.

Shaw  
18/9/30

Send a short dispatch on what:

the present position.

11/11/30  
18/3  
atand

3. No. Gov. 211 - Cons - 24 MAR 1931  
(under to No. 2.)



R. 16250/80 Kenya 25

Mr. P. J. ... 20.9.20

Mr. Dunsen 23/9/20

Mr.

Mr C. Bellamy

Mr J. Shanklin

Mr G. Grindle

Parl. U.S. of S.

Party U.S. of S.

Secretary of State

union 23/9

sent by on 1/10/20

DOWNING STREET,

25 September 1920.

Salt

DRAFT.

KENYA

NO. 750

Govr.

[1]

Sir,

I have the honour to acknowledge the receipt of your despatch No. 457 of the 7th July on the subject of the three draft Bills which have been prepared to amend the legislation <sup>regulating</sup> ~~relating to~~ the relations between employers and native servants in Kenya.

2. I note the explanations given on various points in the memorandum which accompanied your despatch, and the amendments which you now propose to make in the Bills; and so far as concerns points raised in my predecessor's despatch No. 828 of the 12th

November

November 1928, and in your despatch  
under acknowledgment, I <sup>agree to</sup> ~~agree to~~

[24 in 546/28]

the Bills ~~and amendments~~ with the  
alterations now suggested, except that

I find myself unable to accept in its  
entirety the Bill to amend the Resident  
Native Labourers Ordinance, 1925:-

(a) I observe that while you would  
be willing to revise Clause 9 (3) of  
the Bill so as to meet the objection  
taken by my predecessor to the provi-  
sion for recovery of the expenses refer-  
red to from the native concerned or from  
the head of his family, you urge that the  
clause should in other respects stand.  
I have carefully considered the arguments  
adduced in favour of the clause, but I  
regret that I cannot agree to its  
inclusion in the Bill. It would, I think,  
be an unjustifiable interference with  
the liberty of the subject that the  
Government should have power to direct

the

November 1928, and in your despatch  
under acknowledgment, I <sup>of page 15</sup> ~~am sorry to~~

[24 in 15346/28]

the Bills ~~submitted~~ with the  
alterations now suggested, except that  
I find myself unable to accept in its  
entirety the Bill to amend the Resident  
Native Labourers Ordinance, 1925:-

(a) I observe that while you would  
be willing to revise <sup>✓</sup> clause 9 (3) of  
the Bill so as to meet the objection  
taken by my predecessor to the provi-  
sion for recovery of the expenses refer-  
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clause should in other respects stand.  
I have carefully considered the arguments  
adduced in favour of the clause, but I  
regret that I cannot agree to its  
inclusion in the Bill. It would, I think,  
be an unjustifiable interference with  
the liberty of the subject that the  
Government should have power to direct

the

the removal of natives from a farm  
in cases other than those in which the  
natives have been duly charged before  
a court of law and found guilty of  
stock theft or produce theft. If sub-  
clause(1) is remodelled on these  
lines, I should be prepared to agree to  
it: in that event sub-clause(2) could  
remain in its present form, and sub-  
clause(3) as ~~is~~ now amended in your  
despatch. In an extreme case of the  
kind mentioned in your despatch it  
would appear that action could be  
taken under Section 68 of the Police  
Ordinance, that is to say, special  
police might be quartered on the farm  
in question and the cost of these  
police be charged to the occupier, ~~and~~  
~~responsibility to the natives~~  
Incidentally, such action would seem to  
meet the point in your despatch that a  
sense of their responsibility <sup>in this matter</sup> must be  
brought home to the non-native occupiers  
of



of farms.

(b) The new clause in this Bill designed to replace Section 10 of the Principal Ordinance appears to be generally suitable, except that it is not clear why in sub-clause 1 (1) the natives residing on a farm under Section 3 (c) of the Ordinance should not be included; and I am not altogether satisfied as to the necessity for fixing a statutory maximum as in sub-clause 2 for the number of cattle or head of stock which a native shall take on to or keep on any farm, nor, if a maximum is to be fixed, that it should be as low as I shall be glad to have your explanation on these two points.

As a small point of drafting,

"Section 10 (1) of the Principal Ordinance" in sub-clause 7 should apparently <sup>read</sup> "Sub-Section 1 of this Section".

[Copy handwritten]

7  
3. Since these Bills were first submitted much consideration has been given to the questions affecting native labour in British Dependencies, in connection with international discussions and international conventions; and in my circular despatch of the 6th August last I expressed the wish that labour conditions should be reviewed generally. In particular I would now invite attention to paragraph 4 of that despatch which relates to Penal Sanctions as applicable to labour engagements, and a question whether contracts other than those in writing, and attested before a Government officer, should be enforceable. It is for consideration whether any amendments of existing legislation in the direction suggested in that paragraph should not be included in the amending Bills which it is now proposed to introduce. If, however, this would

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As a matter of principle, "Section 10 (1) of the Principal Ordinance" in sub-clause 2 should apparently be "Sub-Section 1 of this Section".

[Copy handwritten]

3, Since these Bills were first submitted much consideration has been given to the questions affecting native labour in British Dependencies, in connection with international discussions and international conventions; and in my circular despatch of the 6th August last I expressed the wish that labour conditions should be reviewed generally. In particular I would now invite attention to paragraph 4 of that despatch which relates to Penal Sanctions as applicable to labour engagements, and a question whether contracts other than those in writing, and attested before a Government officer, should be enforceable. It is for consideration whether any amendments of existing legislation in the direction suggested in that paragraph should not be included in the amending Bills which it is now proposed to introduce. If, however, this would

unduly delay progress with the Bills,  
I will not press the suggestion. But  
in any event I should wish the opportunity to be taken to amend the penal provisions in the existing legislation, e.g., Section 47 of the Employment of Natives Ordinance (Chapter 139), which permit of a sentence of imprisonment without the option of a fine. Further, assuming that penalties are to be retained, at any rate for the present, I consider that those provided for offences by employers should be re-examined with a view to ensuring that they are appropriate to the gravity of the offences, e.g., the fine of £10<sup>0</sup> allowed under Section 47 of Chapter 139 for failure to pay wages due to a servant, detention of a servant's property, or failure to supply food, as stipulated for in any written contract, cannot be regarded as adequate. Similarly, the penalties provided in Sections 66 and

71 of that Ordinance for giving reward to a chief or headman for procuring labour, and for offences in connection with inspectors of labour, etc. (which would remain even if penal sanctions generally in relation to labour contracts were abolished), appear to err on the side of leniency

4. A further point which has been noted in the course of examination of the revised Bills is that clause 32 of the Bill to amend the Employment of Natives Ordinance, makes provision for the expenses incurred by Government in connection with the arrest and trial of servants under that clause (to be refunded by the complainant if the court is satisfied that the facts stated in the complaint were materially untrue in any particular, at the same time no provision is made for compensation for the servant, and



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it is suggested that the Clause might include provision for payment by the complainant of a sum to be assessed by the court as compensation to the servant.

5. The date for the publication of the Bills will be dependent upon the arrangements which you have in view for their introduction in the Legislative Council. But I assume that it will not be desired to take them at the Budget Session of the Council, in which case time will presumably permit of your replying to the despatch by way of despatch and receiving my answer before it is necessary to publish them. If however time does not permit - then you will no doubt telegraph any objections which you may have to offer upon the subject together with a summary of such further amendments as you would propose to make in the light of it.

2  
Signed PARNFIELD.

it is suggested that the clause might include provision for payment by the complainant of a sum to be assessed by the court as compensation to the servant.

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far an employee on task-work would be subject to the general provisions of the law. The Governor refers the Secretary of State to the definition of "servant" in Section 2, and says that he is advised that an employee on task-work would come under the disciplinary provisions of the Ordinance.

CLAUSE 24. On reconsideration the Governor has reduced the normal working day from nine hours to eight. This is all to the good.

CLAUSES 25 - 28. These are important. The Governor has made the alterations in the Bill suggested by the Secretary of State, and they appear now to be harmless.

CLAUSE 29. The Secretary of State's point was one of drafting which has been met by the Governor's amendment.

CLAUSE 31. The Clause in the Bill as drafted is somewhat grotesque in form but good in intention. The Secretary of State made certain suggestions for improvement of its form, but the Governor does not consider either of them desirable. Unless the Legal Advisers can suggest a better form, there is no need to pursue the point further. Two minor amendments suggested by the Secretary of State have been made.

Clause 32. The required report will be made.

A good deal has happened in the last two years since the draft Bill was examined here. In the first place, the Hilton-Young Commission has reported, the prospect of the appointment of a High Commissioner is less remote than it was, and it becomes more important to move towards uniformity in

*I can't find  
any more  
to do*

*Good deal*

*no  
no*

*a comparison  
of the original  
with the  
amendment  
is necessary  
to see  
if the  
amendment  
is really  
improvement  
or not  
140-  
deep*

*I accept with the  
amendment  
140-  
deep*

*As it is substantially the same,  
I would not think it  
better than it was.*

*140-  
II.  
deep*



in Kenya, Uganda and Tanganyika. In the second place, a general overhaul of labour legislation is now being initiated. A Circular despatch was sent to all Colonies etc. on the 6th August (copy attached) asking them to review the conditions of labour etc. generally. In particular, in paragraph 4 of this Circular, the Secretary of State said that generally speaking he desired that any "penal sanction" applicable to labour engagements should be eliminated or reduced to an absolute minimum, and that the relations of employer and employee should be left to be governed by the ordinary law of contract. The subject was also dealt with by Dr. Shiels at the 11th Session of the C.O. Conference (verbatim report attached). *Also* the I.L.O. are taking increasing interest in labour conditions in Colonies, and it is more than likely that in the next three or four years the I.L. Conference will consider the desirability of a convention relating to contract labour.

In view of these facts it seems necessary to raise one or two further points in the Bill:-

A. Penal sanction for Labour Contracts.

In England a breach of a contract between master and servant is not a criminal offence; the remedy of either party is by way of civil proceedings. In most Colonies, however, there is a penalty either by way of fine or imprisonment for breaches of contract. As already stated, the Secretary of State wishes to see this penal sanction eliminated or reduced

*I have suggested in minutes that the matter can be dealt with by the 2<sup>nd</sup> clause - para 4 H.O.*

reduced to an absolute minimum. <sup>In particular</sup> ~~the~~ the penal sanction for verbal contracts <sup>is liable to very</sup> serious abuse (in the of the address to the Co. Conf.)

In Kenya the present law allows, and the law as amended by this Bill would allow, penal sanctions for verbal contracts, including imprisonment without the option of a fine. The following sections provide a penal sanction:-  
Sections 43, 45, 47, 48<sup>53</sup> of Chapter 139.  
Clauses 11 and 32 of the Draft Bill.

