

1931.

Kenya.

No. 17388.

SUBJECT

C0533/417

Annual Abstract Account. 1930.

Previous

16365/30.

Subsequent

3093/33.

E.D.

and shall not affect any liability to conviction or punishment previously incurred under the provisions of this Ordinance.

Immunity.

19. No action shall be brought by any person against whom an expulsion order has been made with reference to anything done or omitted in the execution or purported execution of that order or of the provisions of this Ordinance.

Restriction of
jurisdiction of
courts of law.

20. No court of law in the Colony shall have any jurisdiction to review, quash, reverse, or otherwise interfere with any proceeding, act or order had, done or made under this Ordinance.

Duty of master of ship not to permit to any person departed.

14. The master of any ship about to call at any port outside the Colony shall, if so required by the Commissioner of Police, receive any person against whom an expulsion order has been made and his dependants (if any) on board the ship, and afford him and then a passage to that port and proper accommodation and maintenance during the passage.

Governor may direct how expenses shall be defrayed.

15. The expenses of expulsion, including expenses of maintenance of the person and his dependants (if any) shall be defrayed in such manner as the Governor directs, and for such purpose the Governor may, if he thinks fit, apply any money or property of the person in aid of such expenses.

Offences and penalties.

16. (1) Any person who is guilty of an offence against this Ordinance shall be liable, on conviction, to a fine not exceeding one thousand shillings, or to imprisonment, with or without hard labour, for any period not exceeding six months, or to both such fine and imprisonment.

Aiding or abetting.

(2) Any person who aids or abets any other person in any contravention of this Ordinance, or who harbours any other person whom he knows or has reasonable grounds for believing to have acted in contravention of this Ordinance, shall be guilty of an offence against this Ordinance.

Evidence.

17. In any prosecution for an offence against this Ordinance, the production of an expulsion order signed by or by direction of the Governor shall be conclusive evidence that the same is valid and was lawfully made.

Revocation of expulsion order not to have retrospective effect.

18. The revocation or suspension of an expulsion order by the Governor shall not affect the validity of anything already done thereunder or in respect thereof.

and

Provided always that no person giving evidence before the Board shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Board, be entitled to all the privileges to which a witness giving evidence before any court is entitled in respect of evidence ^{given} by him before such court.

Board to report to the Governor.

10. At the close of each enquiry it shall be the duty of such Board to make a full and impartial report in writing to the Governor in Council on all such matters as have been brought before it during the enquiry, its recommendations and the reasons leading to the conclusions arrived at.

Appointment of Board not in prejudice of power of Governor in Council.

11. The appointment of a Board under section 9, and the report which such Board shall make as a result of its enquiry shall not be construed as derogating in any way from the powers conferred on the Governor in Council under section 2 (1) (b) of this Ordinance.

Order of Governor in Council upon consideration of report.

12. Upon consideration of the report of the Board it shall be lawful for the Governor in Council to confirm, rescind or vary the terms of the expulsion order, as may be considered expedient.

Cases in which recommendation for the deportation shall not have effect.

13. (1) A recommendation by a court for the expulsion of any person shall be of no effect in the following cases, namely -

- (a) where on appeal against the conviction or sentence, the appellate court does not concur in the recommendation; and
 - (b) where the recommendation is by a Magistrate, unless confirmed by the Supreme Court.
- (2) Nothing in this section contained shall

affect the power of the Governor in Council to make an expulsion order under the provisions of paragraph (b) of section 2 (1).

(2) The enquiry shall be in the presence of the memorialist if he desires to appear and shall be in public, unless for good and proper reason the Board determines otherwise. The memorialist shall have the right to be represented before the Board by an advocate.

(3) The Board shall have the powers of a subordinate court to summon witnesses and to call for the production of documents and to examine the memorialist and all witnesses on oath.

(4) Summonses for attendance of witnesses or other persons or the production of documents may be in the same form as those ordinarily issued by a subordinate court under the Criminal Procedure Code, and shall be signed by the Chairman, by whom also oaths and affirmations may be administered.

(5) All persons summoned to attend and give evidence or to produce documents at any sitting of the Board shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey a summons issued from a subordinate court.

(6) Every person refusing or omitting without sufficient cause to attend at the time and place mentioned in the summons served on him, and every person attending but leaving the sitting of the Board, without the permission of the Board, or refusing or omitting without sufficient cause to produce any documents in his possession or under his control, and mentioned and referred to in the summons served on him, and every person who shall at any sitting of the Board wilfully insult any member of the Board, or wilfully and improperly interrupt the proceedings of the Board, shall be liable to a fine not exceeding five hundred shillings:

Provided

any police officer to arrest such person in any part of the Colony and to detain him in custody.

8. (1) Where any person against whom an expulsion order has been made under section 2 (1) for not complying with such order
(b) alleges any excuse or any reason why the same should not be enforced or why further time than that specified in such order should be allowed to him, he may submit the same in the form of a memorial to the Governor, and where such person is in custody, whether by virtue of such order or otherwise, the officer having the custody of such person, on its being signified to him that any such excuse or reason is alleged by such person, shall forthwith make known the same to the Governor.

(2) Where the Governor is informed that any such excuse or reason is alleged by any such person the Governor may suspend the further execution of the expulsion order until the matter can be enquired into and determined as hereinafter provided.

