

1931

Kenya.

No. 17302 / A (Part 1)

main file.
SUBJECT

C0533/415

Estimates, 1932.

Previous

Subsequent

Part 2.
Subfile B

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LEGAL REPORT


THE GERMAN MISSIONS (REPEAL) BILL, 1931.

Satisfactory arrangements having been concluded for the conduct of the properties of the Leipzig Lutheran Mission in the Colony, there is no need to keep this Ordinance on the statute book.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

22nd June, 1931.


ATTORNEY GENERAL.

No. VIII of 1931.

An Ordinance to Repeal the German Missions Ordinance, 1924.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "the German Missions (Repeal) Ordinance, 1931".

Short title.

2. The German Missions Ordinance, 1924, is hereby repealed.

Repeal of Ordinance No. 5 of 1924.

Passed in the Legislative Council the fourth day of June, in the year of Our Lord one thousand nine hundred and thirty-one.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council, and is presented for authentication and assent as a true and correct copy of the said Bill.

G. BERESFORD STOOKE.

Acting Clerk of the Legislative Council.

No. VIII.

1931.



Colony and Protectorate of Kenya.

IN THE TWENTY-SECOND YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
JOSEPH ALOYSIUS BYRNE, K.C.M.G., K.B.E., C.B.,
Governor.

Assented to in His Majesty's
name this *10th* day of *July*
1931.

J. BYRNE
Governor.

**AN ORDINANCE TO REPEAL THE GERMAN
MISSIONS ORDINANCE, 1924**

71



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA.

No. 418

20th July, 1931.

RECEIVED
12 AUG 1931
COL. OFFICE

My Lord,

I have the honour to forward herewith two authenticated and 12 printed copies of an Ordinance intituled "The German Missions (Repeal) Ordinance 1931" which duly passed its third reading in the Legislative Council on the 4th June, 1931, and to which I assented in His Majesty's name on the 10th July, 1931, together with a copy of the Legal Report by the Attorney General.

I have the honour to be,
My Lord,
Your Lordship's most obedient,
humble servant.

BRIGADIER GENERAL,
GOVERNOR.

THE RIGHT HONOURABLE
LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

8 OCT 1931

Amud

not be necessary in any
similar Bill is dealing with
Kenya.

(SIGNED) J. H. THOMAS.

be inconsistent with those contained in the deed. In these circumstances, I am advised that under the German Missions Ordinance and the trust deed of the 30th September, 1926, it would not have been within the powers of the trustees to return the property to its original owners.

§ 6. Section 7(2) of the Interpretation and General Clauses Ordinance provides that where an Ordinance repeals any other enactment, then, unless the contrary intention appears, the repeal ^{does} ^{not} affect the previous operation of any enactment so repealed, or anything duly done or suffered ^{under} any enactment so repealed, or affects any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed.

It follows therefore that, since no provision ^{respecting them} on the matter appears in the Ordinance which you have now forwarded to me, acts done under the German Missions Ordinance remain valid, and that the Trust created in 1926, remains in force and continues to govern both the trustees and the properties concerned.

it is presumably intended to do

67. In the circumstances, it would seem doubtful whether the Ordinance which you have now forwarded to me accomplishes what it purports to do and before any advice is tendered to His Majesty regarding ~~the~~ it, Ordinance, I shall be glad to have your further observations on the subject in the light of this despatch.

^{I have, etc.}
7. I enclose for your info a copy of a ~~draft~~ Bill which is being drafted in the TS to accomplish object similar to those which it is desired to accomplish in Kenya. I also enclose a copy of my draft which I conveyed my approval to the introduction of the Bill. Various complications exist in Tanganyika which will not exist in Kenya & certain clauses of the Bill will therefore

September, 1926, has not been revoked, and the trust must therefore remain in force.

45 The trust deed empowers the trustees (paragraph 2(a)) to make over property to trustees and persons "either by way of lease or licence, or permission to use or occupy for fixed terms or periods, or permissibly at will or otherwise." I am advised that under that power the trustees could not convey the freehold interest, ^{in any property} especially as under paragraph 2(b) they are to retain some control over later alienations.