I doubt if any East African Dependency will be able to agree to do away altogether with the penal sanction at once; conditions in East Africa are so different from those in England; civil proceedings against an employee for damages are valueless; dismissal hardly, to any extent, penalises the employee since it is not the general practice of employers to require characters; and this being so, absolutely no remedy remains for offences by servants except a penal one. But

- (1) Kenya at any rate should come into line with Tanganyika in not allowing imprisonment without the option of a fine - see ~~the~~ correspondence as to this enclosed in Nos. 1 and 2 on 18085/27, and the Tanganyika Law enclosed in No. 2 on 29125/28;
- (2) It may be thought necessary to press that all contracts should be written. I do not know whether Kenya would regard this as at all practicable; the point is one which might perhaps be discussed with Mr. Wade. It will involve a pretty thorough revision of the Ordinance, ~~e.g. Sections 2, 3 & 4 and Clause 31 of this Bill.~~

*I think this is a reasonable amendment to be made by the President and the Government to be the Bill. It will need consideration all.*

*The point as to verbal contracts is covered by last part of para 4 of the circular, if we refer to that. all*

Clause 32 of the Bill makes it possible for

for a Magistrate or Justice of the Peace, on receiving from an employer by messenger or through the post a complaint in a set form, to issue a warrant for the arrest of the person alleged to have committed the offence, Sub-clause 3 containing certain provisions to guard against any abuse of this facility. The object of this Clause is to provide a means whereby an employer can lay information against an absconding servant without having to leave his farm and to travel many miles to a Magistrate's office and back. It had been proposed to allow this Clause to stand on the clear understanding that it was to be regarded as an experiment, and that detailed reports were to be sent at the end of a year's working. Granted the necessity for a penal sanction, I see no great objection to this Clause, having regard to the local circumstances, and there is no need to depart from the policy already laid down.

*This having been decided ahead it seems unnecessary to do any more gain. In necessary notes on proposed*

*all 40: JMA*

B. Penalties.

I do not think the penalties for offences by servants are unduly severe. On the other hand, the penalties for offences by masters seem unduly light, e.g. Section 55 of the Ordinance: the penalty of £10 or one month's imprisonment or both for failure to pay wages, for detaining a servant's property and for failing to supply food, etc. as stipulated in a written contract, seems a very small penalty. Similarly, a penalty of £15 <sup>under sec</sup> for giving a reward to a Chief or Headman for procuring labour might

*Yes: but see minute all*

might be increased, and also the penalty of ~~216~~<sup>210</sup> under Section 71 for obstructing a Labour Inspector. Again, in Clause 32 of the Bill, when a complaint has been lodged by an employer under the new procedure without due cause, there is no provision for compensation to the native.

*Yes: there is reason why it should be so provided that provision should be included for payment by the complainant of a sum to be assessed by the court and to compensate the servant ~~for~~ <sup>need</sup>*

C. Recruitment.

Paragraphs 9 and 10 of (1) on 15346/28 clearly set out the object of the Bill. This is to abolish professional labour recruiters, and to allow only

- (1) private recruiters, i.e. persons who by themselves or by their servants in their regular and permanent and exclusive employ engage persons for their own bona fide personal or business service;
- (2) "labour forwarding agents," specially licensed by a Senior Commissioner, who are allowed to act for employers in respect of the engagement, etc. of natives voluntarily offering themselves, but not to undertake native recruiting.

This proposal is in accordance with the wishes of Unofficials in Kenya, and the Governor has announced his intention of introducing it. It has also been welcomed here. It is, however, not entirely in conformity with policy in Tanganyika, where professional recruiters are allowed, provided that they obtained a licence. See as to the policy and position Mr. Lee's minute, on (2) on 29125/28 T.T. Tanganyika were allowed to go a different way from Kenya, and there appears no need to reverse this policy. [There is a good deal to be said for both systems, & I believe that the Unofficials in Tanganyika like the Tanganyika system as it is now worked.]

*See the attached article from East Africa of July 24<sup>th</sup>*



might, <sup>be</sup> increased, and also the penalty of ~~£10~~ <sup>£10</sup> under Section 71 for obstructing a Labour Inspector. Again, in Clause 32 of the Bill, when a complaint has been lodged by an employer under the new procedure without due cause, there is no provision for compensation to the native.

Yes: There is no reason why it should be in regard to the provision all the incidents for payment by the complainant of a sum to be assessed by the court - it is compensate the servant ~~the~~ need

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The

See the attached article from East Africa of July 24th

Strickland  
will be  
writing  
about  
all

The definition of a labour agent in Section 2 of the main Ordinance should ? be repealed.

The Bill would make it possible for the Governor to introduce by Rules regulations as to minimum standards of sanitation, housing, etc. The need for this has long been felt both here and in the Colony - see e.g. the comments of the Native Affairs Department in the Annual Reports of 1927 and 1928. (7 on 15440/28 and 1 on 15833/29). The promulgation of such rules is apparently not ~~sound~~ possible under the rule-making power (Section 77) of the ~~existing~~ Ordinance. (Personally, I should have thought that this section did give power to make such rules).

Amend the new  
Section 77 - clear so  
we can leave this  
H.O. 1111

BILL TO AMEND THE NATIVE REGISTRATION ORDINANCE

The Governor deals satisfactorily with the only point raised by the Secretary of State, and his new proposal is non-controversial. No comments.

It seems quite  
clear night  
H.O. 1111  
all

P.T.O.

BILL TO AMEND THE RESIDENT NATIVE LABOURERS  
ORDINANCE 1925.

I. THE GOVERNOR'S REPLY TO MR. AMERY'S COMMENTS ON THE  
DRAFT BILL.

*The Govt's reply to  
Amery's comments on the  
bill seems adequate  
H.O.*

CLAUSES 3 and 4. The two points made in the  
Secretary of State's despatch are met.

*The representation of  
the Govt in § 4 is  
adequate, but the  
clause could only apply  
to male natives; but  
it does not matter.  
H.O.  
2/24/25*

CLAUSE 8 (a) The Governor has reduced <sup>to a</sup> minimum  
the number of days work to be done to 180, as suggested  
by the Secretary of State. He gives a further expla-  
nation of the need for a penalty for not providing  
resident native labourers with work. The arguments  
seem adequate, and the Clause may be approved;  
(N.B. the penalty is against the employer).

CLAUSE 9. In deference to the representations made  
by the Secretary of State certain minor alterations  
have been made in this Clause as originally drafted.  
These make it less objectionable than before. The  
main objection is, however, still left untouched. This  
is that it gives the Governor power to direct that any  
native resident on a farm shall be removed and a  
squatter contract rescinded, if it appears <sup>to the Govt</sup> that the  
residence of the natives on the farm ~~has~~ led, or is  
likely to lead, to any crime or breach of the peace.  
This was regarded here as an <sup>unwarranted</sup> interference with the  
liberty of the subject.

The Governor puts up a strong plea for its  
retention, without however advancing any very convincing  
arguments. No doubt a lot of scallywags do often  
collect

collect on farms, but this is hardly a justification for removing them wholesale before any crime has been proved against them. Clearly it is normally the fault of the occupier if he allows <sup>indeed</sup> ~~scally~~ wags to collect on his farm; the Governor says that it is in his opinion essential that non-natives who have taken up farms should realise their responsibilities to their neighbours and to the general public for conditions on their farms. Surely, however, the proposed Clause will not make them realise their responsibility since it is aimed against the natives and not against the occupiers. A much better way would, one would have thought, have been to empower the Commissioner of Police, if he considered that the situation warranted it, to station special police on any farm at the expense of the farmer.

I would suggest that the Governor be informed that the Secretary of State fears that he cannot agree to this Clause since it appears to him to be an unjustifiable infringement of the liberty of the subject; and if it is thought desirable, the alternative suggestion made above could be put to the Governor.

Clause 10 a 5 to be deleted as suggested.

NEW POINTS MENTIONED IN GOVERNOR'S MEMORANDUM.

New CLAUSE 10. (Pages 13 and 14 of the Governor's

Memo.)

Under the law as it stands at present a native squatter may be accompanied by "a native who through age or infirmity is incapable of continuous employment, and is closely related to a family lawfully residing on such farm". The Governor says that this permission is abused, and he proposes to delete it. It will, ~~therefore~~

always

Some say that this is rather illogical. It reads: "eg. to deal with situations such as that which arose in the Satok farms case."

It wd. have to be an extreme case for use of P.M.'s Ord. & be out.

Presumably § 69(1) of the Police Ordinance would make this to be done 1944

It think this must come out. Govt. says cases presumably be dealt with under his Deportation Ordinance does not at any rate require some form of legal process - but I doubt if this will be correct &

II.

1944  
 Inability of native to support himself or family  
 This is intended to mean that the clause should be in the form proposed by the Government in his minutes of 11/10/43 viz: that the person should have been to be removed or cases in which a native squatter had been properly removed a family member of that person under the provisions of the Police Ordinance, and should be taken to the Police Officer's office for removal.

collect on farms, but this is hardly a justification for removing them wholesale before any crime has been proved against them. Clearly it is normally the fault of the occupier if he allows scallywags to collect on his farm; ~~indeed~~ the Governor says that it is in his opinion essential that non-natives who have taken up farms should realise their responsibilities to their neighbours and to the general public for conditions on their farms. Surely, however, the proposed Clause will not make them realise their responsibility since it is aimed against the natives and not against the occupiers. A much better way would, one would have thought, have been to empower the Commissioner of Police, if he considered that the situation warranted it, to station special police on any farm at the expense of the farmer.

?

I would suggest that the Governor be informed that the Secretary of State fears that he cannot agree to this Clause since it appears to him to be an unjustifiable infringement of the liberty of the subject; and if it is thought desirable, the alternative suggestion made above could be put to the Governor.

Clause 10 a 5 1/2 to be deleted as suggested.

NEW POINTS MENTIONED IN GOVERNOR'S MEMORANDUM.

New CLAUSE 10. (Pages 13 and 14 of the Governor's

Memorandum.)  
 Under the law as it stands at present a native squatter may be accompanied by "a native who through age or infirmity is incapable of continuous employment, and is closely related to a family lawfully residing on such farm". The Governor says that this permission is abused, and he proposes to delete it. It will, ~~therefore~~

always

It will be seen that an excellent case for use of Police Ord. 8 & 9.

Presumably S 68(1) of the Police Ordinance would make this to be done.

I think this must come out. Cases may be dealt with under his Deportation Ordinance does not at any rate require some form of legal process - but I doubt if this is suggested.

II.

1/1/14  
 I think it is better to leave the law as it stands. The clause should be in the form suggested. It is in the Memorandum of 12/1/14. The clause should be in the form suggested. It is in the Memorandum of 12/1/14. The clause should be in the form suggested. It is in the Memorandum of 12/1/14.

I am afraid this is rather ill-considered. It reads: "to deal with situations such as that" which arose in the Police farms case."

always be possible for aged or infirm relatives to obtain a permit in writing, as provided in sub-Section E of Section 3 of the principle Ordinance, & no comment therefore seems necessary.

CLAUSE 11. No explanation is given of this new Clause. It appears, however, to be merely formal, and no comment seems required.

