

DOMESTIC

E. AFRICA  
No. 39814

39814  
Rec'd  
Pr. 12 NOV 07

Name of Individual

(Subject)

1907  
11 Nov

Native rights to land.

Last previous Paper.

Points out danger of alienation of native land by Indian traders & money lenders & suggests measures to be taken to prevent transfers of land in settlement of debts.

(Minutes.)

Mr. Peadar.

Mr. H. James, formerly Ch. Commr of Oudh & one of the members of the Trustees' riot commission, mentioned this point to Mr. Kharan last week & has now been good enough to put his name in writing, as you suggested.

Col Montgomery might be able to give a valuable opinion on the matter, in connection with the Dist. Affairs Dept. and a copy of the letter should be sent to the Govt of Oudh & request for their views and thanking Mr. H. J. for his suggestions and stating that this had been done.

In the C.A.P. by Oudh - 12 of '97

Copy sent Govt of Oudh 6/10/07 (also 19 Dec)  
Copy sent Mr. P. H. J. 3/11/07  
of Oudh (5/11/07) re-issued 21 May 08.

Next subsequent Paper

1955

no transfer of land from a native  
to a non-native is valid without  
the consent of the Collector of the  
District, & a certificate in  
Uganda by Circular No. 1900  
as non-native can acquire land  
from a native without the consent  
of the Court. Accordingly

I do not think the danger feared  
by Sir H. James so serious.  
I am sending out the letter

I shd. be content to refer to these  
regulations. I ask whether  
permission has been given in  
any cases for the acquisition  
of land from natives - & whether  
the present regulations are considered  
adequately.  
and ask, saying, it will  
be sent out, but pointing out  
how the natives are already  
sufficiently safeguarded.

Dr. Antrobus

So passed?

4. 2 R

13/11

Mr. North

1/11

excepted  
land

Remind  
11/11

Chatter  
East Africa  
2/11

? Remind  
5/11/11

at mail

C O  
39814

GLENKERRY,

CAMBRIDGE PARK, 12 NO. 07

TWICKENHAM.

11th November, 1907.

Sir,

I venture to bring to the notice of the Secretary of State a point in the administration of British East Africa in regard to which there appear reasons for thinking that timely provision should be made. I allude to the preservation of the rights over the land enjoyed by Natives of the Protectorate, which experience in India, Borneo, and elsewhere, shows to be imperative when ignorant and improvident tribes come into contact with astute money-lending natives of India. When travelling in the Protectorate during 1894-5 I noticed the presence of Indian shopkeepers and itinerant pedlars in quite remote villages, and that colonies of Indian cultivators, some of them the followers of the Khoja and Memon traders who have been established in East Africa for some years, and others who came for the construction of the railway and have remained, were in process of formation near Kisumu and between Kippigori and the Eldoma Ravine. Great areas of waste land exist in British East Africa, and such settlements in hot and steamy tracts, unattractive for white colonists, are decidedly to be encouraged. For Indians are excellent cultivators and their example will be useful to the natives.

The UNDER-SECRETARY OF STATE  
for the Colonies.

55

The purchase of surplus produce in the villages by agents of Indian mercantile firms is also an advantage. But it seems perfectly certain that as time goes on and as the value of native produce increases, thanks to the transport now afforded by the Railway, these Indians will, unless measures are taken in time, obtain effective possession of the best lands of the natives of the country, by a process familiar to all Indian administrators, viz; by advancing money or in kind for seed or for an anticipated crop - taking mortgage bonds for the lands, or even purchasing the lands outright, or their produce for ever, by the simple device of offering to the unsophisticated owners some small showy trinkets or gaudy clothes. It is obviously to the Indians' interest to take land already under cultivation than to go to the expense of reclaiming waste. Meanwhile we are establishing Courts of Law - there are several firms of lawyers English and Indian, already settled at Nairobi - and unless the interests of the primitive native tribes be safeguarded by the Government the Courts will have no alternative but to enforce bonds and deeds of sale. Native rights will gradually disappear, and the natives themselves will become mere serfs of the Indians in the localities where Indian colonization is permitted.

