

PUBLIC RECORD OFFICE

CONTINUED FROM PREVIOUS FILM

PUBLIC RECORD OFFICE

C0533/333

ORDER NO. ⇨ 777
CAMERA NO. ⇨ 19
OPERATOR. ⇨ JM
REDUCTION. ⇨ 12
EMULSION NO. ⇨ 311081
DATE. ⇨ 6/8/71

CROWN COPYRIGHT

THESE COPIES ARE SUPPLIED FOR INFORMATION
AND RESEARCH ONLY-NO REPRODUCTION MAY BE
MADE FOR PUBLICATION WITHOUT THE ASSENT OF
THE PUBLIC RECORD OFFICE

PUBLIC RECORD OFFICE

THE PAGES IN THIS VOLUME ARE TOO
TIGHTLY BOUND FOR ALL WORDS TO BE
REPRODUCED IN ENTIRETY

The General Manager : British Indian Members can possibly take exception to a principle which is designed partly to remove the Railway from political influences in both Kenya and Uganda. I should think that would be welcomed by them. I am very sorry indeed that the Secretary of State has decided to delete the clause dealing with the policy to guide the railway in the matter of administration and management. I am very sorry indeed. The original clause I suggested was that the Railway should be administered on business principles, due regard being had to the agricultural and industrial development in Kenya and Uganda by means of cheap transport. In other words, business principles were laid down as the guiding factor. It was really a Charter suggested in connection with Railway Administration and management. It has been advanced that such a policy clause should not find its way into a law. A similar principle has found its way into law in other countries. The argument has been advanced here that those concerned with the administration of the Railway could be trusted to see the same principle is adhered to. The same principle exists in other Colonies. It was laid down elsewhere in respect of Government Railways only because it was found to be absolutely necessary to establish it firmly. It is in existence to-day in South Africa, has been recommended for Australia, and I believe for Indian railways. Most Government Railways will, in my opinion, arrive at the same sound policy.

In regard to Kenya and Uganda, I have in mind what happened with railway revenue prior to 1921, and I sincerely trust the policy, the expression of which has not been excluded from the Order-in-Council, will be laid down in the supplementary legislation necessary.

In regard to ownership - and particularly

land matters - I do not know whether the clause I submitted, and which I think I am at liberty to say the Honourable Commissioner of Lands has agreed to, has been accepted yet; but my intention is to try and arrange for the supplementary legislation necessary in both Kenya and Uganda to include clauses dealing with the vexed question of Railway land. As I drafted it, all land and other property assets in Kenya would be vested - and I trust this can be arranged - in the name of the Government of Kenya; and in Uganda, in the name of the Government of Uganda. The position to-day is ridiculous. I had recently to buy a house in a certain centre. I am always having it impressed upon me that we must have more staff on lake ports and elsewhere, but, of course, they must have houses to live in. I was so hard put to it for accommodation in a certain centre that when I found I could buy a house on reasonable terms, I bought it. Having bought that house, I was told I could not get it transferred. One suggestion was that the house should be transferred to myself personally! The whole matter of the registration of land and property should be put on a sound footing. All immovable assets in Kenya should remain vested in the Government of Kenya, and those in Uganda in the Government of Uganda. Then, if there is ever a separation, the position would be in order.

I have never quite understood what the Honourable Member for Plateau North really proposes should happen in connection with the Control of this Railway. He states that Kenya is handing over an asset, a very valuable asset. Kenya is certainly handing over the control and the working of this section of the Railway; but what method of control, what method of management, does the Honourable Member really want? He seems to forget that a large portion of this Railway exists in Uganda and not