TYPED CLAUSE 12. See pages 12 and 13 of Memo. At present squatters are allowed to bring with them stock ~~of~~ in such numbers and on such conditions as ~~may~~ be agreed with the occupier, subject to the approval of a magistrate. The Governor says that there is <sup>at present</sup> no adequate means of preventing an accumulation of stock in excess of the agreed number, and he therefore proposes to repeal Clause 10 of the principle Ordinance, substituting a more elaborate Clause. This will make it necessary for a squatter to obtain the written consent of the owner and magistrate to bring stock with him, and the written consent must specify the number of stock to be brought. This much does not seem to me to be open to objection; but the new Clause provides also that the total number of such stock shall not exceed "5 head of cattle or --- head of stock in all." This seems to be rather unnecessary. Recently representations were received regarding the effect of the Fencing Ordinance on native squatters and these representations alleged that the European milk and dairy farmers objected to squatters having many cattle, as they competed with them. I would suggest that the Governor should be informed that sub-Section 7 of the proposed new Section 10 should be omitted.

CLAUSE 14. is a new Clause corresponding to Section 60 of

*Handwritten notes:*  
It is to meet cases (with  
ground) of failure  
or refusal to provide  
a reg. H.O. cell

Two other points :-

(a) Why rule abt  
the Contract native  
under S. 3(c)  
the case (copy  
stock under the  
old S 10(1) ?

(b) in subsection 7  
Section 10(1) of the  
Principal Ordinance  
this be ~~with~~ sub  
section (1) of  
this section *J.M.V.*

Shakespeare blank  
in draft D. 11.  
I don't think it is  
at all in the  
sense *J.M.V.*  
*(what was)*

An explanation  
might be  
asked for but it  
is being too far  
suggested deletion  
*J.M.V.*  
cell H.O.



all J.M.P.  
11/10  
III

the Employment of Natives Ordinance, providing that  
no charge shall be made for fees of court, etc.  
No comment.

OTHER NEW POINTS.

Sections 14 and 15 of the <sup>main</sup> ~~Amending~~ Ordinance  
contain the ~~penal~~ sanction, and it may be thought  
desirable that an opportunity should be taken to  
amend these.

General idea can be  
made to the  
looking up with  
what is said  
on the points. II  
all

*E. Robinson*

2.8.30

CONFIDENTIAL

C. O. 11th Meeting (1930).

COLONIAL OFFICE CONFERENCE, 1930.

STENOGRAPHIC NOTES OF THE ELEVENTH MEETING, HELD AT THE FOREIGN OFFICE ON THE 10th JULY, 1930, AT 4.15 p.m.

PRESENT :—Dr. T. DRUMMOND SHIELDS, M.C., M.P., Parliamentary Under-Secretary of State for the Colonies (*in the Chair*).

Brigadier-General Sir S. H. WILSON, G.C.M.G., K.C.B., K.B.E., Permanent Under-Secretary of State for the Colonies.

Mr. D. J. JARDINE, O.B.E., Chief Secretary, Tanganyika Territory.

Mr. A. DE V. WADE, Principal Assistant, Native Affairs Department, Kenya.

Mr. J. T. GILBERT, M.B.E., Assistant Chief Secretary, Zanzibar.

Sir W. F. GOWERS, K.C.M.G., Governor, Uganda.

Lt.-Col. W. B. DAVIDSON-HOUSTON, C.M.G., Chief Secretary, Nyasaland.

Sir J. C. MAXWELL, K.C.M.G., K.B.E., Governor, Northern Rhodesia.

Mr. T. MILLARD, Colonial Treasurer, British Guiana.

Sir CHARLES ORR, K.C.M.G., Governor, Bahamas.

Major Sir J. A. BURDON, K.B.E., C.M.G., Governor, British Honduras.

Lt.-Col. T. R. ST. JOHNSTON, C.M.G., Governor, Leeward Islands.

Sir W. C. F. ROBERTSON, K.C.M.G., Governor, Barbados.

Sir R. E. STUBBS, G.C.M.G., Governor, Jamaica.

Sir W. C. BOTTOMLEY, K.C.M.G., C.B., O.B.E., Assistant Under-Secretary of State.

Sir Henry LAMBERT, K.C.M.G., C.B., Senior Crown Agent for the Colonies.

Sir F. M. BADDELEY, K.B.E., C.M.G., Chief Secretary, Nigeria.

Sir A. R. SLATER, K.C.M.G., C.B.E., Governor, Gold Coast.

Brigadier-General Sir J. A. BYRNE, K.C.M.G., K.B.E., C.B., Governor, Sierra Leone.

Lt.-Col. Sir G. STEWART SYMES, K.B.E., C.M.G., D.S.O., Resident, Aden.

Mr. H. C. LUKE, C.M.G., Chief Secretary, Palestine.

Lt.-Col. A. E. BEATTIE, C.B.E., M.C., Colonial Secretary, Gibraltar.

Mr. A. W. SEYMOUR, Colonial Secretary, Fiji, Fiji and Western Pacific.

Mr. G. HEMMANT, C.M.G., Under-Secretary, Straits Settlements.

Sir H. C. GOLLAN, Kt., C.B.E., K.C., Retiring Chief Justice, Hong Kong.

Sir H. J. READ, K.C.M.G., C.B., Retired Governor, Mauritius.

Sir H. J. STANLEY, G.C.M.G., Governor, Ceylon.

Observer.

North Borneo . . . Mr. D. R. MAXWELL.

The following were also present :—

Sir JOHN CAMPBELL, C.S.I., O.B.E., Financial Adviser to the Secretary of State.

Mr. H. R. PALMER, C.M.G., Governor-Designate, The Gambia.

Mr. J. J. PASKIN, M.C.

Mr. C. BECKETT PLATT (*Publicity Officer*).

Mr. A. BEVIR

Mr. J. M. MARTIN

} *Joint Secretaries.*

DR. DRUMMOND SHIELDS: Gentlemen, I understand that this is the last Session before the conclusion of the Conference next Tuesday. You were kind enough to arrange to come this afternoon to consider some of the subjects which have been unavoidably left over. I know you have been working very hard, and that you are very tired, and I do not intend, therefore, to bring these subjects before you this afternoon in any formal way. Strictly speaking, they should be taken subject by subject. There are three or four of them, but I do not propose to have any Resolutions in connection with them. If you do not mind, I will just run over the subjects shortly and bring to your notice the points which I think are of importance and which I would like you to consider. Then we might have a little discussion and I would welcome any expression of your views. As I indicated in my opening remarks the other day, the subjects for discussion this afternoon are of special interest to myself and to the present Government. They are also subjects which I am sure you all recognise are of great importance to yourselves. Whatever view we may take of them, we cannot at any rate ignore them, or deny the fact that they are subjects which we have to face, and which will be increasingly before you. During the time I have been in my present position, I have had occasion, as you can understand, to learn a good deal about the legislative arrangements in the various Colonies, and I have been struck with the absence of adequate labour and social legislation. I have also been impressed by the obsolete character of some of the legislation that is in existence. I hope the members from the West Indies will pardon me if I say that I have been specially impressed with the obsolete character of some of the laws in the West Indies. I believe that many of the provisions are not actually now put into force; at least I hope they are not; but I do think there is a strong case for up-to-date legislation in the West Indies as in other parts of the Empire. Certain of the "Master and Servant" ordinances, for instance, which obtain in many Colonies are much out of date. One thing I have noticed especially is the penalties, sometimes severe penalties, for a breach of contract, which in this country and in most other countries is only a civil and not a criminal offence. That, perhaps, is not quite so bad where you have a definite and clear written contract. But in many of these "Master and Servant" ordinances, there is a penalty for a breach of a verbal contract, where there is nothing in writing at all. That, it seems to me, is open to serious abuse if and when it comes to be a question of the relative truth or accuracy of the statements of a master, and of, perhaps, a humble and illiterate servant. I think that is one of the things that should be done away with. Some of the sections in regard to the employment of children are also, I think, bad. The Governors of the West Indies have these facts before them because a despatch was sent out in May of this year, and I am sure that they will be giving the subject their attention.

You have before you in the Conference a memorandum which calls attention to various International Conventions entered into by British Governments dealing with some of to-day's subjects. I am not going to go into them, because your attention has been called to them in despatches. I would like, however, to say a word on workmen's compensation, about which you may be hearing soon. Ordinances for workmen's compensation are in existence, I am glad to say, in a number of Colonies—in Barbados, Bermuda, British Guiana, Cyprus, the Federated Malay States, Gibraltar, Grenada, Jamaica, Palestine, St. Vincent, Somaliland, and Trinidad, and the subject is also under consideration in Mauritius. I do hope that, where it is not in being, efforts will be made to introduce it and also to improve the legislation which is already in existence. I recognise that there are special difficulties in the Colonies. One is where you have an agricultural population, mainly of small-holders or peasants, or people employing only a few persons and with not much money behind them. It is a little difficult in that case to apply this legislation. Another one is the question of insurance. We have been going into that to see if we can get insurance offices to undertake on satisfactory terms this kind of insurance for the Colonies and we shall, I hope, be addressing you in that connection before very long and indicating what arrangements we have been able to make.

Then there is Factory legislation. I know that in some Colonies there are few if any factories. Yet it is surprising how often even in purely agricultural Colonies there are little factories and workshops—of various kinds. And in some of the Colonies, as you know, factory legislation is either non-existent or it is of

a very skeleton nature. I would wish, in our British Colonies, where there are factories or people working under collective conditions, that at least the conditions of work are fair, and enable them to work with some pleasure and comfort and without danger to their life or their health.

Then, wages. Wages are a very difficult subject, of course. Here again I am not very happy about conditions in the West Indies. I fancy that the West Indies have always suffered from a low wage policy. The Blue Book for Jamaica for 1928 gives the agricultural wages as 18s. per week of 50 hours and the manufacturing workers' wages as 26s. per week of 54 hours. In Barbados the agricultural workers earn 1s. 3d. to 2s. per day for 6 days of 9 hours and the manufacturing workers 3s. to 5s. per day for the same length of week. Some reference was made the other day, I think by the Governor of Jamaica, to the fact that the people in the West Indies sometimes only work four and a half days a week, and he said that they were not very fond of hard work. I do believe that a part explanation of that is the low wages. If you have high wages you have more hope, more possibility of saving, a higher standard of life aimed at, and more efficiency. I do not claim at all to be an authority on the West Indies, but it is a remarkable thing, if one looks at comparatively recent history, to see the extraordinary exodus of workers there has been from these islands. There is no doubt that a large part of the successful Cuban sugar industry was built up by Jamaican labour. In Panama, in 1923, there was an enormous number of people from the West Indies working there, and there are regular emigrations to plantations in San Domingo, Costa Rica, and various other places. They go to these places for higher wages. Is it not just possible that we are losing the best, the most energetic and industrious of the workers, who go off where conditions are better, and that those who remain behind are the less energetic, are those who are prepared to vegetate on a small wage? I know the great difficulty of dealing with wages and that a Legislature or a Government has not a great deal of power, but at any rate it is very important that the desirability of decent wages should be kept in view. Anybody who has travelled in Canada or the United States will agree that a great many of the hotel and railway attendants are West Indians. They think a great deal of them in Canada and regard them as hard working and efficient. It is not likely that they have changed their character so completely by going from their own country. The same applies, to some extent, to Malaya and Ceylon. The wages there are very low, and one thing I do feel a little sensitive about is that in Malaya and Ceylon—in the past—efforts to raise wages and create some kind of labour code have been largely due to pressure from outside, with reference to the conditions of Indian coolie labour. I would like to see the indigenous people of those places better catered for owing to the efforts of our own Governments and not owing to pressure from outside, and I am glad that steps are now being taken in that direction. I recognise that, in these more highly developed colonies, where there are Legislative Councils, you have a difficulty. Many of the members of these Legislative Councils, although they are people of the country, do not necessarily show a great and loving interest in the humbler brethren of their own race. As a matter of fact, many of them are indifferent to or even oppose measures which are designed to help the poorer people.