Wild as are many of the tribes - (the Kavirondo, for instance, one of the best of them, wear no clothes, and I have seen many others, Wandi, Lumbwa, and Kikuyu working in the fields in a state of nudity,) some of them are most industrious and capable cultivators,

and

and if the word Protectorate is to be nothing more than a name, their rights need caring for. Not many years will pass, I expect, before a great change comes over them. I noticed myself signs of their striving to imitate the Indians in the wearing of clothes, and in improving their standard of comfort in various ways. Enlightenment will gradually spread, and if protected now, these tribes may become peaceful and prosperous. They are already as civilized, if the term may be used, as some of the aboriginal tribes in India, who have been reduced to practical serfdom by the unwise application to them of our Western laws relating to debt, and whose condition, after a century or more of our administration, is still in many cases the reverse of creditable to the British Government.

It would be quite easy now to prevent agricultural indebtedness, but a few years hence the problem will be more troublesome to handle. I venture to suggest three simple rules which might be enacted at once, Firstly that no Court shall ever entertain any suit for money lent against an indigent cultivator in the Protectorate, That no Court shall enforce against such native an agreement for the surrender of land or the produce of land in liquidation of debt, nor shall any voluntary agreement for the transfer of land be carried out unless such agreement has been sanctioned in the first instance by the Commissioner or Deputy-Commissioner. Such rules would not restrain trade. Rather would they create a truer standard of credit.

The

The Secretary of State is personally aware of the great trouble which British laws for recovering agricultural debt and enforcing mortgages of land have caused in India. In the Bombay Presidency, after many years of discussion and legislation, it has been finally settled that a bond is only a piece of evidence and not conclusive evidence of debt or of accumulated interest. Usurious interest can be cut down, and the enforcement of decrees against land is entrusted to Revenue Officers. In the Punjab, by a very elaborate and, as I hear, a highly successful Act, the work of Sir Denzil Ibbetson, K.C.S.I., the alienation of ancestral and tribal lands to money-lenders, whether by direct sale or by mortgage with possession, or by decree of Court, has been practically stopped. Had these laws been passed when we first occupied the territories in question, much misery would have been saved.

It is probable that the evil which I apprehend has as yet scarcely begun to make itself felt in British East Africa, and that our Courts and Officers would look askance at any document purporting to be signed by an indigenous native, either creating an obligation or transferring property. The vast areas of waste prevent, for the present, any great pressure on the soil; though even that fact must not be relied upon too much, as I learn that numbers of different tribes and even of different hamlets may not, in most localities, trespass upon the lands of others. But, progress in a country like East Africa is likely to be rapid, and I venture to hold the opinion strongly that, for the protection of the Africans, warning should be taken from India, so that the

danger

dangers I have adverted to may be forestalled, rather than a remedy sought after complications have arisen. White men should, I think, be under the same disability as Indians, so far as the recovery of money lent to indigenous Africans, or the purchase of their lands, is concerned.

Another beneficent measure which I believe was contemplated three years ago, and may therefore now be a fait accompli, would be to demarcate liberally the areas to be reserved for native habitations and agriculture, and prohibit colonisation by foreigners altogether within those limits.

A reference to page 179 of Sir Charles Elliott's work on East Africa will show that the evil of agricultural indebtedness to Indians already exists in Zanzibar. And I may mention that some years ago Rajah Brooke of Sarawak informed me that he had encountered precisely the same trouble owing to the indebtedness of the Dyaks to Indians.

Trusting therefore that the Secretary of State will forgive my offering these suggestions,

I have the honour to be,

Sir,

Your most obedient Servant,

*H. Stan. L. James*

*William (and James) (initials)*

To the Under-Secretary of State  
for the Colonies.

T  
39514 EA

See amended draft  
18 November 1977

DRAFT

To H.S. Mr. James KCIE

Sir

I am invited by  
the ~~50%~~ to actual  
the receipt of your  
communication of the  
11<sup>th</sup> inst relative to  
the ~~refugee~~ of  
the native rights  
to land in S.A., and  
to convey to you an  
expression of his Lady's  
thanks for having  
drawn her attention  
to the question.

MINUTE.

