



EAST AFR. PROT.
27232

C. O.
72

PROT. NO. 100

Field, H. O.

DATE OF ISSUE

Date.
1912

Subject

Memorandum

Previous Paper

6
15686

Mr. G. Fuller - see also CO 15783
 The CO. etc. when it reported in
 Nov/11 (see CO 30825) led to the
 assumption that the it was deemed to adhere
 to the principles laid down in the Report
 of the 19th March 08. Before action
 could be taken on that Report Mr. J.
 came on leave and rediscussed the
 question with the S. of S. In Jan 12
 the talk to reconsider the matter with some
 modif. of the principles referred to above,
 as you will see from the paper immediately
 below how far they have got. I think that
 Mr. Balfour has had better be put into
 print & referred to the CO. & when they

CO
29574

Next Paper

29574

are not a separate... they should
set out the two points of view for the decision
of the S. F. I gather that Mr. Belfield
only requires at present a general indication
of the policy which the S. F. desires to
be adopted, & that he does not propose to
submit a detailed scheme until he has been
able to make himself thoroughly acquainted
with local conditions.

H. J. R.

3578

at once Apr 27/9

R.S.

Sir John Anderson.

Please see this memorandum by Mr Belfield on the land question in East Africa and the preceding minutes on this paper. I venture to ask that there may be a preliminary reference to the Secretary of State before the Committee begins to consider Mr Belfield's recommendations. The Committee, as you are aware, consists simply of Mr Read, Mr Kisley, Mr Batterbee and myself, that is, it is merely the East Africa Department with legal assistance. My recollection differs somewhat from that of Mr Read as to the interpretation placed by the Committee on your minute of the 2nd of May (attached to ^{the} 5076). I certainly considered for my own part, and I know that ~~others~~ ^{the} other members of the Committee did also, that we were still bound to adhere to the main principles laid down in Lord Elgin's despatch of the 19th March, 1908, and that all that we ~~had~~ ^{were authorized} to do was to devise the most satisfactory machinery for carrying those principles into effect.

You will see that Mr Belfield wishes to vary those principles in, at any rate, three important points. He proposes that land should be granted for 999 ^{years} or in perpetuity, instead of for 99 years only (see paragraph 5). ~~He~~ advocates the abandonment of the proposed surtax or progressive land tax, not only in respect of land already granted but altogether (paragraph 16). His views as to the accumulation of holdings are at variance with those expressed throughout Lord Elgin's despatch. It may prove on close examination that his recommendations are subversive of other principles which hitherto we have taken as fixed points. I would venture to ask, therefore, whether the Committee are at liberty to examine Mr Belfield's memorandum freely and to make upon it such recommendations for comments as appear to

likely to be required, or whether they are in any way bound to take the principles laid down in Lord Elgin's despatch, ^{eg} at any rate on the three particulars specified above, as immutable. I am, of course, not asking the Secretary of State to commit himself in advance on any of these points. I only ask whether he is prepared to consider recommendations which may not be in ~~these~~ agreement with these ^{particulars} ^{principles}. It would make a considerable difference to the deliberations of the Committee if this point could be cleared up.

Sept 18

Mr Horwood

The Elgin scheme was hopeless impracticable, and ~~is~~ what we want is a practicable scheme that will ensure the efficient use of the Crown Estate, and at the same time ensure that an adequate price is paid for the use of the land, and that the community will get the benefit of the enhanced value of the land due to economic causes other than the operations of the landholder.

I do not think that the Committee should be fettered by more specific instructions than the above.

Ch. 19.9

I wish the Committee to be free to examine & comment on Balfour's suggestions. But I do not see how we are present to depart from the principle of 7 year leases renewable for 23 years. The Government will be a self-governing body and they might not find themselves with all their lands finally alienated.

27232



C. O.

72

Colonial Office

I have been afforded opportunity of examining the draft of the proposed East Africa Lands Ordinance, and of perusing all papers relating to the subject, commencing with the correspondence in which the general principles of the proposed legislation were prescribed by Lord Elgin. The identity of the Secretary of State's adviser is not disclosed in the records before me, and it is not possible for me therefore to form an opinion as to whether the suggestions upon which Lord Elgin's instructions were based emanated from an Official possessed of a practical knowledge of the provisions relating to land which would be really suitable to the needs of a new Colony, and acceptable to the capitalists and cultivators concerned with its development, or whether they were the pronouncements of one who had evolved his views only from a theoretical acquaintance with the subject, coupled with an inclination to experiment.

2. Throughout the whole of this correspondence I have been unable to find an instance in which any officer or member of the public has expressed approval or agreement with the principles and procedure embodied in the directions issued by the Colonial Office. On the other hand continuous efforts have been made to show that they are unsuitable to the requirements of the

the Colony, and the impression left on my mind is that there is at the present time no officer, concerned with the preparation of this Ordinance, either here or in the Protectorate, who is really satisfied that it is framed on lines which are likely to be beneficial to the country.

3. I understand that the case of those who are opposed to the principles of the proposed measure was fully represented to the Secretary of State by Sir P. Girouard, and that Mr. Harcourt then expressed his disinclination to vary the directions given by his predecessor, but as it is not apparent that that disinclination is founded upon concurrence with the principles embodied in those directions, and as the existence of a departmental Committee on the subject is an indication that the question is still open to discussion, I am emboldened to express in general terms the views I have formed and to offer for consideration an outline of the provisions which I advocate, in the hope that it may not be too late to obtain the sanction of the Secretary of State to a substantial modification of the conditions incorporated in the draft.