In any event, no such conveyance could occur without the previous written consent of the Secretary of State ^(which has not been given) Again the power to sell under paragraph 2(c) does not enable ^{the} trustees to sell for a nominal sum, and thereby to get rid of the trust, and the power given in paragraph 4 could not be invoked, as new trusts cannot be declared so as to be

Trust Limited was appointed as trustee under

a trust deed of the 30th September, 1926 of

which a copy was enclosed in Mr. Amery's

despatch No. 928 ~~of the same date.~~

✓
4110/26.

3. In the letter to the Conference

of Missionary Societies of the 30th December,

1929, a copy of which was enclosed in Lord

No. 8 and 9 in
15657/29.

Passfield's confidential despatch of the

same date, it was suggested that the correct

procedure in order to restore the property

of the mission was to revoke the trust deed,

and, in the Ordinance ^{repealing} which ~~was repealed~~, the

1924 Ordinance, to include a clause vesting

the property in the original owners. Subsequently,

it transpired that the mission did not wish to

start work again in Kenya, and it was arranged

that questions regarding their property should

be discussed locally with Mr. Raum - see Lord

Passfield's confidential despatch of the 10th

SE on
16041/30.

March, 1930.

2 I am not aware of the result of these

discussions, but the trust deed of the 30th

September

17300/31 K.

49

Handwritten box containing "G.D." and other illegible marks.

C. O.

- Mr. Eastwood 1/co
- Mr. Trusted 2/10
- Mr. *Reuter* 3/p
- Mr. Tomlinson
- Sir C. Hadowley
- Sir J. Shackburgh
- Sir G. Grindie
- Parlt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

Downing Street,

September, 1931.

8 OCT 1931

Sir,

I have the honour to acknowledge the receipt of your despatch No. 418 of the 20th July in which you forward, for the signification of His Majesty's pleasure, copies of "The German Missions (Repeal) Ordinance, 1931."

2. Section 3 of the German Missions Ordinance, which the new Ordinance repeals, provided that all German mission property in the Colony should be vested in such trustees ~~and~~ upon such trusts as the Secretary of State might appoint and determine. The two missions affected by the Ordinance were the Neukirchen Mission and the Leipzig Evangelical Mission. In the case of the Neukirchen Mission no trust was created, but in the case of the Leipzig Evangelical Mission the Africa Inland Mission

Trust

DRAFT.

KENYA

CONFIDENTIAL

Handwritten initials.

2154/24

Bill
 below 20 in 3002/14 TT.
 to par TT. 25.9. and
 no. 28 in 3002/14 TT.
 Lateral end.

17300/31 K. 4

C. O.

D.D.
A copy
4

- Mr. Eastwood 1/10
- Mr. Trustad 2/10
- Mr. *Truman* 3/10
- Mr. Tomlinson
- Sir C. Holtomley
- Sir J. Shackburgh
- Sir G. Grindie
- Parlt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

ST

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DRAFT.

KENYA

CONFIDENTIAL

for

2. Section 3 of the German Missions

21999/24

Ordinance, which the new Ordinance repeals, provided that all German mission property in the Colony should be vested in such trustees and upon such trusts as the Secretary of State might appoint and determine. The two missions affected by the

Ordinance were the Neukirchen Mission and the Leipzig Evangelical Mission. In the case of the Neukirchen Mission no trust was created, but in the case of the Leipzig Evangelical Mission the Africa Inland Mission

Trust

Boite
Letter 20 on 3002/14 TT.
to for TT. 259. only
40128 on 3002/14 TT.
Controlled copy

the history of the one two
misses effects (the 436 etc.)
The earlier history is summarized
in 7A on 15637/39. The later
is embodied in para 2 & 3
of the draft.

[Signature]
1.2.31.

(A copy of the 436 amongst
dead - one of the original ones - is
gone in 15637/39. ~~was~~ I am
not quite clear how it got there.

to Cav boy (700 25 (part only) & full below
No 28 on 30007/31. 2.7). done -
(1 Answer.)

