

DESPATCH

EAST AFR. PROT.
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Governor No.
456

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1909
Aug

MASTER AND SERVANTS ORDINANCE 1909.

Previous Paper.

Trs for approval copies as passed by the
Legislative Council with explanatory Memorandum by the
Crown Advocate.

13409/8

Order Sanction. No. 20. 10 Jan 10.

Mr. Fidler
This is an important question of
policy & I do not think that we should
express any opinion with regard to this
~~Ord^{ce}~~ Ord^{ce} until we have heard what the
Law Officer has to say on the matter. We
do not wish to appear to be forcing his
hand. ~~The Ord^{ce} is a proposed one with all the
points of law & fact which are involved in it
being settled by the Law Officer.~~
I say that, before proceeding
further in the matter, Lord Cromwell would
be glad to learn whether the Law
Officer is in the Ord^{ce}?

Sir J. Wood
N. Y. R.
12/18

Subsequent Paper

I think that will be
the best course. If you think otherwise, the
papers will be returned for examination of the Ord^{ce}
in the usual way [The Ord^{ce} has not escaped the Ord^{ce}]

39013

and will therefore not come into operation
until he does so. In such cases it will be better
to insert in the Order a clause providing for
its coming into operation on a date to be named
by proclamation - thereby giving the Legislature
power but it is not intended to make it operative
forthwith?]

14/9

Await the Governor's
opinion.

Fyle
11. 9
Armes

C. O.
29567

Governor's office

Nairobi,

August 11th 1909.

EAST AFRICA PROTECTORATE.

No. 456
(Incl. 2)

326

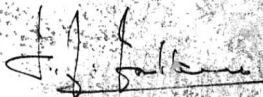
My Lord,

I have the honour to transmit herewith
for Your Lordship's approval copies of the Master
and Servants Ordinance 1909 as passed by the
Legislative Council together with an explanatory
Memorandum by the Crown Advocate.

I have the honour to be,
With the highest respect,

My Lord,

Your Lordship's most obedient,
humble servant,



H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

Ordinance
Mr. Combe
Jul. 18th

INCLOSURE 115

In Despatch No. 286 of 11. 8. 1909

C. O.
29567
EC
4 SEP 09

MEMORANDUM

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-----:CO&O-C&O:-----

MASTER AND SERVANTS ORDINANCE 1909.

1. This Ordinance the purpose of which is to regulate the relations between Employers and Natives employed as servants and to control the recruiting and engagement of Natives for service within or without the Protectorate makes considerable alteration in and addition to the Master & Servants Ordinance 1906.

2. The 1906 Ordinance applied to all persons of whatever nationality or race engaged for certain services. Many of the provisions of the new Ordinance are entirely unsuitable to contracts under which Europeans or other Non-Natives are engaged for service. Further it is considered that the English Common & Statute Law and the Indian Acts applied to the Protectorate afford sufficient protection to both Employers and Servants in contracts under which Non-Natives are engaged for service. For these reasons the word "servant" has been defined for the purposes of the Ordinance so as to exclude persons other than Natives or Arabs.

3. No provision was made in the 1906 for apprenticeship contracts, and such contracts have hitherto been governed by the English law. As it is considered that special provision should be made regarding the apprenticing of Natives Sections have been inserted in the new Ordinance to prescribe the conditions under which such contracts may be entered into,

persons
more than
Natives or
not ex-
cluded
from the
definition
of "servant."

five
apprentices.

and the rights and obligations of the parties to such contracts and the power of the Courts in relation thereto will now be governed by the Ordinance.

4. Several Sections have been inserted in the new Ordinance imposing obligations on masters with regard to the care of Natives employed by them. The provisions of these Sections are based to a considerable extent on certain rules which were made regarding the care of Natives recruited by the Government for employment either by Government Department or private individuals. These rules were open to objection on the ground that they were not sufficiently elastic, as they imposed general conditions very proper in some cases but quite unnecessary and onerous in others.

By the Ordinance it is sought to insure that an employer shall provide his servants with the necessaries of life when engaged in localities where he cannot conveniently and at a reasonable price obtain them for himself, but that he shall not be placed under an obligation to provide his servants with luxuries. With this object it has been found necessary to use such terms as "The Employer shall when necessary provide etc." - The words "when necessary" are certainly unsatisfactory, but cannot I think be avoided without rendering the Ordinance open to the objections which were, with reason, taken to the rules.