4. It is not too much to say that I view with grave apprehension the prospect of having to enact a law upon the lines expressed by the principal clauses of the bill, because I think the terms are not such as will conduce to simple and effective administration, nor encourage intending applicants for land to acquire and develop any description of holding. It seems to me to be right, therefore, that I should indicate broadly the principal changes which I advocate before

matters have gone too far for alterations. The elaboration of details can be left over until it is known whether the Secretary of State is prepared to assent to the alterations which I submit for adoption. The changes which I recommend are shortly as follows -

5. Instead of a lease for 99 years I think we should give a grant for 999 years of perpetuity. I see no advantage in adhering to the shorter term, because it is better for the country that the land should remain in the hands of proprietors who are bound by the terms of their title to maintain it in a condition of effective development than that it should revert in the Crown and impose on the Government the responsibility of effecting the re-alienation. Moreover a general impression exists at the present time that the highest plateaux of the Protectorate are suitable for permanent occupation by a white population - and hence therefore that impression remains in the minds of the natives for land to secure themselves the use of their properties for a period which will enable them to pass on the results of their labour to their descendants. To all such the acquisition of a grant in perpetuity is a prospect infinitely more attractive than that offered by a lease for a term which will not with certainty ensure possession to the grandchild or of the original lessee.

6. There appears to be some diversity of opinion as to the manner in which alienation of land should be effected. My own view is that it should be disposed of by auction in all cases except those special instances in which the Governor, on the recommendation of the Land Officer, may see fit to approve alienation at a fixed price and without competition.

This has been the practice for years past in the Federated Malay States in the case of Town lands, and I know of no instance in which it has been suggested that the discretion has been mis-used. The adoption of the auction method will do away with the necessity for dividing the land into classes, as the value of every block will be settled by the bidding.

7. ^{Areas} ~~Areas~~ of land of all descriptions, whether town plots, agricultural ground or grazing country should in the first instance be divided up and set out by the Land Officer in blocks, in the form best suited to the configuration of the country, and adapted, as far as possible, to the current requirements of intending settlers. A sketch map of the area so subdivided should then be prepared and displayed for the information of the public, and the Land Officer should give one month's notice that such of the blocks as it is proposed to alienate will be offered at auction at a place and time to be announced in the notice, declaring at the same time the amount of the upset price and the rent fixed in respect of each block.

No person should be permitted to bid without a certificate from the Land Officer authorising him to do so, and no one should be allowed to purchase more than one block of the same description of land at any sale. The personal attendance of bidders at sales should be insisted on, and no bid by the representative of an absentee should be received unless sanctioned by the written authority of the Governor.

8. In the case of Town lots, half the purchase price should be paid at the time of sale, and the balance, together with a sum sufficient to cover Survey and registration fees, within seven days after the sale.

In the case of agricultural and grazing blocks, half the premium, together with the rent for

the first year and the deposit in respect of survey and registration should be paid within one month after the sale, and the remaining half of the premium on issue of grant - There is no sufficient reason for dividing this payment into a larger number of instalments.

9. As I have already said, the area of the blocks to be alienated should be settled by the Land Officer in accordance with local conditions and requirements, but it is desirable to prescribe some limit of size, and I think the following might do -

Town land	1000 square feet
Agricultural land	1500 acres
Grazing land	1000 acres.

which may be extended by the Governor in special cases to 7500 square feet, 2500 acres and 2000 acres respectively.

10. Rents should be published in anticipation of sale and should be payable from date of purchase. The following rates are suggested -

Town land - from cents to cents per square foot - to be fixed by the land officer according to the situation of the lot - I am not at present in a position to recommend minimum and maximum figures.

Agricultural land - eight cents an acre, with a minimum of Rs.15.

Grazing land - Four cents an acre with a minimum of Rs.20.

The rents which have been reserved up to the present time are low, and I think they may be reasonably raised as proposed, having regard to the extended term of tenure contemplated by the proposed grant.

11. Occupation licences for country lands may extend

extend to three years. The prolongation of the present term will probably be welcomed by the settler, and it will be an advantage to give the Survey department more time for completion of ~~the~~^{field} work and preparation of the title plan which must be incorporated with the grant. The interests of the Crown will be in no way prejudiced by such prolongation, as rent will be payable "ab initio" and the licensee will have to proceed with his development work in the same way as if he were in possession of ^{A &} permanent title.

12. The tenure of all licences and grants must be made dependent upon the regular payment of rent and upon the performance of such development work as may be prescribed in respect of each class of land. I do not favour the proposal that development should be estimated by the amount of money expended on it, both because the extent of such expenditure is not easily checked and because pecuniary outlay may be qualified by accidents. The practical obligation with which documents of title should be conditioned is the performance of a prescribed amount of development work within a specified period, and its subsequent maintenance in good order. Such conditions will of course vary in accordance with the nature of the land, but it should be no difficult matter to prepare a schedule to the Ordinance, setting out what is required in each instance. For example, in the case of Town land there will be inserted a description of the nature and general dimensions of the building to be erected and a stipulation that it shall be completed to the satisfaction of the Urban Authority within a certain period. For agricultural lands there will be a condition

condition that not less than a certain number of acres shall be opened and planted up in each year, and thereafter effectively maintained, until the cultivated area reaches a certain proportion of the extent of the holding. The details of such a condition may reasonably vary according to the situation of the land and the description of product to be cultivated, but there will be no practical difficulty in making such differentiation in the schedule.

The conditions of development to be required in the case of grazing areas are not so easily determinable, but they will probably take the form of erection of fencing and buildings, the construction of reservoirs, dams and irrigation channels, together with the maintenance of a certain ^{kind} ~~number~~ of stock. The particulars to be prescribed by such a schedule can of course only be settled after exhaustive inquiry on the spot, and I am attempting to give here only the merest outline of obligations to be definitely formulated later on.

13. In the case of areas to be alienated in the highland districts it will be advisable to impose a condition requiring residence and supervision by the owner or a white agent for a considerable portion of each year. It would not seem unreasonable to stipulate that the property should be so managed for at least eight months out of every twelve - but this again is probably a matter for local investigation.