In that connection I think that one of the best methods to ensure a better state of things is a wider franchise. Some of the West Indian Colonies badly need a new franchise. Apparently the early settlers in the West Indies, when they went out from this country two hundred years ago or more, took the whole British Constitution with them, House of Lords and everything else. They settled down there with the restricted franchise of that time, and, in some cases apparently, there has been little change in the franchise since. Apart from the effect of the pressure of the humbler voters for better conditions, there is another important effect. A member of a Legislature concerns himself mainly with those who are his electors; and to those who have no votes, who cannot influence his political fortunes in any way, he is often, though he should not be comparatively indifferent. One of the best ways therefore in which those can help who are anxious to see a better state of things, is to see that the basis of the franchise is broadened and that the humblest worker has a political weapon which he may use for his own economic salvation. I often get, and especially lately I have been getting, a number of questions in the House about the franchise in Colonies in the West Indian area. There will be undoubtedly increasing restlessness and

pressure in these places where there are elected Councils and where the franchise is on the narrow basis that it is to-day. I commend, therefore, a broad franchise as one of the best methods of improving the condition of the common people. Of course, I know that the extension of the franchise itself is a difficulty. Legislative Councillors may not be keen on it, but I would like it to be kept in mind and pushed whenever and wherever possible.

Trade Unions, I admit, would be premature in many of our Colonies, but in other cases there are beginnings. I would like Governors not to be too afraid of organisations of workers or indeed of organisations of any kind. My own view is that, whatever one's political opinions may be, one must recognise throughout the world to-day an increasing restlessness and a discontent with conditions that used to be endured with comparative equanimity. That restlessness will increase, and I believe it is the wisest policy not to oppose but to guide such restlessness, wherever it exists, into a constitutional channel. It is important in running any country or colony to see that there are adequate safety valves. All such organisations—economic or political—act as safety valves. It is also very much better for a Government (because Governments have sometimes to intervene) to deal with organised bodies rather than with odd individuals who are irresponsible and who yet can make a lot of trouble.

We of the Labour Party hold every two or three years what is called the Dominion and Colonial Labour Conference. That is to be held next week, and I have to see representatives from the Colonies who make strong complaints about the economic condition of things there. I would like to be able to say that these matters were being considered sympathetically, and that there was no fear among Governors of Trade Unions or other bodies, so long as these organisations were conducted on a proper basis, but, rather, that they would welcome their establishment.

In the less developed countries, Co-operative Societies, especially among agricultural peoples, for inspecting and selling crops and buying agricultural implements and materials, are good. These, as a matter of fact, have already been very successful in a number of colonies.

There are many other desirable measures which I might have spoken of, such as the minimum wage, old age pensions, and health insurance. I know most of you will consider you are far away from all these things, but the world is going very much faster in these days; it is much smaller; communications are greatly improved, and people are getting to know a great deal more about what is going on in the world than they did a few years ago. I am afraid, therefore, you will all have sooner or later to face up to these questions and I would like you to have them in mind and to try and face them as sympathetically as possible. That is all I will say on labour legislation.

The next subject is native taxation. I need only, I think, call your attention to a few points in regard to this: one is the part of the White Paper which has been recently issued which refers to native taxation. It is said, as you know, and the exact measure of its truth I cannot estimate, that in many parts of our African colonies the taxation imposed obliges the native to go out from his own holding or from his tribal lands and to work for some outside employer in order to pay his tax. None of us can have any objection to a native going out to work for an employer, but we do not want that to be a compulsion because of the amount or nature of the tax. There is also another difficulty, that sometimes there is no local market where he can sell his crop, and arrangements for marketing the native crops are bound to be a great help in enabling taxation to be paid. In cases we know of in certain of our African colonies thousands of our people have to go into other colonies or to other territories not belonging to us in order to get money not only to pay taxes but in order to live at all. Now I sympathise very much with the financial difficulties of the African colonies; they are very great and there are temptations, because native taxation forms a very easy and direct way of raising large revenue. I am sure that the principle will be kept in mind that the taxation should not be such as cannot be paid by the native working on his own or on his tribal land if he does not care to go outside.

I would also like anyone speaking on this subject to give their views about different rates of taxation for adjacent tribes, or even for different sections of one tribe. That appears to me, from the distance, to be a cause of possible heart-burning and grievance which, I would think, should be avoided. It is sometimes

justified to me, when I ask about it, on the ground that it is imposed on the basis of ability to pay, but it may happen, where there is European taxation in the same area, that it is based on a flat rate and not on ability to pay. I think that if ability to pay is the standard in one case it ought to be in the other.

Then there are the difficulties about the taxation of native women, about the wives, and about the huts. I should be glad to have the opinion of Governors as to the merits of the method of hut and poll tax. I was interested to hear Sir Ransford Slater say the other day that there was no hut or poll tax in the Gold Coast, and I was rather pleased about that. Then, however, he went on to say that he was getting very short of money, and he was considering what might be done, though perhaps not along that line. It would be interesting to know if there is any real alternative to the hut and poll tax. I do not know whether there is or not; but if there were I should be glad to hear of it.

The last subject is the conditions of women and children in the Colonies. We have a number of women members in the House now, and even among the male members there is an increasing interest in this subject, while a great many outside bodies in this country send in resolutions and show a very great interest in the conditions of the women and children in the Colonies. You will remember that the Secretary of State, I think in March last, sent out a despatch on this subject, asking Governors to look into the various questions which he put and to send home word as to how things were, and to make suggestions for improvement. You will have noticed that in connection with various rites which take place in many parts of Africa there has been a good deal of criticism. One night in the House of Commons the matter was raised by the Duchess of Atholl and Mr. Ormsby Gore and others and there was quite an animated discussion about it. I know the great difficulties of the subject, and the great danger of doing anything rashly—anything which would be misunderstood and which would appear to be an interference with what is a sacred and immemorial custom from the tribal point of view; but a great deal can be done by education and by instructing the people in hygiene and in the dangers of some of these practices, both immediate dangers and ultimate dangers, when the stage of childbearing is reached. We have had some very interesting replies to this despatch already. We had one from Sierra Leone, which says that "There is no evidence that initiation rites are doing much harm. There is need for more education, and the question of female education is being actively taken up. Progress must come through the spread of enlightenment, and hasty action is to be deprecated." From Somaliland, "The natives are all Mohammedans, and circumcision, while practised, has no tribal significance. The status of women is scarcely distinguished from slavery. There is need for female education, which is now almost non-existent." From Northern Rhodesia, "Initiation ceremonies are not harmful. Women are not slaves, but have large influence and a comparatively easy life." So that you see Northern Rhodesia is rather a happy place, apparently, for the women—certainly better than Somaliland. From Tanganyika, "The Government has already a fine record in the promotion of native welfare. Female circumcision is practised only to a limited extent, and has been officially discouraged since 1927. Much of the matriarchal system still exists, and women are emphatically not slaves. The dowry paid by the husband is not purchase money, but a pledge of good conduct. Much remains to be done, and it will best be done by the gradual spread of Christianity. That is the gist of some of the replies we have had, but we are expecting more and we will read them with very great interest, and be able to form an idea of the lines on which we should proceed.

There are many other questions concerning women and children apart from these of initiation ceremonies, and one of these is the training of native personnel as subordinate medical workers, and the training of midwives. That latter is a very important work, to train women so that they may have some general idea, at any rate, of asepsis and of hygiene. Some effort must be made to lower the figures of maternal mortality and also of infant mortality, some of which are high, though I am happy to say that wonderful progress has been made, to which I would wish to pay tribute. Medical officers and Governments have been doing splendid work and I wish the good work to go on increasingly.

I do not want to dwell too much on these matters, although they are of very great interest to me. I know that—as I have said—you all have very



efficient medical staffs in your Colonies, and that these matters are brought to your notice. I am afraid, however, that some of you have a difficulty at times in getting your Legislative Councils to realise the significance and importance of Public Health work.

I am afraid I have talked a long time, and I am very grateful to you for the attention you have given. I hope you will welcome my bringing these subjects before you, because you feel they are of importance. As I say, this is quite an informal sitting, and we are not going to have any Resolutions. I would like to hear the views of members, because I have promised, in answer to a number of questions from all sides of the House, that I would bring some of these matters to the notice of the Conference. I am very glad to say that there has been a considerable interest in this Conference in the House of Commons, and I have had to answer a good many questions about it. Many of the questions took the form, "Would I bring so and so before the Colonial Conference?" and I was able to say, in most cases, that the subject would come under one of the heads. The heads which I have just gone over cover a good many of the points which I was asked to bring to your notice. I therefore hope you will agree that I have justification for bringing them before you, and now I will be very glad to hear any comments which you care to make.

Sir EDWARD STUBBS: I am sure we have listened with great interest to the Chairman's address, and I am sure, also, that we all fully agree with him as to the importance of the subjects with which he has dealt.

With regard to the West Indies, to which the Chairman referred at the beginning, I should deprecate paying too much attention to figures of wages in Jamaica, the fact being that Jamaica is not an industrial country, and in a great many cases the people who are receiving those wages are small-holders who have their own plots and who only turn out and do a certain amount of work when they feel inclined. Dr. Drummond Shiels spoke of people working four and a half days a week. That is a very rare thing; two and a half is nearer the average. The fact of the matter is that the Jamaican works when he wants to get money to pay taxes or to pay a fine for being drunk, and on any other occasion he refrains from working except to cultivate his own ground, which he does very well. The attitude of the Jamaican towards wages is such that there is no use raising wages if you want the man to do any more work, because if you raise the wage from 2s. to 4s. a day it means he will work for one day instead of two. The average Jamaican does not think that work is a thing to be proud of; he avoids it, if possible. Therefore, if he is forced to work he goes to Cuba or Panama or some other place where he can get high wages—not with the idea of staying there as a rule, but with the idea of making enough money to purchase a plot of land in Jamaica which he can cultivate for himself. The attitude of mind is illustrated by an instance which I heard about the other day. One of the people engaged in loading ships told me that he had great difficulty in providing himself with the necessary number of small coins to pay for the loading of the coal by basket. I think they are paid 1d. a basket. I said, "Why do not you do what is done in every other part of the world, give the men tallies for each basket as they come in, and pay them off at the end of the day?" He said, "If I did that, I could not get anyone to work for me at all. You have to pay the men a penny as they bring the baskets in, because when they have made 6d. they go away and gamble in a corner of the wharf until they have made 18d., which is as much as they want, and if they lose the money they come back and carry more coal until they have another stake to put into the pool." That, I think, is the general attitude of the Jamaican.