in Kenya, and it is quite absurd to think that the Government of Kenya is to-day actually controlling the Railway in Uganda. The Government of Kenya cannot do it and is not attempting to do it. Who is doing it? I say no Government is controlling the Railway as a whole, and the General Manager is left to struggle as best he can with difficulties that arise. What is the General Manager's position as between these two territories? The Government of Kenya has no control in Uganda. You must have a High Commissioner who is recognised by both Governments. It is clear to me that there are only two alternatives for the future. You have either got to introduce a system something like this and have one control, or you will soon be forced to separate the management in the two territories with separate Governments. I say do not separate. I believe separation would create such trouble that there would soon be almost a feud in connection with transport work between the two Colonies. I believe also that the Post Office system, with a division of revenue and expenditure, is unsuitable for Railway purposes, and I decline absolutely to fall into line with one suggestion made by a British Indian Member that the betterment fund should be carefully divided up so that Kenya gets what it is entitled to and Uganda gets what it is entitled to. I resolutely decline to adopt that policy. It is one railway service and one lake service, and the betterment and renewals fund moneys will be spent fairly where required. I have argued in Uganda that it is, for example, as much for the benefit of Uganda as of Kenya that the main line is being relayed, and they accept that as the case.

The question of loans has been dealt with by the Honourable Attorney General. That question should present no difficulty. Similar systems have been in operation

elsewhere and no difficulties have been experienced. I regret that it has not been found constitutionally possible to accept the notice clause, but I agree entirely with the Right Honourable Member in his point that the wording agreed to at least implies that the Order is not unchangeable and that it may possibly be necessary to consider termination at some future date. I cannot help thinking that is the correct point of view.

In regard to the remarks of the Honourable Member for Mombasa, it seems to me that the Honourable Member has got the matter of control of the port in his pocket, very much like some King Charles's head which will pop out on every possible occasion. I think I have been fair in what I have said in regard to the control of the port and the wharfage work. I have always drawn a line between control and working. I have always contended for my view that the control in this country must be vested in some Government department, but I have also said that if it is considered necessary, and found possible, to have a Port Trust, I would be the first to work loyally with that Port Trust; but I have implored the Government and everybody else concerned not to impose on the country and the railway a Port Trust unless that Trust is made financially responsible. It would be monstrous for the Railway to have to pay the loss when the control is in other hands. In regard to the landing and shipping work, I would like to state publicly that I have reported that the Railway would agree to do the work only if the country wants the Railway to do it; if it is the Government policy for the Railway to do it; if the General Manager be given full powers to select his own staff at such rates of pay as he deems necessary, to discharge them if inefficient, to take action in connection with claims, and generally to do everything required

required in a businesslike way. I have also said that the Railway is not out to do the work. I feel I have quite enough to do, but the Railway is prepared to do the work if the country wants it to and if all concerned will give it the necessary business powers and a fair chance. I have suggested that the matter should be the subject of an enquiry. I have also said that if the Harbour Companies honestly think they can do the work more efficiently than the Railway they should prove to the public, by their charges and otherwise, that that is the principle really guiding them, and they should agree to control and regulation, because under present conditions there is no control, there is no licensing or any other form of regulating charges, etc. There must, of course, be central control, but, from a working point of view, whether that is in the hands of a Port Trust or the Railway does not matter, providing the controlling authority carries the financial responsibility. The Honourable Member for Mombasa has made a most astonishing statement. He said Kenya is parting with one of its most important assets in the Railway, and he objects strongly. In the past he said this asset has contributed nothing to the Government. He also said something about requiring from the railway a substantial dividend to the Government which might be set off against other liabilities. He must surely be aware (I am telling him now, in any case) that the Uganda Railway actually paid into Kenya Government revenue before 1921 no less than two million pounds, and that is exactly what is the case of the trouble to-day. If that £2,000,000 had been spent on betterments and renewals it would not only be a totally different railway, but the General Manager would have a much easier time. I sincerely trust that the argument raised recently at the Coast, that

the proper thing to do is to allow the Wharfage Companies to retain their profits and to require the Railway to make good the loss out of betterment funds, will not carry much weight.