14. If it is agreed that grants in perpetuity shall take the place of leaseholds for 99 years, then I think that we should allow no more freeholds. Subject to compliance with the conditions attached, by expression or implication, to his title, the holder of a grant in perpetuity will be vested with an interest differing very little from that of a freehold right. He must conform to his obligations, and he must pay his rent. These are demands which the Government may properly make of the landholder in the interests of the country, and there is no sufficient reason why the authority administering the Protectorate should divest itself of its undoubted right to ensure progressive development and to secure an annually recurrent revenue from alienated land.

15. The principle of re-assessment of rent in every thirty-third year may be retained, but I support the view expressed by Sir John Anderson that such re-assessment should take place, not in the thirty-third year next following the date of each grant, but in all cases at the expiration of thirty three years from a date to be notified, say January 1st 1914. This will be a special work for which special arrangements must be made in advance, as is done in the case of a census.

A simple and efficient method of re-valuation is that propounded by Mr. Tannahill in paragraphs 5 and 6 of his memorandum of June 2nd, 1912, and although it is true, as pointed out by the Committee, that the rates so calculated will eventually work out at a figure somewhat in excess of those laid down in Lord Elgin's despatch, I nevertheless commend them for the acceptance of the Secretary of State, because they will work out far more equally, owing to the disappearance of the maxima, which would press most heavily and unduly

unduly upon low grade properties.

16. I most strongly advocate the abandonment of the proposed Sur-tax. I consider it a complicated and intricate piece of machinery, difficult to administer accurately and effectively, and devised as a preventive of what has been assumed to be an evil, but has not really been proved to be so.

Assertion of the necessity for the provision of such preventive measures has been based upon the assumption that it is impractic to permit the accumulation of land in the hands of any single individual or corporation. But in order to prove that such accumulation is detrimental to the well being of the country, it is essential to establish the fact that the proportion of improvement to acreage diminishes as the extent of ownership increases. I do not deny that this might happen if land is disposed of free of obligation to develop it, but it cannot occur if adequate covenants are imposed and their fulfilment is consistently required.

As stated above, I propose that conditions ensuring effective development and maintenance shall be invariably imposed, the penalty for non-compliance being forfeiture, under which circumstances it makes not the smallest difference to anybody whether four blocks of land are held by one person or by four. *

If A, B, C and D. each hold an agricultural block of 1,000 acres, conditioned in each case that at least one quarter of the area shall be brought under cultivation within a certain number of years

from

except from the point of view of bringing a larger number of Europeans into the country. This is the whole question of class settlement. Australia - N.Y. J.R.

from date of grant and thereafter to be maintained, the position will be the same whether they continue to be separately owned or whether all four are bought up by A. So long as the improvement of alienated areas is safeguarded by such conditions, the accumulation of land in the hands of a single person is fraught with no detriment to the country, because if he becomes lax in fulfilling the conditions attaching to any block, that block thereupon reverts to the Crown.

It appears to me therefore that the imposition of such a tax is an unnecessary precaution introduced only for the purpose of obviating an imaginary evil. Additionally it is of a vexatious nature, and it certainly will not conduce to its popularity that it should be laid upon a portion only of the Protectorate lands. I most strongly urge therefore that the proposal be discarded as unnecessary, and be no further proceeded with.

17. I gather from the correspondence that trouble has been caused in the past by the attempts of licensees and lease holders to transfer their holdings without the cognizance or authority of the Government. Such disposition is sure to take place if the proceedings are not regulated by law, but it need not be difficult to place the whole subject upon a proper footing.

Provision should be made in the new

ordinance

ordinance that no transaction in land will be valid unless and until it is registered in the Land Office. In the first instance all licences and documents of title issued by the Government should be prepared by the Land Office in duplicate, whereof one copy should be filed in the Office and the other issued to the land holder. As to occupation licences, I agree that transfers and other transactions of a similar nature should be prohibited except when specially sanctioned by the Governor, because the object of issuing a licence in the first instance, is to compel the applicant to qualify by the performance of a certain amount of development work, for the receipt of a permanent title, and that is a duty which he must not be permitted to pass over to another party. But I cannot go so far as to endorse the suggestion of the Committee that the transfer of a licence should be made a criminal offence. Forfeiture is the natural penalty for any improper dealing with land over which the Crown retains the rights of land-lord, and that is sufficient to meet the case of unauthorised transfer of land held under such licences, which penalty may be made additionally severe by enacting that the improved as well as the unimproved land shall in such case revert to the Government. Further, if thought desirable there might be imposed on the offender a disability to bid at auction sales of Crown land for a certain number of years subsequent to the commission of the offence.

offence.

18. I think that no restrictions should be placed on the free disposition of other lands by way of transfer, transmission, charge, or subdivision, except in special cases where it may be necessary for the Governor to prohibit an assignment on the recommendation of the Land Officer. The sort of case I have in ^mmind would be an attempt by a white farmer in the highlands to dispose of his holding to an Asiatic. Otherwise I would leave to all landowners the free and unrestricted right to effect such dealings, merely prescribing that each transaction must be performed in accordance with the procedure provided, and must be completed and registered before it can be endowed with legal effect. It is ^{not} necessary for me to describe here the procedure by which such record will be secured. The machinery can be easily provided if the principle is accepted.

19. I do not think it reasonable or desirable that any obligation should be imposed upon Government to pay compensation either in the case of the voluntary release or surrender of the whole or portion of a holding, or in the event of forfeiture for failure to comply with conditions. It must always be open to the land holder to surrender any portion of the land comprised in his right, whether improved or unimproved, provided that in the case of surrender of a portion only he first deposits a sum sufficient to cover the cost of sub-division and re-preparation.

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re-preparation of title, but such surrender should be free of any obligation on the part of the Government to do more than re-enter on and accept control of the area surrendered.

A fortiori, no compensation should be payable in the case of forfeited land, but where the right of resumption is exercised for failure to comply with the obligations attaching to an agricultural property, the defaulter may usually be allowed to retain that portion of the area, if any, which has been efficiently cultivated, together with a reasonable portion of the land immediately contiguous to such cultivated portion.