Dr. DRUMMOND SHIELS: Are they all like that?

Sir EDWARD STUBBS: I think so—all that I know.

There is no danger of the interests of the working classes being ignored. The franchise is very low indeed—10s. a year in taxes gives a man a vote. Most of the Elected Members are men of what would be the working-classes if the classes worked, and their seats in Council depend on the interests of the small man. I can assure you that the Legislative Council of Jamaica is not unsympathetic with any possible method of improving the situation of the lower classes. The Trade Union movement has not caught on, and I think it will not catch because the people will not pay the dues that any Union must require, but we have recently

had good success in co-operative movements which have really transformed the face of the country, and there are a great number of Friendly Societies, Burial Societies, and so on, which I have done my best to encourage, even to the extent of laying foundation stones for their meeting houses.

The questions of old age pensions and of insurance are matters which I have been worrying over for years, but for which I have failed to find any proper solution up to the present. The old age pension is much complicated by the fact that people as a rule, as I said, are not employees, since for the greater part of their time they are working for themselves, occasionally doing work for someone else when they cannot avoid it. The difficulty of workmen's compensation arises from the fact that the local Insurance Companies will not touch anything of that kind and the employer as a rule has not enough money to put up an insurance scheme of his own, and he cannot risk having heavy claims made upon him. The other matters which were dealt with by the Chairman do not affect us as we have passed beyond the stage of hut or poll taxes. I can only say in conclusion that I am certain you can find no body of men in the Empire more sympathetic to the poorer classes than the Legislature of Jamaica.

Sir HERBERT STANLEY: Like Sir Edward Stubbs I have only a few minutes before having to leave. I should like to occupy the few moments by giving you an assurance that as far as the Government of Ceylon is concerned there is no suspicion of or opposition to the Trade Union movement. We welcome the Trade Union movement as we should any movement likely to improve the lot of the poorer classes, the under-dogs of the community. We did in fact rather more than a year ago prepare a number of Bills dealing with various labour matters, the formation of conciliation boards, a minimum wage and a good deal of other up-to-date labour legislation, and we sent them to the Colonial Office at the end of April, 1929. By the end of April, 1930, we had not succeeded in getting any answer from the Colonial Office. I do not know whether the drafts are thought objectionable, possibly that may be so, but if there was any serious objection we had hoped that the authorities here would indicate in what respect they thought they should be amended or reconsidered, and in that case certainly further consideration would very readily have been given in Colombo. However that may have been, the cause of the delay which has occurred in introducing legislation in Ceylon is not entirely due to the Government of Ceylon. I say that, in case attacks should be made on my Government for alleged negligence or callousness in these matters.

Workmen's compensation is a matter we have also taken up at our own instance, without pressure from outside, because we feel it is a very important and necessary thing. It is attended with great difficulty. We have discussed it on many occasions in my Executive Council, and some time before I left I gave instructions to the legal Department to draft a provisional Bill which we could look at and see what exactly it would amount to and what machinery would be necessary to carry it out and whether it contained proposals which it would not be possible to enforce. We had not yet gone into the question of insurance that is likely to be involved before a system of workmen's compensation on any large scale can be introduced, but we have every intention of dealing with such matters as soon as practical methods can be discovered. We may have to start in a small way by limiting the legislation to certain trades, and by excluding the large agricultural industry as being rather more than we are able to tackle with our present resources, but at any rate the will to deal with these matters is there and I hope we shall not encounter undue difficulty in passing the legislation through our Legislative Council.

I do not propose to say anything about native taxation. I was much interested in the question when I was serving in Africa, but as I am not in Africa now I had better leave that to those Governors who are concerned with the African natives. Generally speaking, I should like the authorities at the Colonial Office to know that we in the Colonies are very keenly alive to the necessity of doing what we can for the amelioration of the lot of the working classes, and that there will be no undue opposition proceeding from my Government if anything like a practical scheme can be devised. There are difficulties in the more primitive communities greater than those in more highly developed communities, but with goodwill on both sides we hope that they will be found capable of solution.

Dr. DRUMMOND SHIELDS: May I say that Sir Herbert is going in a moment and I would like to say a word in reply? I am well aware that since Sir Herbert went to Ceylon he has taken a great interest in these matters and has brought about a great improvement, which certainly was required. He would agree with that, I am sure. He has also called attention to the fact that certain legislation which he had drafted has been hung up in the Colonial Office. I am very sorry for that; there were reasons for it, but I think he will agree that when he came home and drew my attention to it, I at once took the matter up, and I can assure him there will not be very long for him to wait now. I am grateful for all he has done, and I fully understand the will and the sympathy that he has brought to the consideration of these matters. I hope he will accept my apology on behalf of the Colonial Office, which I hope will improve in future—though as a matter of fact, the blame lies elsewhere—and that he will not have occasion to say any such things again.

Sir HERBERT STANLEY: I was not asking for an apology, but I wished to make it clear that if criticisms were made of the Government of Ceylon we were not entirely to blame.

Dr. DRUMMOND SHIELDS: I think you had a grievance, I quite agree. I appreciate what is now being proposed.

Colonel ST. JOHNSTON: Mr. Chairman, I only want to say half a dozen words with reference to the final point of those items of which you spoke in your address. I may say at once that as far as the other matters to which you referred relate to my part of the world I am in agreement in principle with most of them, but we out there, as I think Sir Edward Stubbs said, have progressed beyond such matters as hut taxes, and I do not think we have yet advanced to the stage of the minimum wage or old age pension, though that will be welcomed in its due time. But the point I want to refer to is the last item you spoke of, the subordinate medical department and nursing staff. We have heard with pleasure a good deal at this Conference about the unification of services, and I do not know how much that can be expedited, though we have got a good bit on the way in the direction of the unification of the agricultural service; but the medical service is, to my mind, the most important thing, and I do wish it had progressed further at this Conference. I feel that something can be done even now in regional areas, such as has already been done in West Africa. For instance, unification should be possible in the West Indies, not only with regard to the medical service of the qualified doctors but with regard to the subordinate sanitary medical service and the nursing staff, and I would like to draw the attention of the Colonial Office to this matter and to ask whether that question could not be taken up at an early date.

Sir FRANK BADDELEY: Sir, I would like to refer to one remark which you made in regard to native taxation. You expressed the hope that as far as possible it should not be necessary for the native to have to leave his own homestead in order to find work wherewith to pay his taxes. Speaking for Nigeria, that is not the case; they do not leave their country. We do not encourage them to come into the towns. We much prefer that they should stay where their ancestors have lived and pay their taxes out of their labour in their own country. It is inevitable that some do leave for the towns and become domestic servants of Europeans, take work on the railways, become policemen, and whatnot. That is inevitable, but we are much opposed to a flow from the country to the towns, and, as regards the incidence of taxation, that of course varies in different parts of the country, whether it be poll tax or lump sum assessment, but I can assure you that the assessment duties of the administrative officers are probably the most important they have. These officers are constantly going round assessing and re-assessing and they give the greatest possible care to it and their results are all carefully scrutinised by their superior officers before they come to headquarters to be approved by the Governor, and the very fact that the rates vary and that the assessments are not uniform shows that every attention is paid to local variations. With regard to the other points mentioned in your remarks, some of them you suggest are not quite ready to be adopted by a country like Nigeria, but I assure you where they are practicable and feasible Nigeria does and always will give them the most sympathetic consideration.

Sir RANSFORD SLATER: I should like to add a word to what Sir Frank Baddeley has said about native taxation. You have referred, Sir, to the remarks I made at a previous Session about there being no hut tax and no poll tax in the Gold Coast and about the Gold Coast Government considering means by which it can raise more revenue. May I remind you, Sir, that there is very little municipal taxation in a country like West Africa? We have four municipalities in the Gold Coast, but, outside those places, there is no municipal taxation at all, and all that the Gold Coast Government is aiming at now is to induce the native authorities to raise money for purely local needs. In the past they have always looked to the Central Government for everything, even for purely parochial needs. The Gold Coast Government being in the past a comparatively rich Government has been able to meet those needs, but we feel that this is wrong in principle, and now that our finances are a great deal less elastic than they were, we think the time is opportune to try and persuade the native authorities to raise local levies for the financing of purely local needs.

I think you also mentioned, Sir, that there was a danger in some places of natives being compelled to leave their own country and go to other Colonies in order to get money to pay their taxes. That is by no means the case on the Gold Coast. In fact it is just the other way round. A great many natives come into the Gold Coast from French Colonies in order to earn money to pay their French taxation. There is practically no emigration from the Gold Coast to the neighbouring Colonies.

There are only two other points to which I would wish to refer. First, the question of the franchise. It must be remembered that the degree of illiteracy in the West African Colonies is still very large. I think the percentage of literates in the Gold Coast does not exceed 4 per cent. and therefore the question of any extension of the franchise is one which must be very carefully explored.

As regards Trade Unions, I personally have no objection whatever to their formation. I prefer to deal with organised representatives rather than with irresponsible individuals. Trade Unions of a minor and modest character are already beginning to spring up in the Gold Coast. There is a Carpenters' Union, a Motor Drivers' Union, and at one time we even had a Cooks' Union! The first representation of the Cooks' Union was to appeal to the Governor to lay down definite wages for all cooks in Accra, and because I, as Colonial Secretary at the time, opposed that, I was unable for a very long time to get a cook! That is rather an extreme case, but I personally have no objection to the formation of these Unions. Their articles of association are often very quaintly drawn, but I find it more satisfactory to deal with an organised body than with an individual.

Sir WILLIAM ROBERTSON: I should like, Sir, to thank you in the first instance for your address. I am sure I am speaking on behalf of every other member who has listened to it when I say how much we have appreciated what you have said. You have mentioned the question of wages in the West Indies. Much of what Sir Edward Stubbs told us applies also to Barbados. The rate of wages to which you referred in Barbados was 1s. 3d. per day. That was the wage of an agricultural labourer, but it is higher now. In other classes the wages are often much higher, in some cases as high as two or three dollars a day. In regard to wages the same difficulties exist as exist in other parts of the West Indies and as Sir Edward Stubbs has described as existing in Jamaica, that an increase in pay is always followed by a diminution in hours of work. My own view is that while in time probably a higher rate of wage will produce the effect of better work, the best means of effecting this is to create in the people a desire for a better life by better amenities of living, by providing them with more suitable and hygienic houses and by inspiring them with the thought that they can lead a better life and get greater enjoyment out of life.