5. Employers desirous of entering into written contracts with their servants are sometimes prevented from so doing by the fact the nearest Magistrate who can attest the contract is residing many miles away. As it is desired to encourage employers to enter into written contracts provision is made in the new Ordinance to enable Justices of the Peace to attest written contracts.

Justices of the Peace are also empowered to receive complaints and to compel the attendance of parties before a Magistrate having jurisdiction to adjudicate on the complaint. It is believed that these provisions will remove a difficulty which has been experienced in the working of the 1906 Ordinance. It is proposed to introduce a bill giving the Governor the power to appoint Justices of the Peace with authority to exercise the powers conferred upon Justices of the Peace by this Ordinance together with other powers which may properly be conferred upon them.

6. Provision is made in the Ordinance to regulate to recruitment of Natives for labour.

Every person desiring to recruit labour to be employed by any person other than the person recruiting is required to obtain a licence. Such licence is to be granted for a district or districts specified in the licence and subject to such conditions as having regard to the circumstances may be considered necessary. The Governor is also empowered to make general rules regulating the recruitment of labour and for the care of Natives by the recruiting Agent.

7. Other alterations in and additions to the 1906 Ordinance are shown and explained in the Schedule attached hereto.

The Ordinance should be submitted to the Secretary of State for his approval before being assented to . . .

R. J. C. P.

CROWN ADVOCATE.

12-7-09

THE MASTER & SERVANTS ORDINANCE 1909.

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Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 1 Title and enactment.	Section 41.	
Section 2 Interpretation.	Section 1.	<p>The definition of the word "Servant" has been altered so as to exclude persons other than Arabs or Natives, and to include all Arab & Native labourers and apprentices.</p> <p>The definition of "Contract of Service" has been altered so as to include "Contracts of apprenticeship".</p> <p>The definition of "Foreign Contract of Service" has been altered by the addition of the proviso:</p> <p>It appears that it has not been the practice to require that a contract for the employment of domestic servants for service in Uganda or Zanzibar, or for the employment of sailors for service on the lake steamers or coasting vessels should be entered into as a Foreign Contract of Service. It is considered that the provision relating to Contracts</p>

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1905.	Remarks.
		<p>of Service, other than foreign may properly be applied to such contracts of which there are a very considerable number.</p> <p>The definition of the term "Labour Agent" is introduced for the first time as the earlier Ordinance did not make provision regarding the recruitment of labour.</p> <p>The words "Railway Servant" is defined for the purposes of Section 14 of the Ordinance.</p>
Section 3 Foreign Contract Service to be writing.	Section 2.	
Section 4 Attestation of Foreign contract.	Section 3	<p>This Section now provides for the attestation being made either by a Magistrate or a Justice of the Peace.</p>
Section 5 (1) Attestation & Attestation of Foreign Contract.	Section 4.	<p>The last part of Section 4 of the 1905 Ordinance has been omitted. Provided that there is a sufficient memorandum which complies in other respects with the provisions of the Ordinance there appears to be no sufficient ^{reason} for requiring the contract to be in any particular form.</p>

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 5 (2) Governor's assent Foreign Contract Ord.		This is new and inserted to further protect the Natives of the Protectorate from being engaged to serve in foreign parts under circumstances or conditions which may not be ^{to} their best interest.
Section 6, Contracts of service not to be stated unless in certain forms.	Section 3.	The condition (d) regarding the payment of wages monthly or at shorter interval is new and has been inserted in consequence of cases having arisen where employers have withheld wages due to servants until the completion of the contract.
Section 7 to fix fees for the attestation of Contracts.	Section 5.	The second paragraph of this Section is new. It is desired that every encouragement should be given to employers to enter into written contract with their Native employees and therefore provision has been made exempting such contract from stamp duty.
Section 8 Security in Foreign Contract of Service	Section 7.	
Section 9 Persons being persons to proceed abroad under informal contract.	Section 8.	The Proviso to this Section is new.