20. If the principle of alienation of land of all classes by means of grants in perpetuity is accepted as the policy of the future, opportunity should be given to those now holding land under earlier titles of a different description to surrender them and receive grants in substitution. But such exchange can only be permitted upon the understanding that the applicant accepts all conditions which may be attached to the new form of title, including such new rates of rent as may be determined, and the obligations relating to development and maintenance. The offer of the longer period will probably prove so great an attraction to many land owners as to induce them to accept terms which in themselves may be slightly more onerous than those at present imposed. The removal of all differentiation in title

and

and terms is a desideratum which cannot be entirely attained, but which should be promoted as far as possible by encouraging the exchange of old and less advantageous titles.

21. The provisions of the ordinance relating to temporary licences for small areas, reserves for natives, and the reservations dealt with in Part VIII, do not call for substantial alteration, but it may be possible to make some improvement in the sections in which those provisions are embodied. If it is decided that the Ordinance shall be re-drafted to give effect to all or any of the amendments which I have advocated.

H. Conway Boyd.

29. 8. 12.

August

Memorandum in regard to the ~~Alienation~~
~~Method of Allotment~~ of Crown Lands East Africa
Protectorate & various matters arising on the
Draft Crown Lands Ordinance 1909.

- 1/ At a meeting of the Committee of the E.A.P.'s draft Crown
Lands Ordinance held in the Colonial Office May 21st 1912
I was instructed to prepare a ~~Statement~~ ^{Memorandum} setting out the
relative ~~advantages~~ & disadvantages of alienation of land by
the means of allotment or application - by means of auction respectively.
- 2/ The Secy of the Committee has placed at my disposal the 1909 Ordinance
as drafted, ^{but not corrected.} together with a large number of valuable memoranda & returns
& also the S & S's despatches to Gov of E.A.P. of March 19th 1907,
Feb 5th and Feb 9th of 1911: & I have also been able to obtain an
interview with Mr J. O'Connell Smith the Commissioner in charge of the
Empire & Canada and also Capt L. S. Morgan who had expressed
himself very strongly in favour of Auction & from whom I was able to obtain
more definite views.
- 3/ ~~Amongst~~ ~~out~~ ~~of~~ ~~the~~ ~~above~~ ~~mentioned~~ ~~memoranda~~ ~~especially~~
At the meeting of the Committee above referred to there appeared to me
an unanimous feeling that it was well within the range of practicable
policy to charge a Grand Premium on all lands before alienation
which considerably affects my previous conviction that Allotment or
Application ~~was~~ the better system, but before committing thereon
I venture most humbly to put forward a suggestion relative to
Interest & revision of Rental which ~~is~~ ~~perhaps~~ ~~to~~ ~~be~~ ~~considered~~ ~~may~~ ~~possibly~~
be equally acceptable to the S & S. and to Applicants for Land.
I may say I mentioned the outlines of the suggestion to Capt Morgan
who positively stated he would do all in his power to further same
& I believe Lord Dufferin would agree entirely with the principle.

2/
Suggested form of
Lease

The suggestion shortly is: After completion of certain conditions the grant of a lease either in perpetuity or for 99 years which shall also be renewable in regard to rental every at the expiration of every period of 33 years.

3/
Method of Valuing
the land for Rental

The method of Valuing the land shall be to ascertain the market value of the land with the Improvements effected thereon & to subtract from such gross value the replacement value of Improvements as defined in Sch 2, the remainder to be taken as the value of the land.

4/
Percentage to be taken
rental.

At the expiration of 33 rd year	1/3
" " " " 66 th "	2/3
" " " " 99 th "	5/6

& for all periods thereafter } 5% on the capital value of the land ascertained as in para 5 to be the annual rent for the ensuing period of 33 years.

7/
Reason for suggesting
lease in perpetuity

Advancing to para 4, nearly every person interested in Land, who from sentimental reasons, cherishes the hope of obtaining some tenure which he can hand down to his heirs for all time, although financially he benefits by the 99 years lease as at present drafted. This latter benefit has I believe been absolutely overlooked. I gather from the despatches that the primary idea of a 99 years lease is that, in the 100th year, the State shall step in and sell the farm at a very material benefit. But every body who looks at the matter commercially will take very good care that it is himself & not the State who will benefit. Take the case of a hawthorn, Sand or Agricultural Farm. In the 15th or 20th years of

the lease the Lessee will take every bit of heart out of the land & ^{will} leave it a tangled mass of roots & weeds. The Crown (under Sec 61) will pay him for his permanent improvements & will be saddled with that debt & a farm which it is no exaggeration to say has no value & is a source of danger to the neighbours. In my opinion the fixed termination of a lease at any period is not only as brought to the community but a grave danger & further, is a direct incentive to reckless farming for the benefit of the individual.

Method of determining
compensation for
improvements
(secs 61 & 62)

Which on this point I venture to call attention to Secs 61 & 62 of the Ordinance. As I read it, the Crown, through the Land Officer, guarantees to pay the full value of the improvements whether a new lease comes forward or not. In the case of compulsory termination by effluxion of time (if this is inserted upon) such a clause has certain arguments in its favour but, to my mind, not otherwise.

As an example I would instance Sir W. Mellans farm at Jaja where a very rich man has spent £22,000 on the most elaborate buildings & plant, which no other person farming for profit, could afford to pay over than about £1,000. In other words the state would be saddled with a debt of £21,000.

Another example. A poor farm with development to the extent of say £1,000 remains without a lease coming forward for 500 years. The L.O. at the expiration of six months pay out the £1,000. It is almost impossible to put a caretaker on to the farm, a grass fire burns down the forest, weeds cover the cleared land, the irrigation channels are broken down & no lease in his senses will give £10 for the improvements & the remedies for these objections are -

- (a) A perpetual lease with ^{compensation}
- (b) No compensation in cases of expropriation for breach of the covenants of the lease.
- (c) In the case of voluntary surrender, the Crown to guarantee that the land will be open for revaluation within 3 months (perhaps) of the completion of the surrender & the Crown (po an act of grace but as a matter of universal practice) will endeavour to obtain the best price possible for the development improvements but will make no guarantee of the amount of the sum to be paid. This latter is simply the practice in Canada when the Land Transfer Commission assesses the value of the improvements as they stand.

