

X.10015  
1927

KENYA

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1927

From

CO533/364

Date

Grant of Magisterial Powers to  
Justices of the Peace.

Previous paper

(Minutes within)

Hof C 5947 1/2

Subsequent paper

Sub Title A  
(Parliamentary Questions)

Hof C

Hof C

Hof C 22-1

X SA

Colonial Office ----- 10 January, 1927.

Government Notice No.466 directing the recently appointed Local Government Commission to inquire into and advise on the question of granting magisterial powers to Justices of the Peace.

(Extract from Official Gazette No.1107 of 17th November, 1926).

Sir C.Strachey.

I had this registered for record as prima facie the question of granting magisterial powers to selected Justices of the Peace seems a matter altogether foreign to the objects of the Local Government Commission.

It involves an important question of policy - see Mr.Bottomley's minute on 46049/25 - and is one that will probably lead to further questions in Parliament - questions having already been asked on the subject, see X.2313/26 and X.F.5947/26.

I attach a précis of the correspondence on this subject, at the end of which you will see that the position has arisen through the Governor referring this question to the Conference of Law Officers who recommended that it should be referred to the Local Government Commission. It would not be ~~unreasonable~~ <sup>unamusing</sup> if the Commission confined themselves to expressing the view that the question involves matters of policy on which they did not feel competent to advise, in which case the circle would be complete. ~~unreasonable~~ But even if this were done, it is unlikely that it would be a unanimous opinion since, as you will see from the attached Government Notice, the Commission is composed, in addition to the three original official members,

*for this particular purpose*

members,

members, of the special Commissioners appointed for the "settled areas"; and the two Europeans ~~and the~~ Lord Delamere and Mr. Conway Harvey will, one may assume, have decided views.

I think you should see this, but ? no action is necessary and the paper may be put by pending the receipt of something further from the Governor.

*W. Allen*  
21/1/27

Yes - The result of the enquiry may be a  
... ..  
... ..  
... ..  
... ..

2 House of Commons  
Question by Col Wedgwood

9 Nov 27

Entry proper on  
Sub File "A"

3 14/3 to Lya - 22 Nov 1927 on sub. file  
"A"

In para 3 of Lya's despatch of 24<sup>th</sup> Oct, 1927 on X. 10000/14 it is stated that the report of the Local Govt. Commission in the grant of Magisterial Powers to certain selected justices of the Peace has been referred for the views of the various District ~~Magistrates~~ and that pending receipt of local opinion on the Commission's recommendations no further action is being taken.

4. Copy of Official Report 5<sup>th</sup> Decem<sup>r</sup> 1927.  
(Extracted from X. 10220/27 "Leetham Comm.")

44  
OFFICIAL REPORT, 5th December, 1927.

KENYA (FEETHAM COMMISSION.)

23. Colonel Wedgwood asked the Under Secretary of State for the Colonies whether the Feetham Commission was appointed to deal with local government in Kenya Colony; and whether the Terms of Reference to the Commission have been enlarged so as to include recommendations regarding questions of general colonial administration, such as alterations in the judicial system?

Mr. Ormsby-Gore: The answer to the first part of the question is in the affirmative. By a Commission, dated 8th October, 1926, the original Terms of Reference were extended to include an inquiry into the desirability of granting magisterial power to selected Justices of the Peace in the settled areas of the colony and the extent of the powers, if any, which should be so granted.

Colonel Wedgwood: Are we to take it that the Government's approval or qualified approval of the Report of the Commission includes approval of the recommendation that settlers should act as magistrates?

Mr. Ormsby-Gore: I have not received a communication from the Governor about that. All that he has reported is that he is sending this Report to the districts concerned and consulting both official and unofficial residents before letting me know his views.

Colonel Wedgwood: Is the right hon. Gentleman not aware of the extraordinary undesirability of allowing people to be judges in labour questions where their interests are directly concerned?

Mr. Ormsby-Gore: I think the rule that obtains in regard to magistrates in this country where their interests are concerned will obviously obtain there.

Colonel Wedgwood:

C.O. 303  
304  
PUBLIC RECORD OFFICE, LONDON

Colonel Wedgwood: But magistrates in this country do not get labour under regulations which they direct.

Mr. Macaulay: Will the Government pay as much attention to the findings of this Commission as they did to the findings of the Peetham Commission in the Irish boundary case ?

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42809/23.

The Local Government Commission which reported in 1923 recommended that Justices of the Peace should not at present be given magisterial powers since in the opinion of the majority of the Commissioners the disadvantages outweigh the advantages. ~~The~~<sup>A</sup> minority report signed by a single member, however, stated that the ends of justice would be more expeditiously met by the granting of such powers.

36047/24.