With regard to certain remarks made by the Honourable Mr. Smans-ud-Deen, let me state first of all that the decreases in Indian rates of pay made some time ago were made with the full approval of the Secretary of State. They were not made on my sole authority, as he seems to think. What the Honourable Member does not know is that where there has been really good work on the part of Indian servants of the railway, I have made exceptions. When I say good work, I refer to work such as, for example, work done by the station master at Kampala and the pier clerk at Port Bell during the period of congestion. In such cases I have made special exceptions. I have no objection to paying for good work, but that is totally different from paying all and sundry high rates of pay. The Honourable Mr. Sham-ud-Deen also referred to a despatch from the Secretary of State contained in this Blue Book and he said that it is obvious that what we said about the position elsewhere was wrong, and that, therefore, in his opinion, the Order-in-Council should fall to the ground because the precedent had been wrongly quoted. The Secretary of State referred not to the whole Order, but only to the one policy clause. We informed the Secretary of State this policy clause was embodied in the South African Act. Some doubt was thrown on that, but it was clearly proved the clause was there. The Honourable Member has been out of touch with the matter lately, so I cannot blame him, but the fact is he has read the Secretary of State's remark on one clause as if it applied to the whole Order.

The only other point I would like to deal with is this. The Honourable Member for Plateau North referred

to a remark I made when this Order was last before this Honourable Council in regard to indirect control. The Governments will be better represented on the new Council than they are now. The provision here is for a High Commissioner, a strong High Commissioner, who acts as advised by a very comprehensive Railway Council fully representative of Governments and public - a much more comprehensive and representative body than the present Railway Council - which should be of more assistance to the Colonies and High Commissioner. Not that the present Council has not done its best, but it is a non-statutory, non-articulate, body at present. The position in Uganda would have been much better this year if this new Council had been in operation. The position in Uganda to-day is that most unfair criticisms are sometimes made against the Railway Department - not consciously unfair, because that is the last thing these people want to be. Quite a large proportion, if not practically all concerned, are out to assist, but they do not know. The Estimates are introduced here and not in Uganda, and in Uganda, therefore, they know nothing about the Estimates. In future Uganda will have on the Council two official and two unofficial members, and all minutes will go through a central High Commissioner, who will be able to keep in touch with the Governments of the respective Colonies. The Estimates will be introduced not only here, but also in Uganda, and will be subject to full criticisms in both Legislative Councils. I believe myself when this system is brought into full operation it will be a great improvement on the present system. At the same time I would be the last person to suggest that these proposals are perfect. They will be subject to evolution, and are a tremendous advance on what exists to-day, and they will, I feel, serve as an excellent foundation for the future.

1

ENCLOSURE TO SECRETARY OF STATE'S DESPATCH No. 495.
RECOMMENDATIONS FOR AN ORDER IN COUNCIL.
(MAY, 1925.)

As further amended by Select Committee.

1. There shall be established the office of High Commissioner for Transport for the Colony and Protectorate of Kenya and the Protectorate of Uganda.

(2) The High Commissioner for Transport hereinafter referred to as "the High Commissioner" shall be a Corporation Sole under that name with perpetual succession and an official seal and may sue and be sued under the above name, whether in contract or in tort by the ordinary procedure of law.

(3) Any damages, compensation or costs awarded by any Court to the High Commissioner shall be paid into the Railway and Harbour Fund, any damages, compensation or costs awarded by any Court against the High Commissioner shall be paid out of the Railway and Harbour Fund.

2. The person holding the Office of High Commissioner shall be the officer administering the Government of Kenya.

3. (1) The High Commissioner shall have the control, working and management of the Services, and for this purpose shall have all the powers necessary for and incidental thereto. The Services shall include all such railways, ports, harbours, wharves and steamship services as:—

(i) Are now or may hereafter be owned, controlled or managed by the Government of Kenya or the Government of Uganda; and

(ii) Are declared by an Order of the High Commissioner, with the approval of the Secretary of State, to be included in the Services.

(2) All powers given to the High Commissioner by this Order shall be exercised in accordance with the provisions of this Order and, in so far as is not inconsistent with the aforesaid provisions, in accordance with the provisions of any law in force in Kenya or Uganda and of any Ordinance which may hereafter be passed by the Legislature of Kenya or Uganda.

4. The services shall be known as the "Kenya and Uganda Railway."

5. (1) The High Commissioner may appoint a General Manager who shall have such of the authority and powers of the High Commissioner as may be delegated to him by the High Commissioner or may be conferred upon him by any Ordinance of Kenya or Uganda.

In any act done by the General Manager in pursuance of his duties it shall be presumed that he was duly authorised thereto.