9/
 Provision for making
 a formula in para 6.

Adverting to para 6. Supra. the method therein set out is roughly the formula adopted in Australia. The value so obtained is not the 'unimproved' or 'priced' value but after 16 years practical experience in land & property valuation of every description I know of no method for ascertaining precise value that could be applied to B. & A. I venture to estimate one or two difficulties.

- (a) Only a couple of years ago wool sheep cost £20 per head. By the care & industry of the Settler aided to a certain extent by Government bounties the price has been reduced to £2. By how much ~~of~~ his land has been improved in consequence?
- (b) A Settler by careful grazing & years of experiment & failure has turned some cattle with such sheep pasture & shown other settlers how to do it in 10th of the time it took him to make experiments.

The rest of all land of this description is appreciated.

- (c) By cattle & in some cases ruinous experiments certain districts have been proved fatal to stock, or fatal to certain classes of stock & in consequence of this certain expenditure is saved to ^{the} farmers, a further appreciation to the land, & so on.

All these experiments continually add to the \uparrow value of land but this value is most certainly not "prairie value" & with equal certainty is not "unearned increment" mentioned in para 4 of S of S & Gov of Mar 19 1905

It is a combination of the two of which to my mind the major portion is "prairie value"

The advantages of the comparatively simple formula suggested in para 6 are (a) that a lessee can estimate for himself what rent he will be likely to pay & (b) will be credited to a certain extent with the value of his own improvements & productions.

Reasons for
Percentages for stranding
under para 6 supra

Sec 57 of C. C.

Adverting to para 6 supra I venture to believe that 5% at any rate on a value found by the formula mentioned above, would be an excellent impost.

In a new country such as S. A. a Settler stands very heavily indebted to himself & from the amenities of civilization, stands relatively to a settled & known country enormous sums of money in improvements and in common justice looks to a reimbursement ^{check} not to make up for the disadvantages.

These difficulties decrease as the country gets older & it is for that reason I support an increasing percentage for the first 3 recitations but I am of opinion they should not exceed 1, 2 & 3% respectively taking into account the basis of valuation which is not prairie value.

I am of opinion that the wishes of the S of S are amply met by these percentages for the following reason:-
The maximum provided for by the Sec of 57 is 56 cents per acre for the 2nd period. The price of 1st class land in the Highlands is £4 per acre at the present moment 1% on £4 (or £40) is 40 cents already 4 cents above the maximum.

11
Inequality of land
maxima

Under any proposal I would abolish maxima
altogether. I venture to think that the
~~establishment~~ ^{the} of a reasonable rent is incompatible
with a fixed maximum, which latter acts very
harshly on low grade land.

Under the system to be set out in the present draft
the following would actually arise within a few miles
of Nairobi at the expiration of 33 years.

Limuru Grand Wattleland

Value Rs 150 per acre @ 5% = Rental Rs 7.50

Althe Plains doubtful grazing

Value Rs 12 per acre @ 5% = Rental Rs 6.00

Under the system of a maximum the rent to be
wattle farmer would pay a purely nominal rent of 56 cents
while the stamping parastat would be rack-rented at
the same figure.

By the time the area of 33 years ⁱⁿ land on the ~~area~~ ^{Juba}
becomes worth £50 per acre no one will object to
paying me at 5%. The principle of no maxima
is recognized in Townships (see sec 87, 2nd para) this
arbitrary distinction appears inconsistent.

page 6 "Income Land" 1907
The Commissioners of Lands, July 12 1907
advised "that the enhancement should
be stated when the land was granted, so
that the grantee would know exactly
what he would have to pay" but I
submitted a reasonable rental based on value
on time of issue as a basis. This is for
all purposes.

2
Fluctuation in the
Value of Land &
Fixing of a Maximum
Rental.

In adopting this system of revaluation it must
be borne in mind that land values may
possibly decrease. It is also possible to
imagine ^{cases when} that after deducting the value of the
improvements from the gross value the theoretical
land value is a minus (e.g. Juba ^{grazing} ~~grazing~~)
This would create the anomaly of the landlord
paying rent to the tenant, to avoid this I
would recommend fixing a nominal minimum
rental of Rs 15.

13
"except land in Townships"
By J. D. D. (6)

13
Small Allotments
of 160 acres

I venture to recommend the Survey for alienation of ~~small~~ blocks of land of 8 to 10000 acres, ^{in total} not 160 acre small holdings, on the same lines of development & tenure as in Canada, by a fixed grant after certain conditions have been fulfilled at a cost which will cover nearly the cost of alienation without direct revenue from the land.

I believe this would have the effect of stopping the small but genuine farmer from acquiring a larger area ~~which~~ of which he would never have the capital to properly develop & which at the present moment is the cause of very large tracts ~~being~~ remaining undeveloped.

6
Areas of Farms

I gather the Committee are unanimous in agreeing the ^{average} area of farms should be ~~increased~~ decreased. In Southern Nigeria the area of a grant is about 1500 acres, in Nyassaland about 2000 acres, in Canada 160 acres.

Grazing leases

In Canada however there ~~are~~ grazing leases for 2 years & no one shall own a greater area than 20 000 acres. These grazing leases ^{or any part thereof} however, are subject to 2 years notice to quit & I understand have practically ceased to be applied for.

Grazing leases

The usual ~~requirement~~ ^{requirement} is 1 acre per annum. A lease cannot be granted an applicant unless he runs one head of cattle or 5 head of sheep for every 60 acres applied for and the lease shall increase his stock so as to be in possession at the end of 3 years of one head of cattle or 5 sheep for every 20 acres leased & shall maintain stock in this proportion during the continuance of his lease.