Mr. Lobb 15/11

Mr. Bras 15/11

Mr. Just

Mr. Andrews

Mr. Cox

Mr. Lucas

Sir P. Hopwood

Mr. Churchill

The Earl of Elgin

2 of 4

2. The ~~importance~~ of  
protecting the ~~rights~~  
in this respect has  
however



however, not been  
in the East  
perished, after the

transfer of land from  
a native to a non-

native, except in the  
municipal territories

of the latter of Uganda,  
is only valid after

the consent of the

District Comm<sup>r</sup> has  
under the provision of Ord<sup>s</sup> 12 of 1897,  
been obtained, while

in the Uganda Prot<sup>o</sup>, the  
by Law No. 11 of 1900, the  
acquisition of land

by a non-native from  
a native is <sup>forbidden</sup> ~~illegal~~

without the permission  
of the Governor.

2. A copy of your letter  
also mentioned has  
been forwarded to

the Governor of the

for the country  
Prot<sup>o</sup> and I have  
requested them to  
inform me whether  
existing regulations are  
considered correct.

Yours  
R.A.

*Be sure to take that a copy of the letter is forwarded to the Governor*

Communications on this subject should be addressed to:

THE UNDER SECRETARY OF STATE,  
COLONIAL OFFICE,  
LONDON, S.W.

and the following Number quoted. 39814/1907

Downing Street,  
18 November, 1907,

SIR,

I am directed by the Earl of Elgin to acknowledge the receipt of your communication of the 11th instant, relative to the safeguarding of the native rights to land in East Africa and to convey to you an expression of his Lordship's thanks for having drawn his attention to the question.

2. The importance of protecting the natives in this respect has, however, not been overlooked. In the East Africa Protectorate the transfer of land from a native to a non-native, except in the mainland territories of the Sultan of Zanzibar, is only valid after the consent of the District Commissioner has been obtained under the provisions of Ordinance 12 of 1897; while in the Uganda Protectorate, by Circular No. 11 of 1900, the acquisition of land by a non-native from a native is forbidden without the permission of the Governor.

3. A copy of your letter above mentioned has been forwarded to the Governors of these Protectorates for their consideration, and I have requested them to inform whether the existing regulations are considered adequate.

I am, Sir,

Your obedient servant,

*[Signature]*

*RLA*

*mt  
18/11  
The [unclear]*

*7  
What  
North  
Copy to file 650  
copy to file 318  
Nov 19 1907*

however, not been  
overlooked, after the  
transfer of land from  
a native to a non  
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inform me whether  
these regulations are  
sufficiently adequate.

Yours  
R.A.

*Copy should be taken that a copy of the letter should be given to the Governor.*

Communications on this subject should be addressed to  
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COLONIAL OFFICE,  
LONDON, S.W.  
and the following Number quoted. 59814/1907

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I am, Sir,

Your obedient servant,

*[Signature]*  
R.L.A.

*Copy to Dept 620  
copy 318  
copy 19 Nov*

*15/11  
M.S.P.*

*W.H.*

*Nov 16*

J  
39514

SA

62

15  
16

DRAFT.

(1) C.A. No. 630 *in ad*  
Srv

(2) *318 in ad*  
Srv

MINUTE.

Mr. Lobb *7/11*

Mr. Tye *7/15/11*

Mr. Tuck

Mr. Anselmus

Mr. Cox

Mr. Lucas

Sir P. Hopwood

Mr. Churchill

The Bar of Elgin

2876

Sir H.S. Jones. H. = *harm* 1907  
(39514)

C.A. 18 *harm* 1907  
(Srv *harm*)

19<sup>th</sup> November 1907

*in ad*

Sir,

Minute handed to

transmitted to you for  
your attention that  
accompanying copy of a  
letter which has been  
received from Sir H.E.M.  
James K.C. relative  
to the matter of the  
land in the *in ad* together  
with the reply which  
I have prepared to be  
addressed to him

2. Under the provisions of

- (1) Ord. 12 of 1897
- (2) Ord. 11 of 1900
- (3) no transfer of land  
except

in the last step, from a  
native to a non-native  
is valid without the  
consent of the Collector  
of the District.

A person non-native can  
acquire land from a  
native without the  
consent of the Governor.

3. I shall be  
glad to learn of any  
cases - which  
might be a basis for  
the transfer of land.

(1) to a non-native  
(2) by a non-native  
have been granted  
the E.A. (Transfer) and  
Under ( ) and

whether you are  
of opinion that  
the existing regulations  
are sufficient to  
prevent an adequate

safeguards against  
the alienation of  
native rights