There are no Trade Unions and I think in Barbados at present one obstacle to these is that no man would trust his next-door neighbour. But we have started co-operative societies and I trust they will succeed and will lead eventually to some form of Trade Unionism. There are numerous, very numerous, Friendly Societies. The amount of money invested in these each year—I have not got the figures by me—is extremely large, and a very large proportion of it, I regret to say, is dispersed at Christmas each year. The question of workmen's compensation



Dr. DRUMMOND SHIELDS: May I say that Sir Herbert is going in a moment and I would like to say a word in reply? I am well aware that since Sir Herbert went to Ceylon he has taken a great interest in these matters and has brought about a great improvement, which certainly was required. He would agree with that, I am sure. He has also called attention to the fact that certain legislation which he had drafted has been hung up in the Colonial Office. I am very sorry for that; there were reasons for it, but I think he will agree that when he came home and drew my attention to it, I at once took the matter up, and I can assure him there will not be very long for him to wait now. I am grateful for all he has done, and I fully understand the will and the sympathy that he has brought to the consideration of these matters. I hope he will accept my apology on behalf of the Colonial Office, which I hope will improve in future—though as a matter of fact, the blame lies elsewhere—and that he will not have occasion to say any such things again.

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has been before us on more than one occasion and has hitherto failed to get a hearing. I hope that it will in time, but if it ever does come it will be linked up with some form of insurance, as I do not think the Legislature there would consent to any law which would provide for liability resting on the employer. They would consider that in any question of compensation or insurance there should be a contribution by the employee as well as by the employers.

Mr. HEMMANT: Sir, you referred to the low wages in Malaya. I think it should be remembered that, though the wages may seem low, the cost of living for a labourer is also low. We rely in Malaya entirely on foreign labour, either from China or India, and I think the fact that the Chinese flock to us in enormous numbers must show that they themselves do not look upon the wages as particularly low. There is no question that Malaya is full of wealthy Chinese who started as labourers. To take an example, an ordinary household servant gets say £3 10s 0d a month, of which he probably pays 14s. to the cook for his food; that is to say, he has nearly £3 a month entirely for himself. £3 a month for people in his position is quite a considerable sum in a country where small capital is always valuable, and it is a common thing to find a household servant who has worked for four or five years with a share in a shop in the town. The ordinary labourer can do better if he wishes to do so. On the other side, we have the labourers from India who are looked after by an extraordinarily efficient, sometimes we think rather interfering, Government.

Mr. SEYMOUR: Mr. Chairman and Gentlemen, with regard to the Fiji population and the populations of the Western Pacific, may I say that it is difficult to introduce modern labour legislation in these parts without interfering with the present Pacific social fabric. This would in fact necessitate a dissolution of the communal system, which is the structure of Fijian Society, and the similar tribal organisation of the territories of the Western Pacific. The institution of private property is a new thing amongst these people and the earnings of the communal body go into a common fund. The acquisition of private property by a member of the community leads to extensive borrowing by his neighbours which discourages every sort of thrift and makes any organisation which is not based on the authority of the chief practically impossible at present. The steps towards the ends in view will have to be very gradual and much will have to be done by education of the individual, but it has been held by all competent authorities in the Pacific that any artificial steps to dissolve the communal system would have to be taken with great caution, that until an individualistic spirit has grown up it is no good to try to enforce schemes of organisation on them which they have not begun to understand. The Fijian Government and the Governments of the Western Pacific have taken great trouble to put a ring fence round these communities and keep out outside influences. The time is possibly coming when that policy will have to be revised.

As to the matter of the provision of medical services, the Fijian and the Western Pacific Governments have united to form a central medical school in Suva, from which we hope for great results and which already is doing good work in all the Melanesian and Polynesian native medical practitioners who have qualified in Suva have already achieved considerable success in Fiji and in the neighbouring territories and it is remarkable that even Fijians of this class, who have not been found wholly suitable in Fiji, frequently acquire more responsibility and self-reliance, and become more efficient when taken out of their own country and set to work in other islands of the Pacific.

Dr. DRUMMOND SHIELS: Gentlemen, I am very grateful to you for the very kindly way in which you have received my remarks. I was a little afraid that you might think I was trying to lecture you, but I see from the way you have taken what I have said that you have appreciated the spirit in which I spoke.

Sir Edward Stubbs has gone, unfortunately. He has now come down to two and a half days as the working week in his Colony, which makes Jamaica a sort of Paradise. It is very gratifying. I am, however, not altogether convinced. I do not know why so many people leave Jamaica to go and work elsewhere if they are so very happy there. I recognise that, as regards franchise, Jamaica is well in advance of many places, and I am very pleased that that is so. The

Governor said there were no trade unions, or practically none, but that there were Friendly Societies. I am glad he has shown his sympathy with the ideals of the Friendly Societies by laying a good many foundation stones for their buildings. I am also pleased indeed to hear that he has been considering the questions of old age pensions and health insurance. I know there are very great difficulties, at any rate with regard to health insurance, but with old age pensions I think there might soon be a start made. On the whole, I was grateful for the line Sir Edward took.

I have already referred to Sir Herbert Stanley's remarks. Of course, I do know Ceylon much better than I know other colonies and I understand what the position is there. I look forward to great developments in Ceylon.

Colonel St. Johnston spoke about the medical services and, although I was not here yesterday when the reports were taken, I understand that the Medical Report had some reference to the Colonial Development Fund. I had the privilege of presiding over a Committee which was considering how the money which is likely to be allocated for public health services from that Fund should be spent. I hope, if you have not had opportunity before, you will at some time or other read the memorandum giving the Report of that Committee. This will show you that we made a point of the provision of specialist medical officers, especially in the form of teams of experts on nutrition, and on malaria, hook-worm, and other conditions. I may say in passing that I regard nutrition as important because many of the diseases which give us trouble in Africa and elsewhere are due to malnutrition and under-nutrition, and expert guidance in dietetics will be very useful. Sanitary experts and if necessary sanitary engineering experts will—we hope—be at the command of the colony which wishes to have them. These experts will be of great assistance to a colony, not only in any actual proposals which they themselves may originate, but in the backing which they may be able to give to the Director of Medical and Sanitary Services in regard to proposals which he may have already put forward. You will often find that the Director of Medical and Sanitary Services has some very excellent schemes in mind, but there may be a shortage of money, and sometimes Legislative Councils, where there are these, are not sufficiently impressed by the importance of what he puts forward. With the increased authority of a body like this backing up the local medical officer's views, it might enable things to be done where otherwise there might be less progress. Apart from this we hope their actual original contributions will be of great benefit. There are various other proposals, such as assisting in the training of these medical assistants of which I have already spoken.

I was very glad to hear what Sir Frank Baddeley said about Nigeria and I think it is one of the good points about this discussion that these little speeches will all be recorded and will give a good deal of information to the readers. I agree that the assessment by the administrative officers is very important and I think it is obviously well done because there is generally very little trouble. We have not the report yet as to the recent troubles in Nigeria which caused great anxiety here. There was some suggestion that taxation was at least an element in the disturbances, but we do not know how far that is true. Undoubtedly the introduction of taxation among a primitive people is a difficult process, because, somehow, taxation is a thing which people do not take to naturally and even after a great many generations or a good many hundreds of years, as in this country, there are some people who do not take taxation with that gladness and enthusiasm which one might expect after all this time.

Sir Ransford Slater reminded us again that there is no hut and poll tax on the Gold Coast. I agree that something equivalent to municipal rates should be levied. He seemed to think illiteracy was a barrier to an extension of the franchise, but if Sir Ransford will look at the new Ceylon Constitution, in the framing of which I had the privilege of taking some part, he will notice there is adult suffrage granted; and a considerable proportion of that population is entirely illiterate. I do not put a great deal of stress on literacy myself. I think even in this country that a rural worker who has a good fund of common sense and some character is a much shrewder and better judge of a candidate or of affairs than a half-educated city dweller may be. I was much interested to hear that Trade Unions are beginning even in the Gold Coast. I am sorry Sir Ransford had that unfortunate incident



has been before us on more than one occasion and has hitherto failed to get a hearing. I hope that it will in time, but if it ever does come it will be linked up with some form of insurance, as I do not think the Legislature there would consent to any law which would provide for liability resting only on the employer. They would consider that in any question of compensation or insurance there should be a contribution by the employee as well as by the employers.

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Governor said there were no trade unions, or practically none, but that there were Friendly Societies. I am glad he has shown his sympathy with the ideals of the Friendly Societies by laying a good many foundation stones for their buildings. I am also pleased indeed to hear that he has been considering the questions of old age pensions and health insurance. I know there are very great difficulties, at any rate with regard to health insurance, but with old age pensions I think there might soon be a start made. On the whole, I was grateful for the line Sir Edward took.

I have already referred to Sir Herbert Stanley's remarks. Of course, I do know Ceylon much better than I know other colonies and I understand what the position is there. I look forward to great developments in Ceylon.

Colonel St. Johnston spoke about the medical services and, although I was not here yesterday when the reports were taken, I understand that the Medical Report had some reference to the Colonial Development Fund. I had the privilege of presiding over a Committee which was considering how the money which is likely to be allocated for public health services from that Fund should be spent. I hope, if you have not had opportunity before, you will at some time or other read the memorandum giving the Report of that Committee. This will show you that we made a point of the provision of specialist medical officers, especially in the form of teams of experts on nutrition, and on malaria, hook-worm, and other conditions. I may say in passing that I regard nutrition as important because many of the diseases which give us trouble in Africa and elsewhere are due to malnutrition and under-nutrition, and expert guidance in dietetics will be very useful. Sanitary experts and if necessary sanitary engineering experts will—we hope—be at the command of the colony which wishes to have them. These experts will be of great assistance to a colony, not only in any actual proposals which they themselves may originate, but in the backing which they may be able to give to the Director of Medical and Sanitary Services in regard to proposals which he may have already put forward. You will often find that the Director of Medical and Sanitary Services has some very excellent schemes in mind, but there may be a shortage of money, and sometimes Legislative Councils, where there are these, are not sufficiently impressed by the importance of what he puts forward. With the increased authority of a body like this backing up the local medical officer's views, it might enable things to be done where otherwise there might be less progress. Apart from this we hope their actual original contributions will be of great benefit. There are various other proposals, such as assisting in the training of these medical assistants of which I have already spoken.

I was very glad to hear what Sir Frank Baddeley said about Nigeria and I think it is one of the good points about this discussion that these little speeches will all be recorded and will give a good deal of information to the readers. I agree that the assessment by the administrative officers is very important and I think it is obviously well done because there is generally very little trouble. We have not the report yet as to the recent troubles in Nigeria which caused great anxiety here. There was some suggestion that taxation was at least an element in the disturbances, but we do not know how far that is true. Undoubtedly the introduction of taxation among a primitive people is a difficult process, because, somehow, taxation is a thing which people do not take to naturally and even after a great many generations or a good many hundreds of years, as in this country, there are some people who do not take taxation with that gladness and enthusiasm which one might expect after all this time.