In such country as the Highlands of S.A. where the whole ~~is~~ ^{is} ~~characteristic~~ ^{characteristic} of the soil & topography

may change every 3 or 4 miles it is so impossible to lay down any definite area or districts, quite apart from the fact that topography plays a very important ^{part} in land farm survey in BSA

The procedure adopted at present is (a) a report is issued that land within certain limits is suitable for cutting up into farms (b) a surveyor is sent up to make a $\frac{1}{2500}$ map of the country & report generally (c) the ^{area} land office, District of Survey, District of Survey, District Branch & land Ranger endeavour on the Reports & evidence before them to lay out a scheme of farms on paper (d) An accurate survey tied on to the main triangulation is completed roughly on the lines indicated on paper

This scheme could be improved if an expert accompanied the Topo Surveyor - practically ~~down~~ took charge notes as the survey progressed. From such notes he should be able to determine practically exactly where the boundaries should come of each farm

~~in~~ Office of the same Dept should be this report so that his knowledge ^{of the locality} could always be at the disposal of the ~~office~~ ^{work}

I feel as a guiding principle that land capable of agriculture should not exceed 500 acres but a wide location both ways should be allowed. There are certain portions of the Protectorate even in the Highlands where a grant of 320 acres properly farmed should prove not only a comfortable but a fortune.

Average Area
about 1500 acres

15/

Summary of Protector

Paragraph

Summary of possible

areas

Before proceeding with the question of the matter of ~~alienation~~ ~~it should~~ ~~matter~~ ~~to~~ ~~summarise~~ ~~the~~ ~~preceding~~ ~~paragraphs~~ ~~so~~ ~~that~~ ~~it~~ ~~is~~ ~~clear~~ ~~what~~ ~~is~~ ~~the~~ ~~Government~~ ~~is~~ ~~proposing~~ ~~to~~ ~~do~~ ~~about~~ alienation it is necessary to decide the different forms of land grants it is ^{possible} prepared to adopt & offer approval. They are as follows -

(Various forms
of tenure)

- A. (1) The right to lease an Agricultural Estate of about 1500 acres (dealt with in paras 4 & 5, 6 & 7 supra)
(2) Whether the privilege of purchasing 320 acres would be included in this grant. See 63 of the Ordinance vide also para 6 of Confidential despatch from S of S to Gov. 5/11/1911. 5th Feb 1911.

B. The right to acquire 320 acres ~~freehold~~ on leasehold or purchase principles. See 63 of the Ordinance.

C. Free grants of 160 acres vide para 13 supra.

D. Leasing leases outlined in para 14 supra.

E. Concessions such as Timber, Lake Mangrove, Pearl, Catclaw, Guano, Papayas etc. etc.
These ~~latter~~ I am of opinion require to be dealt with each on its own merits & hardly come within the scope of the memorandum. The Ordinance (See 63) leaves it to the Protector's to devise procedure.

16/
method of
granting leases
Allotment

In regard to the method of allotment the system ^{now in vogue} adopted or present in the Protectorate is as follows -

- (1) A notice is published in the Official Gazette that on a certain day (generally 23 days ahead) applications for farms specified in a Schedule attached will be received at the Land Office between the hours of 10 AM & 4 PM. Only personal applications will be dealt with applications by letter will not receive attention until after 4 PM. If there is more than one applicant in the Office at 10 AM the order of priority of selection will be balloted for.
(2) At 10 AM there may be a mass of 50 ~~or more~~ people. Each person is immediately given a ticket & numbered 1 to

50 are ruled off as 10 o'clock. If an applicant arrives at five minutes past ten he gets ticket 51 & the doorkeeper enters the time & is against that number.

(c) The Applicants enter in the order of their tickets & hand to the Officer in charge (a) their full name & address. (2) Cash for £5. (3) a list of the farms they wish to apply for in the following form "My first selection is Farm 1" ... if that is not available my 2nd Selection is farm P" ... and so on. An applicant may make only 5 selections out of 50 farms, in which case he has to add a note "if none of the above is available I share my deposit fee refunded."

(d) When the ~~first~~ 10 o'clock applicants have all registered, the order of priority of selection is balloted for & the public are admitted to the ballot. The method is, 50 numbers (in this example 1 to 50) are placed in a bag, one officer reads out the name of the 1st registered applicant, simultaneously a second officer draws a number from the bag & hands it to a 3rd officer who reads it out & that number is placed against the applicant's name.

(e) So soon as the ballot is completed the Land Officer examines the list of names & has the opportunity of withdrawing any applications.

(f) The Officer in charge of the allotment then takes the application which has drawn N° 1 in the ballot and if his application & Proof of Means are in order he gets the form 1st on his list that farm is struck off the Schedule & the papers passed on to the Dreds Dept for the Licenses to be prepared. The Officer then takes N° 2 & if the 1st farm on his list has not been selected he gets it, if it has been taken then his second, and so on through the whole number of applicants.

It is a most curious but true fact that about 50% of the Applicants get their 1st selection and about 70% get a farm in their first three selections.

17
 Allotment by
 means of a Board

There is quite a strong feeling in the Protectorate that the system of Allotment by ballot should be superseded by Allotment by means of a Board.

The system in use would be much the same as in allotment by ballot but instead of ballot, applicants would have to appear in person before a Board who in Public would examine each applicant & after examining every one, would make an order of priority of selection.

The Board who were made to have sittings at convenient stated intervals & the notice of the meeting would contain a Schedule of all farms available in the Protectorate. If at one sitting all the available farms are not taken up the remainder unapplied for, shall be included in the Schedule of the next sitting.

Such a Board to be advisory to His Excellency the Governor & to consist of the Land Officer & two non-official members of the Land Board.

There would be certain difficulties in the selection of the non-official members but I do not think they are insuperable.

This system, apart from the extra trouble involved, has many advantages over allotment by ballot - I quote as follows a case pending at the present moment, which allotment by ballot would be of great assistance.

Deceased Sam Coak & Wilson, two headworking public school men with Capital, purchased by private Treaty, a farm of 5000 acres at Kilmackin on which there are permanent springs the overflow from which does not run off their land.