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 10 obligates to be deposited, Custody Originals.	Section 9.	
Section 11. Written Contract to be valid for more than two years.	Section 10.	The period has been reduced ✓ from 3 to 2 years.
Section 12 Termination of contract whose provision not expressed.	Section 11.	This Section has been altered and now provides that when the contract is to pay wages monthly or at a monthly rate the contract shall be deemed to be a contract for one month. This is in accordance with a custom which the Natives understand.
Section 13 Contract expiring on journey may be extended.	Section 12.	
Section 14 Provision of Section (3) 2 and not to apply to contracts entered into by Railway agents and persons in the service of Post Office with reference to which special provision is made by law.		This Section is new. Both the Railway Act and the Post Office Act and the rules there- under require that notice should be given by a person serving under those Acts, of his intention to determine his service. In the interest of ^{the} public service such notice is necessary.
		The words "Railway Servant" have been defined so as to exclude

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1908.	Remarks.
		labourers employed by a Contractor doing work for the Railway Administration.
Section 15 Penalty for decoy- ing and harbouring servants.	Section 15.	
	Sections 13 & 14.	These Sections have not been re-enacted.
Section 16. Apprenticeship of children by parents and guardians.		New. Section 18 of the Gold Coast Ordinance No. 8 of 1893. As the mother is seldom the guardian by native custom of a fatherless child the words "the mother" have been omitted.
Section 17 Apprenticeship of children without parental consent and guardian.		New. Section 19 of the Gold Coast Ordinance.
Section 18 Persons may apprentice themselves.		New. Section 20 of the Gold Coast Ordinance except that the maximum period of the apprenticeship is reduced by ^{now} five to three years.
Section 19 Apprenticeship of persons under 18 years of age.		New. Section 22 of the Gold Coast Ordinance.

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 20 Contracts and assignments invalid unless by deed approved.		New. Section 23 of the Gold Coast Ordinance.
Section 21 Apprentices not to be taken out of jurisdiction.		New. Section 24 of the Gold Coast Ordinance.
Section 22 Employing apprentices		New. Section 25 of the Gold Coast Ordinance.
Section 23 Apprentices retained after expiration of contract entitled to wages.		New. Section 26 of the Gold Coast Ordinance.
Section 24 Hiring of Servants		New.
Section 25 Hiring of Servants		New.
Section 26 Provision for supply of servants.		New.
Section 27 Penalty etc. when necessary to be satisfied if requested by a servant.		New.
Section 28 Penalty to be satisfied with amount tent accumulation.		New.
Section 29 Masters to provide maintenance and proper medical attendance.		New.

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 30 Employer to notify Magistrate of the death of a servant and to deliver wages due or belonging to deceased to Magistrate.		New.
Section 31 In certain cases Magistrate wants to be returned to place engagement at Employer's expense.		New.
Section 32 Employer to supply food for servant's subsistence when returning to place engagement.		New.
Section 33 Labour agent to obtain labour without permit.		New.
Section 34 Provision for protection to be made by writing. A Bond to be required of Labour agent.		New.
Section 35 Permit to be issued for limited time and in specified districts.		New.
Section 36 Labour agent not to allow person to employ him in recruit- ment labour without notifying the Provincial Commission.		New.

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 37 It may be refused in certain cases.		New.
Section 38 Power to make rules.		New.
Section 39 Penalties.		New.
Section 40. Complaint in cases of disputes between employers and servants.	Section 16	<p style="text-align: center;">1111</p> <p>This Section has been altered to the extent of permitting a complaint to be laid before any Magistrate or Justice of the Peace. Neither a Magistrate of the 3rd Class nor a Justice of the Peace is empowered to <i>adjudicate upon</i> a complaint under the Ordinance, but he is authorised to receive the complaint and to forward it to a Magistrate who has jurisdiction to try the case.</p>
Section 41 Jurisdiction of Magistrates.	Section 17.	<p>The words "and every special Magistrate" are new.</p> <p>Section 64 makes provision for the appointment of "special Magistrates". It has been found necessary in the past to appoint labour officers to be Magistrates of the second class in order to give them jurisdiction to determine disputes between employers and labourers.</p>

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
Section 42 Warrant or summons issued by a Magistrate of the third class or Justice of Peace to be made returnable before a Magistrate having jurisdiction to try the case.		New and consequent on the alteration in Section 40.
Section 43 Arrest of absconding servant.	Section 18.	
Section 44 Magistrate may order that the remedy by civil action shall not be available for this Ordinance.		New. There is rather less reason for this Section since servants not being Natives or Arabs have been taken out of the Ordinance, but disputes may yet arise which could be more conveniently dealt with in a civil action.
Section 45 Provisionary powers of Magistrate.	Section 19.	The last part of (d) providing for imprisonment in default of payment of the fine is new. The last part of Sub-section 3 of the original Section has been deleted. It was contended with some reason that if a servant was to be relieved of his obligation to pay money due to his employer in the event of his having been imprisoned for nonpayment, the same relief should be given to the employer.