Sir Ransford Slater reminded us again that there is no hut and poll tax on the Gold Coast. I agree that something equivalent to municipal rates should be levied. He seemed to think illiteracy was a barrier to an extension of the franchise, but if Sir Ransford will look at the new Ceylon Constitution, in the framing of which I had the privilege of taking some part, he will notice there is adult suffrage granted; and a considerable proportion of that population is entirely illiterate. I do not put a great deal of stress on literacy myself. I think even in this country that a rural worker who has a good fund of common sense and some character is a much shrewder and better judge of a candidate or of affairs than a half-educated city dweller may be. I was much interested to hear that Trade Unions are beginning even in the Gold Coast. I am sorry Sir Ransford had that unfortunate incident

about the cook; it will make him more careful next time how he proceeds to what is said, but I never hear of any more of it.

Sir William Robertson speaks about wages and about increasing the living followed by a discussion in which I have heard that often said and, frankly, I am very sceptical about it. It is possible that this might be the case for a short time, but he himself indicated the cure for that, the raising of the standard of life, and the improvement of housing, the increase of amenities, the opening up of opportunities for the people to live a fuller and a better life. If that opportunity is given to them I am sure that they will be only too glad to work if they are going in that way to have the opportunity to enjoy these things. I must say I do not think it is in keeping with the general facts of human nature, taken broadly and over a sufficiently long period, to say that increases of pay are followed by a diminution in output. The same plea was put up in Ceylon about the wages of the Tamil labourers on the tea estates. The tea planters said it would be no good giving increased wages, since the pickers would only knock off work, and it would lower the production and be a great financial loss to them. It was pressed on them by ordinance and the results were found to be quite satisfactory. Sir William said that in Barbados there were no trade unions, as no man would trust his neighbour. I must say this for West Indian Governors, they do not flatter their own people. I am not quite clear—after that—how it happens, but I was glad to know that here again Co-operative and Friendly Societies are flourishing and apparently that is a form of organization which is suited to the people. He also spoke about workmen's compensation and insurance and said his Legislature would probably demand a contributory system. That, of course, is quite proper in the case of health insurance, but not in the case of workmen's compensation. I do not think he meant to include that.

Mr. Herzmant spoke about Malaya and said that though the wages were low the cost of living was low. I think that is probably true. It is, however, not only wages but conditions of hours and factory legislation that are involved.

Mr. Seymour, from Fiji, spoke very interestingly about the nature of the people there. Fiji is one of the colonies I have seen and I found the people very attractive. He seemed to think that we should aim at getting them away from their idea of common ownership to realise the beauty of private property. I do not know but what they have begun at a stage which we, perhaps, will ultimately reach. Certainly it may have disadvantages in present circumstances and when they are surrounded by other people. The Fijians are in touch with Indians, who have a different conception of life, and there is, of course, the small white element. You have then a simple and primitive people who have to be protected and sheltered because they are not fit to face the world. Is it wise for them to continue like that, or, if that state of things is not to be continued, how are you going to bring about the transition to more modern and sophisticated ways without doing them damage? The Pacific Islanders are different from the negroes and certain other peoples. The impingement of alien races seems to have a bad effect upon them, certainly physically, and Mr. Seymour has touched on a very real problem.

I must apologise for speaking so long. I have to thank you again for listening to me in such a patient way, and to express the hope that our little talk this afternoon will be helpful to all of us, and will inspire us to go forward—so far as conditions permit—in our several tasks, and that the ultimate result may be to make the people for whom we are responsible happier and better citizens of the British Empire.

(The Conference then adjourned.)



KENYA

No. 457

126  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
28 JUL 1930  
COL. OFFICE

7 July 1930.

My Lord,

I have the honour to refer to Mr. Amery's despatch No. 828 of the 12th November, 1928, relating to the three draft bills which have been prepared in this Colony embodying certain amendments which it is proposed to make in the legislation regulating the relations between employers and native servants in Kenya.

2. It will, I think, be convenient to your Lordship if my replies to the points raised in the memorandum which forms an enclosure to your predecessor's despatch take the form of a similar memorandum dealing separately with the several matters in respect of which criticism or objection has been made. I have accordingly adopted that course and attached a written memorandum for Your Lordship's consideration. To this memorandum I am adding proposals on sundry points connected with each bill which have arisen since the present printed drafts were prepared.

3. I regret the delay which has occurred in dealing with these important matters, but it has been ...

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

been due to my own absence from the Colony and that of the Chief Native Commissioner, and to the pressure of other work that has occupied my time since my return to Kenya. The matter has now become one of urgency as Elected members are pressing for the amending legislation, and I enclose for your Lordship's information a copy of a Question asked in Legislative Council on the 11th December last by the elected member for the Lake and of the reply which was made at my direction by the Chief Native Commissioner.

I enclose copies of the three bills in question embodying the alterations which it is proposed to make to the Bill.

I have the honor to be,  
 Sir,  
 your Lordship's most obedient,  
 humble servant,

*H. Wilson*

for GOVERNOR.

*(Draft approved by the Governor)*

I. BILL TO AMEND THE EMPLOYMENT OF NATIVES  
ORDINANCE: (CAP. 139 OF THE REVISED EDITION  
LAW OF KENYA).

(a) Sec. 5. I am advised that, if this proviso is retained in the Bill, native domestic servants, who are as a class becoming increasingly sophisticated, will very soon become cognisant of the fact and will either realise that they have to give their employers a month's notice or will make an agreement with him to the contrary. In practice such servants are engaged as a matter of course on a monthly contract. The normal procedure is also for the servants to give a reasonable amount of notice. On the other hand, cases occur in which great inconvenience is caused to employers through domestic servants, herdsmen or syces, departing from their employment on the last day of their monthly contract without having given their employers any notice whatever or any reason to believe that they intended to terminate their service. The proposed proviso would afford a reasonable remedy for such a state of affairs, and Your Lordship will notice that the whole proposed amendment applies only to servants other than unskilled labourers, that is to say it applies to the more intelligent, sophisticated and highly paid natives, and I do not consider that it could be the cause of any undue hardship. It will be noted also that there is precisely the



same obligation on the employer to give notice, and the servant is thus protected from the possibility of being unexpectedly thrown out of employment at the end of any month. I trust that, in the circumstances, Your Lordship will allow the clause to stand.

(b) Sec. 11. The reason for the insertion of the words "A servant employed under a thirty-day contract may be guilty of desertion" was that it was considered desirable to make it quite clear that the seven days limit applies to "thirty-day contracts" and to "special contracts" notwithstanding the fact that such contracts could in other respects be completed in spite of the absence of the employee for a longer period than seven whole consecutive days. A servant, for example, engaged on a thirty-day contract might consider that he committed no offence if after working for 20 days he absented himself for 12 days and then returned to complete the remaining 10 days. He might argue that as he had completed a stipulated number of days within the stipulated period he had committed no offence in being absent from his place of employment for more than seven days without lawful excuse. It was thought desirable to make it quite plain that such an argument could not be admitted in view of the provision in section 4 of Ordinance No. 4 of 1924, that the contract is for the servant to work for thirty days in succession or otherwise at the election of the employer. The words in question were accordingly inserted in the draft bill *ex abundanti cautela*. I am advised that the retention of the words would be convenient and would make the intention of ...

*2/10/1924*

of the Ordinance quite clear to all concerned and I trust therefore that they will be allowed to remain.

(c) Sec. 16. It may be taken for granted that it is not normally possible to order any special food for a servant without exceeding the normal cost of rations. It was felt therefore that Rules made in accordance with section 21 of the Bill might possibly conflict with clause 69 (4) of the Principal Ordinance. I am now advised that it would be preferable to retain the present section but to delete the proviso. I propose therefore that Clause 16 of the Bill should read:-

"16. Subsection 4 of section 69 of the Principal Ordinance is hereby amended by the deletion of the proviso thereto."

(d) Sec. 23. I am advised that this part of task work presents no practical difficulties because any servant is defined by section 2 of the Principal Ordinance as governed by such of the 21 Ordinances as apply to him respectively of the basis of his remuneration. On the other hand, the provisions of the Bill apply to any person who works in the territory of the Government and not in that of a private.

(e) Sec. 24. It is pointed out that the existing law should be eight hours a day and the Bill has been drafted accordingly.

(f) Secs. 25 to 28. Clause 25 (4) and clause 27 were by no means intended to place District Commissioners in the position of labour recruiters. Clause 25 (4) aimed at affording protection to juveniles who may wish to take advantage of prospects of good and remunerative ..

remunerative employment but may be prevented from doing so by the unreasoning prejudices of unenlightened parents. There are, of course, cases in which service with a benevolent employer is infinitely better in every way for a native juvenile than life at home with a drunken and dissolute guardian, and clause 25 (4) was prompted by the realisation of this fact.

While these provisions were, as I have pointed out, inserted solely in the interests of native children whose homes are known to be unsatisfactory, I appreciate the points raised by Your Lordship's predecessor and realise that the clauses may be considered to place drastic powers in the hands of District Commissioners. I am advised further, that such cases as I have particularly in mind might suitably be dealt with under section 8 (1) of the Custody of Children Ordinance, 1926, Paragraph 4 of clause 25 and the whole of clause 27 have accordingly been deleted from the Bill. I propose further, subject to Your Lordship's concurrence, to delete the words "if such be the case" from the fourth line of clause 28 (1) and to add the following proviso to clause 25:-

"provided that

(a) when there is a parent or guardian of a native juvenile living and when such parent or guardian is unwilling to grant permission to such juvenile to seek employment, the District Commissioner shall withhold the certificate:

(b) no native juvenile who appears to be below the age of 10 years shall be allowed to contract for service:

(c) nothing in this section shall apply to any native juvenile who is employed by the day only and who is accompanied throughout the duration of such employment by an adult relative."

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(g) Clause 29. On examination of this clause I agree with the interpretation of Your Lordship's predecessor and it appears further that the side note is distinctly misleading. I propose therefore to delete the proviso as printed and substitute the following:-

"Provided that nothing in this section shall prevent a private recruiter or a labour forwarding agent from carrying out the functions ascribed to them respectively in section 2 of this Ordinance."

(h) Clause 31. Employers of labour have in general accepted the principles of this clause and I trust that Your Lordship will allow it to be retained. I am advised that a proviso to permit of leave for a reasonable length of time on urgent private affairs would not in practice serve any useful purpose. When a native employee asks for leave the ground is invariably what he considers to be urgent private affairs. It will be observed that any special case that may arise can always be met by obtaining the permission of the Magistrate as provided in sub-clause (1). I trust moreover that Your Lordship will not pass the suggestion that employers should be prohibited from granting leave to their servants in excess of a stated period unless full wage is paid to the servant while on leave after that period has expired. Any such provision could be very easily evaded. There would be a great deal of quite natural connivance between the employer and the employed over such matters where the servant was anxious to obtain such leave, and in the circumstances, the servant would never in practice sue his employer for the wages that might technically be due for the excess period. It would therefore in most cases be difficult, if not

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impossible, to prove whether an offence had been committed against this provision or not.