Adjoining & surrounding this farm is a vast tract of good grazing land without permanent water, although there are water holes which are liable to dry up. They apply

for 8,000 acres of this land & will guarantee to introduce a Australian sheep & stand the risk of not finding water that will hold water in dams. (one small water in a very arched gneiss area) They are prepared to deposit the Survey

(7 contd) ~~feels~~ advance. The Land Office is unable to consider the application because the land ~~cases~~ has not been taken for public application & if it was allotted to Lumber & Lumber is a practical certainty written as most threaten there would be five or six people complaining ^{literally in the papers & to H.C.} that they had been waiting for this land to be offered for allotment but had been told it was not available.

Makes a Director of
Allotment Board

It may be argued that Auction would meet this case but, the answer being so clear that Lumber dealers were after it other purchasers might outbid them with the idea that it must be valuable, whereas under present conditions these Lumber dealers having water pumped water can afford to experiment in Lumber which no other purchaser could. The result would be that Lumber dealers would have to ~~wait~~ wait the Lumber relinquished the farm & nobody would benefit whereas if the land ^{off} office was in a position to allot, then the Government would make experiments at no cost to the Government which would enable the Govt to deal with what might be a valuable land in the result.

Such cases are not infrequent

In allotment by ~~the~~ ^{the} Govt owned in many cases the merits of the cases of the Applicants will be so similar that the Govt itself will have to issue a series of ballot ~~on the other hand~~ ^{on the other hand} it will be possible to give preference to applicants at our own risk

It would also be possible to impose special conditions on special applications if so desired

It would be faced with the technical difficulty of having to assess a Stand Premium with no Public Sale as a guide

It is a somewhat cumbersome system & open to criticism on the ground that certain members of the Board have shown bias.

18
4/
Other methods of
Allotment

I made very careful enquiries as to the method adopted in Canada & find that there they give about 10 days notice by a notice posted in the local Land Office. In these cases applications in the order in which they appear before the selection & ~~other~~ office, they will have people waiting in the street for 9 or 10 days. This has led to really awful scenes of persons' breakdowns in health. If a man leaves the cue he loses his place as the sanitary conditions can be imagined. The inconvenience to the neighbourhood is no small matter & after all, does not get over the hardship to the man who doesn't happen to be in the neighbourhood of the Land Office when the notice appears. On the other hand it is a considerable deterrent to the man who applies to the Land Office at 9.55 on the morning of the selection on the chance that he might draw a farm for subsequent operation.

Another method is exactly after a notice is published, to require applications as they appear at the Land Office against that the man who got made application would appear at the same time as the notice. Applicants who did not live near the Land Office would never have a chance. On the whole, the system at present in vogue in the Protectorate is in my opinion as good as any other I have ever heard of.

A suggestion emanating from the Land Board had never formally carried has certain merits viz. that the Land Office should take cognizance of the date when an applicant first landed in the Protectorate. It has obvious disadvantages. e.g. a man may have landed 2 years ago without sufficient means to acquire a farm which it takes him 1 1/2 years to accumulate. He should not take preference

over a man who has been waiting with sufficient capital for
say eighteen months.

1978
Method of
Auction

of Auction
The present system is as follows -

(a) A notice appears in two consecutive Official Gazettes
(ensuring at least 16 days notice) that the right to lease
certain lands will be put up to Auction.

Except in the case of Town Plots Persons desirous
of bidding must obtain a certificate to bid from the
Land Officer & also such is required to show proof of funds to £400.
An initial price is quoted.

25% of the purchase money must be paid on the fall of the
hammer & the balance within seven days.

The initial price ~~ordinarily~~ is never less than will pay
for the cost of auctioning & elsewhere locally varies
from 25 cents to Rs 2 per acre (6 to 2/3).

In addition, the Purchaser has to pay Survey Fee as per Schedule,
cost of lease Rs 5, & Registration as per Stamp Act.

Merits & Demerits
of Auction

9
Merits & Demerits
of Allotment

Auction has the very great merit of deciding
matters quickly.

- 1) The ~~unpleasant~~ ~~deliberate~~
- 2) The ~~slow~~ ~~unpleasant~~ ~~deliberate~~
- 3) The ~~slow~~ ~~unpleasant~~ ~~deliberate~~

It has the disadvantage of active work in special cases.

The Land Officer has only so much control over the allocation
of land & suitable portions are would be given in all hands
by a Board.

Recommendation that
method of alienation
should be discretionary

the price realized being the
premium for the right to lease,
together with the right to free hold
320 acres at a certain fixed price

Adverting to paragraph 5 I venture to make the
following recommendations in regard to each of the
four classes of grants as follows - 351

Class A Agricultural lease

I am of opinion, in the
vast majority of cases under this head that auction should
go ~~on~~ be the method of alienation especially when
a new block of farms becomes available for alienation

In special cases e.g. the Lambert Wilson case, it should
be left to the discretion of the new office to deal with
by allotment. I see no reason why the whole Land Board
as at present constituted should not be the advisory body
they are a practical body & could be depended upon to
give a fairly unbiassed opinion on the merits of the
several applicants

I believe the cases dealt with by allotment would be
so few that they could be settled at the ordinary
quarterly meetings of the Board.

Class B 320 acres free hold

should be dealt
with by auction the price realized being the price
to be paid for free holding the land

Class C 160 acres free grant

The only change

In Canada the
fee is £2 only
In B.I.A. the survey fee
alone is \$5 which could
probably be reduced if
a big area was cut up
in one operation.

to be made to be sufficient to cover Survey & Office
expenses. Personal ~~application~~ occupation to
be an absolute sine qua non. In the event
of more than one applicant appearing at the same time
e.g. when a new block is opened then allotment
by ballot as at present in force to be the system of
alienation.

The applicant to sign an affidavit that he has
received no previous grant from the Crown & that he
holds no undivided interest in any form the subject of

2 acres. Occupation to be for six months in each of the first 3 years after which provided development has been completed a lease certificate of title in fee simple to be granted.