In his comments on the report, the Governor said that the question of the granting of magisterial powers to Justices of the Peace had been frequently brought up for consideration by the Government; that it might well be advantageous to give such powers to tried and experienced Justices of the Peace who would need to be very carefully selected, but that the matter was one requiring further consideration, and that he did not propose to make any recommendation at the time (18th June, 1924).

36047/24.

In his reply the Secretary of State concurred in the view that the question of granting these powers was one requiring further consideration and need not be taken up at the present moment (19th December, 1924).

46049/24.

In a despatch dated the 1st September, 1925, the O.A.G., in connection with an alleged practice of employers administering corporal punishment to native servants, said that an interesting suggestion had been made which conformed with his view that a growing sense of responsibility would serve as a  
remedy

remedy; the suggestion being to appoint Honorary Magistrates or Justices of the Peace with authority to try certain cases and with limited powers of punishment which would not include flogging. He felt that this matter, although not to be taken up at the moment, should be kept in mind as a possible measure in the near future. Its adoption should of course be very limited in application. The whole matter is one requiring very full consideration and on which opinion in this country is by no means unanimous.

In a despatch dated the 9th April, 1926, the Governor refers again to this question which he had under close consideration, and proposed to place it on the agenda for the Conference of the Law Officers of the various East African dependencies.

X.4235/26.

This matter was duly considered by that Conference - see page 19 of the report of the proceedings. The Conference confined itself to expressing agreement with the view that the matter is one which should be referred to the Local Government Commission rather than to a Conference of officers the majority of whom have no acquaintance with the condition and local needs of the settled areas of Kenya.

The Government Notice dated 8th Nov. <sup>(1926)</sup> 1925, directed the Local Government Commission to enquire into and advise upon the desirability of granting magisterial powers to selected Justices of the Peace in the settled areas of the Colony, and the extent of the powers (if any) which should be so granted.

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THE COMMISSIONS OF INQUIRY ORDINANCE.

LOCAL GOVERNMENT COMMISSION.

WHEREAS by a Commission under my hand dated the 13th day of July, 1926, Commissioners were appointed for the purpose of making recommendations, *inter alia*, as to the establishment or extension of local Government in such settled areas of the Colony as the Commissioners may consider to be suitable for the establishment of local Government, and of advising upon certain other matters in relation thereto :

AND WHEREAS on the 20th day of October, 1926, certain persons were appointed to be additional Commissioners for the aforesaid purposes :

AND WHEREAS it is desirable that the said Commissioners should also make recommendations and advise in regard to the matter hereunder mentioned :

NOW, THEREFORE, I, Edward William Macleay Grigg, Knight Commander of the Royal Victorian Order, Companion of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Distinguished Service Order, upon whom His Majesty has conferred the decoration of the Military Cross, Lieutenant-Colonel in His Majesty's Army (retired), Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, by virtue and in exercise of the powers conferred upon me by the Commissions of Inquiry Ordinance, do hereby direct that the said Commissioners shall, in addition to the matters set out in the said Commission, inquire into and advise upon the desirability of granting magisterial powers to selected Justices of the Peace in the settled areas of the Colony, and the extent of the powers (if any) which should be so granted.

Given under my hand at Nairobi this 8th day of November, 1926.

EDWARD GRIGG,  
*Governor.*

## GOVERNMENT NOTICE No. 297

## THE COMMISSIONS OF INQUIRY ORDINANCE.

## A COMMISSION.

I, EDWARD WILLIAM MACLEAY GRIGG, Knight Commander of the Royal Victorian Order, Companion of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Distinguished Service Order, upon whom His Majesty has conferred the decoration of the Military Cross, Lieutenant Colonel in His Majesty's Army (retired), Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, do by virtue and in exercise of the powers conferred upon me by the Commissions of Inquiry Ordinance by this my Commission under my hand appoint:—

THE HONOURABLE MR. JUSTICE FRETHAM,

THE HONOURABLE W. C. HUGGARD, K.C., LL.D.,  
Attorney-General.

THE HONOURABLE H. T. MARTIN, Commissioner of  
Lands.

And such other person or persons as I may from time  
to time nominate.

to be Commissioners.

To make recommendations as to the establishment or extension of local Government for the following areas in the Colony:

1. Nairobi and its environs;
2. Mombasa and its environs;
3. Such settled areas as the Commissioners may consider to be suitable for the establishment of local Government.

And in particular to advise upon the following matters:—

- (i) The constitution of the local governing body or bodies most appropriate to each area;
- (ii) The duties and functions of such bodies;
- (iii) The powers, administrative, financial and otherwise, that should be bestowed upon such bodies;
- (iv) The desirability or otherwise of establishing a co-ordinating authority at the headquarters of Government and the relations of any such body, if created, with the local governing bodies;
- (v) The basis of contribution from the central Government's funds towards the expenses of the local governing bodies.