I have adopted the suggestion of Your Lordship's predecessor to make it clear that the incidence of the cost of leave certificates (sub-section 3 (c) ) should fall upon the employer and that sub-clause has been amended accordingly.

I propose to re-draft sub-section 6 of section 3 as follows:-

"Every written contract of service under this Ordinance shall contain a condition stating specifically whether or not wages are to be paid to the servant during any period of leave".

(i) The views of Your Lordship's predecessor in this respect are noted and reports will be forwarded in due course.

II. BILL TO AMEND THE NATIVE REGISTRATION ORDINANCE (CAP. 127 OF THE REVISED LAWS OF KENYA).

✓ (a) Sec. 5. I am in full agreement with the suggestion of Your Lordship's predecessor and this clause of the Bill has been amended to meet the point.

My attention has recently been drawn to the advisability of making a further verbal amendment to the Native Registration Ordinance. It involves no new principle and may be said to rectify an omission apparently due to oversight. It is the insertion of the words "or employs" after the word "engages" in section 6 (1) of the Principal Ordinance, in order to bring it into line with sub-sections (3) and (b) of section 13, and to obviate the defence that a native was engaged for a day only but remained on without any definite contract.

This proposal is non-controversial, and I trust that Your Lordship will have no objection.



III. BILL TO AMEND THE RESIDENT NATIVE  
LABOURERS ORDINANCE. (NO. 5 OF 1925).

(a) Sec. 3 (2). The sub-clause as drafted was modelled on section 8 (2) of the Native Registration Ordinance (Cap. 127) but I have no objection to the proposal of Your Lordship's predecessor, and the clause has been re-drafted as suggested.

(b) Sec. 4. The word "wage" was inserted in the Bill as only those have Registration Certificates. It will be observed that section 4 (2) of the Native Labour Ordinance enables farmers if they so desire, to be permitted to contract, e.g. by hiring labour, at specific rates during harvest time, or even to some form of domestic service, and the amendment to that Ordinance was framed accordingly.

(c) Secs. 9 and 10 (b). As I informed your Lordship's predecessor in paragraph 12 of my report on the 20th July, 1925, these clauses were inserted for the reason at the request of many employers of labour, but I myself was of the opinion that the proposed increase in the minimum wage from 180 to 270 days of work was excessive. I was still of that opinion when I drafted your Lordship's predecessor's Bill, but there to be no increase after the existing minimum. I am now, however, completely of the opinion that clause 9 (without the alteration from 180 to 270 days) should be retained. It was the intention of the 1925 Ordinance, inter alia, to encourage resident native labour but not to encourage resident native idlers. It was therefore provided in section 4 (b) of that Ordinance that the occupier must provide employment and must pay wages for not less than 180 days, and such provision is a

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part of every contract by virtue of which a native is permitted to reside on a farm. It was hoped that this provision would prevent the collection of idlers on farms. In practice, however, it has been found that this provision is largely ineffective, because unscrupulous employers, who hope to make money surreptitiously by having native tenants, are able to make arrangements with natives who do not desire work but wish to evade tribal obligations (including the obligation for communal labour) to reside on their farms under a contract under the provisions which prohibit any intention of enforcing against the occupier the work or wages provisions. It is therefore essential that there should be definite provision that any occupier who fails to provide employment or to pay wages is liable to be prosecuted. In the absence of such a penalty the only remedy available will be one which the native can seldom afford to take advantage of, and one of the main objects of the Ordinance is thereby defeated. I do not wish it to be understood that the practice of collecting idle natives on farms by means of such devices, read on the above, is of itself a crime. I am, however, that isolated cases - sometimes bad ones, - come to light from time to time, and I am satisfied that the penal provision against the practice is necessary, not perhaps so much to deal with the existing situation as to prevent future development.

The nature of the danger to the public which arises from such action on the part of occupiers is the danger of crime, particularly stock

or produce thefts, to which undisciplined and uncontrolled natives living in isolated settlements on farms are almost invariably addicted. The Commissioner of Police is anxious that such collections of idle natives should be prevented as far as possible in view of the fact that farm areas are not always easy to control, and, in the absence of definite prevention, may tend to become disorderly haunts of vagrants, scoundrels and criminals.

(d) Sec. 9. The purpose for which this clause was inserted is to some extent indicated by my remarks in connection with clause 8. In many native tribes there are habitual criminals, particularly thieves. Among the Kikuyu, for instance, the first obligation imposed by native law and custom upon the head of a family is to leave behind him at least as much stock as he inherited from his father and, if possible, more. Some natives endeavour to fulfil this obligation by working for wages; others by cultivating their own land; others however, attempt to obtain the necessary property by theft. They usually belong to families who have no great possessions and are habitual thieves in accordance with the traditions of their fathers. In the native reserves these families are well known and their activities are watched and controlled by their tribal authorities. In the towns they are to a certain extent under the observation of the Police: on the farms, however, they are free from the supervision of either police or tribal authorities, and are not always controlled by their employers. Any farm that might, under an unscrupulous or careless occupier, become a haven of refuge to criminals, of this type would undoubtedly become a grave public

menace. Under the 1925 Ordinance a Magistrate may rescind a contract and may cancel a permit on the application of either party when the other party has been convicted of a criminal offence against him or of any criminal offence involving serious moral turpitude, but cases occur in which no such application is likely to be made. Clause 9 was intended to deal with the situation by giving powers of intervention to the Governor. It was, moreover, considered desirable to extend such powers to enable him to deal not only with individual convicted criminals, as suggested by Your Lordship's predecessor, but also with cases wherein it has been made to appear to the Governor that the residence of native on a farm has led, or is likely to lead, to the commission of any crime or breach of the peace.

As a result of the... with regard to the Social... which were... established... a buffer between the Lamowa and the... are now filled with Lamowa... are ten... requiring the intervention of... It is... natives who have... for their own profit... and would otherwise... must... to their neighbours and to the public generally, and I trust that Your Lordship will allow this clause to be retained. I propose however, in deference to the wishes of Your Lordship's predecessor, to delete from sub-clause 3 the words "and shall be recoverable by such occupier from such native or from the head of his family", to substitute the ...

the word "may" for the word "shall" in the second line of the sub-clause and to put a fullstop after the word "farm". It would then be open to Government to decide in each case whether the circumstances were such as to justify proceedings being taken against the occupier for the recovery of the expenses incurred in effecting the removal of any natives. I hope that sub-clause 2 will be allowed to remain. A native reserve is the proper home for native undesirables where they can be kept in order by their own tribal authorities.

(e) Sec. 10 (a). I was inclined to the view that a 10 years' maximum for the period of the contract was preferable to the three years' maximum in that the former provides a greater feeling of security and permanency on both sides. I quite appreciate, however, the argument of Your Lordship's predecessor that there is a risk that a native may not understand that he is at liberty to give notice and I am quite ready to concur with the decision of Your Lordship's predecessor that the balance of the advantage is on the side of the three years' limit. I am informed that very few applications have been made for the termination of contracts, and no case has been brought to notice in which a Magistrate has withheld his consent to such an application.

Since the Bill was drafted my attention has been drawn to several fresh points of which I invite Your Lordship's consideration. In the first place it has been represented both by Farmers' Associations and by the Commissioner of Police that considerable difficulty is met with in administering those provisions

of the Ordinance which relate to the keeping of stock on farms. At present there is no adequate means of preventing the accumulation on farms of stock far in excess of the number agreed between the occupier and the native and approved by the Magistrate. Such accumulations are not merely due to natural increase but undoubtedly in a greater degree to illegal movements of stock in contravention of the Diseases of Animals Ordinance. Again, the provisions relating to branding are of little value unless it is made compulsory to preserve the brands in a legible condition.

In view of all the problems which arise from the keeping of cattle by natives on farms, not only in relation to the spread of disease, but also in regard to the difficulty of dealing with large herds owned by natives whose contracts have terminated, it is considered desirable to fix a maximum number to be allowed and that this number should be related to the needs of the natives for the sustenance of his family.

*15 Section 10  
Amended*

I have therefore caused to be drafted and now submit for Your Lordship's approval a new clause 12 repealing and replacing section 10 of the Principal Ordinance.

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A further point in respect of which difficulty has arisen relates to the provisions of paragraph (d) of Section 3 of the Principal Ordinance under which persons who from age or infirmity are incapable of continuous employment and who are closely related to a family lawfully resident on a farm need not be included in the contract under the Ordinance executed by the head of the family, nor need they be

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in possession of a permit to reside on a farm.

I am advised that in actual practice the Police find that the exemption from permit or contract thus granted is being largely abused and that aged men and women are found to be resident on farms who profess but do not possess close relationship to a "squatter". Such alleged relationship is extremely difficult for the Police to disprove and there seems little doubt that the relative exemptions in the Ordinance respecting such persons are being abused systematically.

I am informed that not a little of the brewing and distribution of native intoxicating liquor on farms is traceable to elderly natives who are thus resident outside reserves in the professed guise of relationship to squatters. I need not enlarge here on the desirability from a Police point of view of closing every avenue possible for the illicit supply of such liquor.

Further, the Police find that this type of elderly native is taking up unlawful residence on farms for the purpose of obtaining grazing for stock and more particularly for stock belonging to other natives who are not resident on the farms concerned.

It is therefore proposed to delete paragraph (d) and thereby render it necessary for such persons to obtain permits under the present paragraph (e): such permits would not, of course, be refused in genuine cases.

The third proposal is that a clause should be added in similar terms to those of section 60 of the ...

*See new section 10.*  
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the Employment of Natives Ordinance (Cap. 139) to enable genuine complaints under the Ordinance to be taken without fees of Court, and I have caused a new clause, numbered 14, to be added accordingly.

COPY.

END

Q. 12/29/44.

LEGISLATIVE COUNCIL.

QUESTION.

THE HON. CONWAY HARVEY.

To ask the Hon. the Chief Native Commissioner if he will be pleased to state what amendments to the Resident Native Labourers Ordinance, the Masters' and Servants Ordinance, and the Native Registration Ordinance are under consideration; and what steps are being taken to bring natives under contract in terms of the Resident Native Labourers Ordinance within the scope of the Registration Ordinance.

REPLY.

THE HON. THE CHIEF NATIVE COMMISSIONER to reply:-

"A number of amendments to all the Ordinances mentioned in the Hon. Member's question are under consideration. Draft Bills have been submitted for the consideration of the Secretary of State in accordance with Article XXXIV. 9 of the Royal Instructions of the 11th September, 1920.

"A number of points have been raised and these are now being dealt with. It is hoped that the Bills will be ready for introduction into this Council early next year."