(2) The High Commissioner may appoint in addition to the General Manager such servants as may be necessary for the efficient working of the Services.

(3) Persons so appointed or deemed to be appointed as hereinafter provided shall be servants of the High Commissioner, but shall be and remain in the service of the Crown and shall be deemed to be in the public service of Kenya and Uganda.

11. The senior official member representing the Colony and Protectorate of Kenya shall be the chairman of the Council provided that when meetings are held in Uganda the senior Uganda official member present shall preside.

12. If any member of the Council shall be prevented by absence, or other cause, from acting, the Governor by whom he is appointed may appoint some other person to act and vote in his place until he shall return, or be able to resume his functions.

13. The High Commissioner may make, vary and revoke regulations prescribing:—

(a) The fees and expenses which may be paid or allowed to members of the Council.

(b) The quorum necessary to constitute a meeting.

(c) The intervals at which meetings shall be held, the manner in which the business of the Council shall be conducted, the method of voting, and the form in which the minutes shall be kept: and generally such matters as may be necessary for the effective carrying out of the objects and purposes of Articles 8, 9, 10, 11 and 12.

14. (1) The High Commissioner may consult the Council upon all matters concerning the administration and working of the Services.

(2) The following matters shall be submitted to the Council for advice:—

(a) Any substantial alteration in the tariff of rates, fares and charges of the Services.

(b) All estimates of revenue and expenditure, including Loan Services.

(c) All Government Bills relating to the Services prior to submission to the Legislative Council of Kenya or Uganda, as the case may be.

(d) The expenditure of any sum exceeding £2,500 in respect of any one railway or harbour work or service other than a work or service covered by sanctioned working estimates or carried out under an authorised construction, betterment or renewals programme.

(e) Alterations in the scales of salaries, wages or hours of employment, or other important conditions of employment.

(f) Substantial reduction of staff.

(g) The abolition of any office in the Services carrying a salary of £1,000 per annum or over.

(h) Substantial changes in the organisation of the Services.

(i) All questions of general policy in connection with the administration, control, working or management of the Services.

15. (1) All Government Bills relating to the Services shall prior to submission to the Legislative Council of Kenya or Uganda, as the case may be, be submitted to the High Commissioner by the Governor of the Government introducing the Bill:

(2) The Railway Council shall be entitled to submit to the High Commissioner within a reasonable time of receiving a copy of the proposed Bill a minute containing the Council's comments on the proposed Bill, and it shall be the duty of the High Commissioner to forward such memorandum to the Government concerned.

21. No loan shall be raised for the construction of new railways or for additions to the capital assets of the services except by the Government of Kenya or the Government of Uganda, or by both Governments jointly in such proportions as the Secretary of State may determine; and any loan so raised shall be authorised and appropriated by Ordinance.

22. If any railway is constructed by either the Government of Kenya or the Government of Uganda or both against the advice of the High Commissioner, the High Commissioner may declare that such railway shall be included in the Services and in such case the loss, if any, upon the working of such railway, shall be made good to the Railway and Harbour Fund by the Government or Governments concerned.

23. Accounts relating to the Services shall be kept as directed by the High Commissioner. Such accounts shall be subject to audit under the direction of the Director of Colonial Audit, and shall be published annually.

24. The High Commissioner shall forward to the Secretary of State all regulations made by him under this Order, and any such regulation may be disallowed by the Secretary of State.

25. Nothing in this Order shall limit the rights of the legislatures of Kenya and Uganda to pass laws, not being inconsistent with the provisions of this Order, relating to the Services.

26. All contracts entered into by or with the authority of the Government of Kenya or the Government of Uganda on behalf of the Uganda Railway prior to the date of this Order shall be deemed to be contracts entered into by or on behalf of the High Commissioner.

27. The Governors of Kenya and Uganda may, by Joint Proclamations in the Gazettes of Kenya and Uganda at any time within two years from the date of this Order, and provided that the approval of the Secretary of State has been previously obtained, vary, amend, or add to the provisions of this Order in order to carry out the purposes of the same.

28. His Majesty, His Heirs and Successors in Council may from time to time revoke, alter, add to or amend this Order, and nothing in this Order shall limit the right of the Legislative Council of Kenya or Uganda to petition His Majesty through the Secretary of State for the termination of this Order or any provisions of this Order.