AND I DO HEREBY APPOINT the said Mr. Justice FRETHAM to be Chairman of the said Commissioners;

AND I DO HEREBY DIRECT that three Commissioners shall form a quorum;

AND I DO HEREBY APPOINT W. M. LOGAN, ESQ., to be Secretary to the said Commissioners;

AND I DO HEREBY DIRECT that the Oaths of the said Commissioners shall be made and subscribed before any Resident Magistrate of the Colony;

AND I DO HEREBY DIRECT that the Inquiry shall be held at such places in the Colony as the Chairman may think fit:

AND I DO HEREBY DIRECT that the said Inquiry may be held in public or in private, or partly in public and partly in private, at the discretion of the Commissioners;

AND I DO HEREBY COMMAND all persons whom it may concern to take due notice hereof and give their obedience accordingly.

Given under my hand at Nairobi this 13th day of July, 1926.

EDWARD GRIGG,  
*Governor.*

GOVERNMENT NOTICE No. 316.

THE COMMISSIONS OF INQUIRY ORDINANCE.

(CHAPTER 25 OF THE REVISED LAWS.)

With reference to the Local Government Commission (Government Notice No. 297 dated the 13th day of July, 1926) His Excellency the Governor is pleased to nominate:—

THE HON'BLE MR. JAGANNATH BHAVANISHANKER PANDYA,

and

T. AINSWORTH DICKSON, Esq., M.C.,

to be Commissioners for the following area:  
Mombasa and its environs.

Nairobi.

This 22nd day of July 1926.

W. M. LOGAN,  
*for Acting Colonial Secretary.*

GOVERNMENT NOTICE No. 354

THE COMMISSIONS OF INQUIRY ORDINANCE.

(CHAPTER 25 OF THE REVISED LAWS.)

WITH reference to the Local Government Commission (Government Notice No. 297 dated the 13th day of July, 1926), His Excellency the Governor is pleased to nominate

THE HON'BLE MR. THOMAS ALFRED WOOD, C.M.G., M.B.E.

AND

THE HON'BLE MR. VAMAN VISHNU PHADKE.

to be Commissioners for the following area:—

Nairobi and its environs

Nairobi,

This 30th day of August, 1926.

G. A. S. NORTHCOTE,  
*Acting Colonial Secretary*

GOVERNMENT NOTICE No. 435

THE COMMISSIONS OF INQUIRY ORDINANCE.

(CHAPTER 25 OF THE REVISED LAWS.)

With reference to the Local Government Commission (Government Notice No. 297 dated the 13th day of July, 1926) His Excellency the Governor is pleased to nominate—

THE RT. HON. LORD DELAMERE,

THE HON. MR. J. O. W. HOPE, C.M.G.,

THE HON. MR. CONWAY HARVEY,

AND

ABDUL WAHID ESQ.,

to be Commissioners for the following area:—

“ Settled Areas.”

Nairobi,

This 20th day of October, 1926.

G. A. S. NORTHCOTE,  
*Acting Colonial Secretary*

11  
END.

GOVERNMENT NOTICE No 466.

THE COMMISSIONS OF INQUIRY ORDINANCE.

LOCAL GOVERNMENT COMMISSION.

WHEREAS by a Commission under my hand dated the 13th day of July, 1926, Commissioners were appointed for the purpose of making recommendations, *inter alia*, as to the establishment or extension of local Government in such settled areas of the Colony as the Commissioners may consider to be suitable for the establishment of local Government, and of advising upon certain other matters in relation thereto :

AND WHEREAS on the 20th day of October, 1926, certain persons were appointed to be additional Commissioners for the aforesaid purposes :

AND WHEREAS it is desirable that the said Commissioners should also make recommendations and advise in regard to the matter hereunder mentioned :

NOW, THEREFORE, I, Edward William Macleay Grigg, Knight Commander of the Royal Victorian Order, Companion of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Distinguished Service Order, upon whom His Majesty has conferred the decoration of the Military Cross, Lieutenant-Colonel in His Majesty's Army (retired), Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, by virtue and in exercise of the powers conferred upon me by the Commissions of Inquiry Ordinance, do hereby direct that the said Commissioners shall, in addition to the matters set out in the said Commission, inquire into and advise upon the desirability of granting magisterial powers to selected Justices of the Peace in the settled areas of the Colony, and the extent of the powers (if any) which should be so granted.

Given under my hand at Nairobi this 8th day of November, 1926.

EDWARD GRIGG,

Governor.

1927

Kenya

No. 10017

CO 533/364

SUBJECT

Education Poll Tax

Previous

Gov. 7999/26

Subsequent

15669/29