Master & Servants Ordinance 1909.	Master & Servants Ordinance 1906.	Remarks.
		<p>There are substantial reasons for not relieving an employer of his liability in such a case.</p> <p>Sub-section 4 is new and will be found a useful provision in permitting of substituted service of a summons on a Employer and the attachment of property which could not be taken in satisfaction if the criminal procedure had to be followed.</p>
Section 46 Arrestment of files.	Section 20.	
Section 47 Arrestment by servants 1.	Section 21.	<p>(7) and (8) are new.</p> <p>The latter is justified on the ground that except the true name and address of a servant is ascertained it is almost impossible that he should be found if he deserts from his work.</p>
Section 48 Arrestment by servants II.	Section 22.	<p>In the first line ^{of} (1) the word "wilfully" has been inserted.</p>
Section 49 Arrestment for fine nor Arrestment to have Effect of cancel- contract.	Section 23	
	Section 24. Term of Imprison- ment added to term of service.	Not re-enacted.

Master & Servants Ordinance 1904.	Master & Servants Ordinance 1906.	Remarks.
Section 50 wages to accrue servant during period of imprisonment.	Section 34.	
Section 51 When a servant is convicted of absent- ing himself or departing from service period of absence may be added to term of service.	Section 25.	This section has been altered and it is now left to the discretion of the Magistrate to determine whether the period of absence shall be added to term of service.
Section 52 Losses etc. of employ- er's property.	Section 26.	This section has been altered by the omission of the provision with regard to imprisonment in default of payment.
Section 53 Penalty on servant leaving service before working off advance of wages.	Section 27.	The word "repaid" in the fourth line has been inserted.
Section 54 Limit within which complaint may be made by master.	Section 25.	
Section 55 Penalty on employer.	Section 29.	The penalty has been altered by reducing the fine and by provid- ing that either a fine or imprison- ment or both may be imposed. Provision is also made for penalties in cases where the require- ments of the Ordinance relating to the case of servants have ^{not} been complied with.

Master & Servants Ordinance 1902.	Master & Servants Ordinance 1906.	Remarks.
Section 56 plaint a competent witness.	Section 30.	
Section 57 plaint not to be called to enter depositions except in certain events.	Section 31.	
Section 58 amount of a fine imposed a part of which may be paid by the complaining party.	Section 32.	
Section 59 plaint may be fed Government expenses attending hearing of plaint. Cost to be borne by servant		This provision is new and has been inserted to legalize a practice which has been adopted of necessity.
Section 60 number of witnesses	Section 33.	
Section 61 actions may be instituted against any offence punishable under the law in force.	Section 35.	The reference to the Indian Penal Code has been omitted.
	Section 36. Savings as to contracts by porters.	Not re-enacted. The whole of the Native Porters and Labour Regulations 1902 are repealed by this Ordinance.
Section 62 provisions as to contract of service made abroad.	Section 37.	In the last para the words "or to attest contract of service" are new and have been inserted to

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Servants No. 10.	Master & Servants Ordinance 1906.	Remarks.
		cover the case of an Emigration Officer who may be authorised to attest Contracts of Service, but who may not be a Magistrate or authorised to take affidavits.
63 as to ben- s under Acts ing to shipping	Section 35.	
64 to appoint Magistrates.		No.
65 for the Peace land or for of Ordinance		No.
66 for giving Chief or procur-		No.
rules	Section 39	
68 for breach	Section 39 the last paragraph	The provision with regard to penalties for breach of rules has been made the subject of a separate section as the provision should apply to all rules made under the Ordinance and not ^{only} to those made under Section 67.
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Encl.

17 Sept 1909

MINUTE.

Parkman St.

Room 16

Fishes.

Just.

Coz.

C. Lucid.

F. Hopwood.

Boily.

rd. Crease.

Encl.

I have the honor to
ack. the receipt of your
rep. No. 456 of the
11th August, transmitting
copies of the meeting
& servants ordinance
1909 as passed by
the Legislative Council,
& to inform you that,
before proceeding
further in the
matter I should