355

Development to consist of a habitable house within the first 12 months of a floor space including verandah of at least 200 sq feet and at the expiration of 3 years 30 acres bloughed of which at least 20 must be cropped.

Class D Grazing Leases a much more difficult

problem & rather depends on whether such areas would be surveyed ahead of application or only on receipt of applications. Another point for determination, considering the ^{with a 2 years notice} expiry of the 3 years lease is whether the Govt is satisfied in issuing a Survey other than by elementary plans table.

In this it may be proved that certain lands are unsuitable for agriculture but suitable for Stock, in which case there is no necessity for short term leases.

a rough idea of procedure is as follows -

Tracts of country ^{notified} in the Gazette as open for Grazing Applications. In all probability a plans table map would be available.

An applicant having proved himself possessed of a certain amount of Stock claims the equivalent in acres.

He must be prepared to bond out with & pay the expenses of a Land Ranger or Surveyor who would roughly beacon off a suitable area.

The only conditions should be that he must increase his herd of stock up to a certain maximum ^{and take care} area within a certain period & maintain that amount on the land.

He ^{must} should be granted, with the lease, the right to declare an ignominial area on which he shall be able to acquire an

(20. contd)

Aggricultural lease ~~and~~ ^{paid at the time of granting the lease} Stand Premium on the want of the Land Officer declaring that his lands or portions of it must be reserved for smaller ~~area~~ ^{close settlement}. 353

If these recommendations are approved Secs 34 & following sections of the Ordinance require re-drafting. Drafting would be essential.

21
Rents
(2) on Farms

Under Secs 32, 34 & 36 it says Rents are determined by classification except in the case of Town Plots & are confined to four classes at 3, 6, 12 & 18 cents per acre per annum respectively.

I venture to suggest that classification be abolished in any case, and that Auction, or an assessed Stand Premium shall make the difference ~~or~~ ^{or} compensate the Crown for the difference in values.

I suggest there should be one standard rent throughout the whole Protectorate for the first period of 33 years & am of opinion that six cents per acre per annum is a very fair average & adopt provided that no rent shall be less than say Rs 16 per annum.

to Town Plots

By Part III of the Ordinance, as I read it, no provision is made or contemplates for revising the ^{or existing} ~~rent~~ ^{rent originally} fixed by the Land Officer, on any basis of percentage ~~of~~ ^{of} site value at stated periods but as I read Sec 25 it is written the power of L.O. to determine that there shall be an ~~increase~~ ^{increase} ~~in~~ ⁱⁿ rental at certain periods provided the amount of such alteration is ~~stated~~ ^{stated in the lease}.

I have not observed such leases in England. ~~The system~~ ^{has} been introduced into various building leases in the Protectorate e.g. So down Gales, Tidbinbans where (speaking from memory) the rent for the 1st 33 years is one cent per sq ft, for the second 33 yrs 2 cents & for the third period 3 cents per sq ft also on Factory sites Nairobi, the rent for the 1st 3 years

so one pepper corn for the next 3 years R1 per ft footage
for the next 3 years R2 per ft footage & for the remainder
of the 99 years R3 per ft footage. 357

For ordinary business plots in Nairobi, the Land Officer has
fixed a comparatively high rental & has depended on the Standard
Premium to secure the true value to the Crown

owing to the rapid appreciation in Site values in Nairobi the Crown
has not obtained the full value. Plots 50 ft footage 150 ft depth
Rental £10 per annum which fetched at the Government Auction £200
about 2 months ago are now selling for £600 so that on a 5%
basis the rental value is now £35 per annum. At the time
of the sale the prices realised by the Crown were considered
very high & in my opinion the other Purchasers are to be
congratulated on securing a substantial increase in having the lease
& some other conditions into effect

The example afforded by this block is however an argument
for retaining the practice of fixed rents in building leases to
other classes than 30 years & further & is worthy of careful
consideration

22

Development

(a) Farm Leases

The development requires to fulfill the conditions
of an occupation license as set out in sec 49
of the Dept Ordinance and to pay a yearly amount
to the local authority. The Local Board passed a
resolution a short time ago substituting £100 per acre
for this method of securing development. The idea being
that on 2 £5000 acre farm £200 is sufficient to qualify
for development taking into account the short period of two
years during which development has to be completed
Under the proposal set out above it is suggested that
the area of farms should be reduced to 500 acres which
at R1.20 per acre amounts to £2.20 million

I am of opinion the R1.20 per acre should be maintained
but that a minimum of £200 ^(R0.3750) should be insisted upon

for every farm under 314.8 acres

(The word improvements being the proper word)

I suggest sec 49 should be altered to read as follows: -

sec 49 (1) Every license shall at the expiration of two years from the date of the license have completed improvements upon the land the subject of the license to the value of not less than one Rupee twenty cents per acre provided that in no case shall the value of improvements be less than Two hundred

~~and~~ Rs 3750.00

3750

sec 50(1) (2)

The value of any such improvement shall, at the request of the licensee or as near thereto as circumstances shall permit, be appraised by the Law Officer or such other person as the Land Officer may appoint for that purpose & shall for the purpose of this section be deemed to be such sum as the Law Officer shall determine may be a reasonable expenditure to replace such improvements on the same condition as they stand at the time of making the appraisal.

Suggested deletion of sec 50

In the alterations suggested above I am endeavouring to insert that the licensee shall have the proper value of the improvements at the end of the license. Under the existing wording of Secs 49 & 50 it would be possible, & in the case of a speculator highly probable, that shortly after he got his license he would spend the necessary amount for development & call upon the Land Officer to issue a certificate. Then as no more time could elapse before he got his certificate, the best guess he can come along & reap on all the improvements is that at the end of the license he will get a lease for a term with no development existing. I believe the wording I suggest would deter this.

If that is approved then sec 50 should be deleted entirely as being merely restrictive to the Land Officer & of no practical benefit to the licensee.