6/5/31
8 OCT 1931

[Signature]

as to be inconsistent with those contained in the deed.

Section 7(2) of the Interpretation and General Clauses Ordinance (cap.1) provides that where an Ordinance repeals any other enactment, then, unless the contrary intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed, or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

The repeal of the Ordinance therefore does not affect the present trust, which continues to govern both the trustees and the property concerned.

M. Roberts
11.9.52

M. Roberts Esq.

Then what is wanted is an Ad^{ce} on the lines of the T.T. Bill and in 28 on 20/27/51 T.T. coming

- (1) last 3 lines of cl. 2 (1)
- (2) Refers to cl. 2 (1)
- (3) Cl. 6
- (4) The schedule

Probably some other passages.

If this is so, the action wd. normally be to send Kenya a copy explaining what for the reasons set out in your minute

Ex coming Dept.

above the Ad^{ce} does not do what it is 3 purports to do: enclosing a copy of the T.T. Bill appended & suggesting that what is required in Kenya is an Ad^{ce} on similar lines, although certain clauses appearing in the T.T. Bill (would not be required in the case of Kenya since they were due to special circumstances which do not arise in Kenya.

Plattwood
26.9.52

I agree but would suggest that Kenya be asked if some thing on the lines of T.T. Bill would give effect to what they desire to do rather than suggesting that that is what is required

H. H. Trustled
29/9

Pl. M. Comin

Plattwood
30/9

Mr Director (through Mr Trustled) Draft herewith for comment. On coming to draft, it would be desirable to go more at length into

as to be inconsistent with those contained in
its deed.

Section 7(2) of the Interpretation
and General Clauses Ordinance (cap.1) provides
that where an Ordinance repeals any other
enactment, then, unless the contrary intention
appears, the repeal shall not affect the previous
operation of any enactment so repealed or anything
duly done or suffered under any enactment so
repealed, or affect any right, privilege, obliga-
tion or liability acquired, accrued or incurred
under any enactment so repealed.

The repeal of the Ordinance therefore
does not affect the present trust, which continues
to govern both the trustees and the property
concerned.

J. Robert Long

11.9.31.

Mr Robert Long.

Then what is wanted is an
Order in the form of the T.T. Bill
and in 28 or 29/2/31 T.T. containing

- (1) last 3 lines of cl. 2 (1)
- (2) proviso to cl. 2 (1)
- (3) cl. 6
- (4) The schedule

↳ possibly some other passages.

If this is so, the action
w^d. presumably be to send Kenya
a copy explaining that for the
reasons set out in your minute

Here to
Library

Gov. Byrne 418 _____ 20 July 2
The authenticated and printed copies of German
Missions (Special) Ordinance no. 8 of 1931, with
legal report by Attorney General.

? Minn. LF.

Longman & Co.

25-8-31

I do not know what it is intended to do with the property, but I very much doubt if this Ordinance effects what is required. The Ordinance which it is proposed to enact in ~~Germany~~ ^{Tanzania} for similar purposes is much more complicated.

Section 3 of the German Missions Ordinance vests the property in such trustees and upon such trusts as the Secretary of State may appoint and determine. I gather that the Secretary of State appointed the Africa Inland Mission Trust, Limited, as trustees, and executed the deed the draft of which is on 7396/24. That deed empowers the trustees (paragraph 2(a)) to make over property to other trustees and persons "either by way of lease or licence or permission to use or occupy for fixed terms or periods or permissibly at will or otherwise". In the first place, I doubt whether, under that power, they could convey the freehold interest, especially as under 2(b) they retain some control over later alienations. Moreover, the power is not to be exercised in the case of a permanent transfer without the previous written consent of the Secretary of State, and I see no indication that such consent has been given. The power to sell under 2(c) does not enable them to sell for a nominal sum and thereby get rid of the trust, and the power under clause 4 does not help, as new trusts cannot be declared so