Asst. Commr

SW

Urgent

41844

5/10/25

C. D.	
R	500
D	3

Ind

Could be sent
S.C. 220 p.m.
5/10/25

Wash.
10/10/25

5th October Your obedient of.

20 August 1040 as

Order in Council cannot

be effective until local

order under clause ~~three~~

~~two~~ 3 (ii) has been

issued should be glad to

receive draft of local

Order by first mail

RAFT. Tel
Nairobi

Blackburn.

Miss.

Indle.

Anderson Smith.

W. Gore.

...

...

SW

Wenger

Asst. Secy

41894

5/10 atome

C. D.	
R	5091
D	

Ind

Could be sent
J.E. 220 p.m.
5/10/25

~~10/10/25~~
Wash

5th October Your draft of

20 August ~~for~~ 1040 as

Order in Council cannot

be effective until local

order under clause ~~three~~

~~two~~ 3 (ii) has been

issued should be glad to

receive draft of local

order by first mail

DRAFT. Tel
Gen Nairobi

- Tracy.
- Shuckburgh.
- Davis.
- Grindle.
- Hasterton Smith.
- Worsby-Gore.
- Emery.

W/41894/25 Kenya

Bo Tonley.

234

Strachey.

Dud

J. Shuckburgh.

~~2/10/25~~
Ansell
57047

C. Davis.

Downing Street,

G. Grindle. 22

Sept 1925.

J. Masterton-Smith

has read
suffices
Ord. 5/10/25

J. Wilson
Ormsby-Gore.

inery.

DRAFT.

Dear Cuthbertson,

CUTHBERTSON, ESQ.,

May I ask you to look at the

TREASURY CHAMBERS.

Treas.
(26996/15
Cuth)

correspondence ending with our letter
of the 20th Aug. about Uganda
Railway finance.

The terms of the draft Order
in Council have now been settled (with
very great trouble) with the Kenya
Legislative Council, and nothing stands
in the way of our submitting the draft
to the Council except the desire
expressed in Treasury letter of the
13th June that their Lordships should be
consulted before a decision was taken on
the question of annual deficits. As
we told you in our letter of the 20th
Aug., the decision had already been

(Print in 41894)

Thank from the point
of detail which we
are taking up with
the Governor.

20/25

taken *in hay.*

If we may take it that the Treasury are content to leave the matter alone, will you please let me know at once, so that we can get on with the Order in Council. If, on the other hand, ^a further ~~action~~ ^{letter} is contemplated, we should like to have it as soon as possible so that this outstanding matter may be settled. I should be very sorry if any further alteration to the draft had to be made, as we are not likely to find the Kenya people in a better frame of mind than they are now. I am certain that you have no need for misgiving. The Order in Council makes provision for securing the payment of the debt charges, and for future loans to be covered by local ordinances, the terms of which will be settled here. I enclose a copy of the draft Order, which, as you will observe, says

nothing

nothing about the ownership of the
railway system. This point has,
by general consent, been left un-
settled.

Yours sincerely,

(Signed) W. C. BOITOMKEY.

Off 4189 copies Kenya

206

Oct 15
Efficiency 12/10
Bulawayo 15/3

2nd



- Whealey
- Shuckburgh
- Davis
- Grindle
- Masterton Smith
- Wesby-Gore
- Wesby

19 Oct 1925

Sir

With ref. to the letter from this
 Office No ²⁶⁹⁹⁶ ~~4459/25~~ of the 20th of
 Aug, I am sorry to transmit to you
 to be laid before the C.P. of the
 Treasury, a copy of the draft
 Order in Council relating to
 the Uganda. ^{This} ~~document~~
 Order is the one ~~referred to~~
 above-mentioned
 in the letter, ~~concerning~~ to which

(Copy in 45159/25)

AFT.

Secy
Treasury

Off O-in-C
In 41894

no reply has been recd.

I. H. Linsley will be glad
to receive their L's early
obon. on the Order as it
is desirable to submit it
to the Council at an
early date.



(Signed) W. C. COTTOMLEY.