(3) Such person, if in custody under an expulsion order, shall remain in custody, and, if not in custody, may be arrested and detained in custody until the matter is determined.

9. (1) The Governor may from time to time as occasion requires appoint a Board consisting of three or more persons as he may determine, one of whom at least shall be a person unconnected with the public service, for the purpose of enquiring into the subject matter of any memorial submitted under the provisions of section 8, and may direct where and when such enquiry shall be made. The Chairman of the Board shall be designated by the Governor, and shall whenever possible be the magistrate of a subordinate court of the first class.

(2)

Proceeds where
excuse or reason
alleged for delay
in complying with
expulsion order.

Appointment and
constitution of
Board of Enquiry.

Contrevention of
expulsion order.

5. (1) If any person against whom an expulsion order has been made is found within the Colony after the expiration of the time fixed by the order, he shall be guilty of an offence against this Ordinance.

(2) Where a person has been convicted of an offence under sub-section (1) of this section, the Governor may, if he thinks fit, order such person to comply with the expulsion order within such extended time as the Governor may fix, and if such person is found within the Colony after the expiration of the time so extended, he shall be guilty of a further offence against this Ordinance.

(3) The Governor may, if he thinks fit, order that any person who has been convicted of an offence under either of the preceding sub-sections of this section shall, so soon as practicable after the expiration of his sentence, be deported from the Colony in such manner as the Governor may direct and, in the meantime, be detained in custody.

Power of Governor
to order arrest
and deportation.

6. It shall be lawful for the Governor, if he thinks fit, in an expulsion order, instead of requiring the person against whom it is made to leave the Colony within a fixed time, to order that such person be arrested and deported from the Colony in such manner as the Governor may direct.

Intention of person
ordered to be
deported.

7. (1) Any person arrested under an expulsion order, shall, pending his deportation from the Colony, be detained in custody in such manner and place as the Governor shall direct.

(2) No person in custody under an expulsion order shall be admitted to bail, except with the consent of the Governor.

(3) An expulsion order whereby the arrest of any person is ordered shall be deemed to authorize

any

16

A B I L L
TO MAKE PROVISION FOR THE EXPULSION OF
UNDESIRABLE PERSONS.

BE IT ENACTED BY the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof, as follows:-

Short title.

1.. This Ordinance may be cited as "the Expulsion of Undesirables Ordinance, 1938".

Power to make expulsion order.

2. (1) The Governor in Council may make an order (hereinafter referred to as an expulsion order) requiring any person not being a native of the Colony to leave the Colony within the time fixed by the order, and thereafter so long as the order is in force to remain out of the Colony, in the following cases -

- (a) if the person has been convicted of any offence punishable by imprisonment without the option of a fine and the court recommends that an expulsion order should be made against him either in addition to or in lieu of sentence; or
- (b) if the Governor in Council deems it to be conducive to the public good or advisable in the interests of public morals that such an order should be made.

(2) It shall be lawful for the Governor in Council to make any such order subject to such conditions as he may think fit, and to rescind or suspend any such order either absolutely or subject to conditions.

Detention pending decision of Governor in Council.

3. Any person with respect to whom a recommendation is made by a court that an expulsion order shall be made, but against whom no sentence has been passed, may be remanded to a prison until the decision of the Governor in Council has been communicated to such court.

Effect of expulsion order.

4. Any person with respect to whom an expulsion order is made shall leave the Colony in accordance with the order, and shall thereafter so long as the order is in force remain out of the Colony.

- (a) Miss "A". European Nursemaid, at one time associating with Indians, later employed up-country as nursemaid with European family. Generally immoral. Suffering from venereal disease. Guilty of theft, but employers refused to prosecute.
- (b) Mrs. "B" and Miss "C". Two women drug addicts. When under influence immodest before natives and visit Bazaar. Receive treatment from Indian doctors.
- (c) Mr. "E". European Sodomist - sent out of another Colony for this.
- (d) Miss "F". Seychellois woman living with a Buganda by whom she has an illegitimate child.
- (e) Mr. "G". Moral pervert with native men and women.
- (f) Capt. "H". with a distinguished medal won during the European War. An inebriate. Associates, when intoxicated, with native women. Trades on the decoration won during the war. A very ill influence.
- (g) Family "I". Father, Italian, deceased. In distressed circumstances. Son convicted of theft and "sniffs" petrol. Consorts with Indians and is frequently under the influence of liquor. Two sisters aged seventeen and fourteen years. Have been financed by Indians. Often taken out by Indians for motor rides. Have been photographed in the nude by a coloured man. A disgrace to the white community. Italian Consul unable to assist in any way.

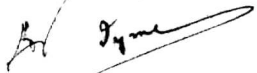
4. No power of deportation in respect of such cases is conferred by the Immigration Restriction Ordinance (Chapter 62 Revised Laws of Kenya), which incidentally does not apply to those who have resided for more than 5 years in the Colony, nor by the Deportation Ordinance (Chapter 61 Revised Laws of Kenya), and I am in agreement with the opinion of my legal adviser and of Executive Council that such provision is urgently necessary.

5. The accompanying draft Bill is therefore enclosed for your consideration.

I have the honour to be,

Sir,

Your most obedient,
humble servant.



BRIGADIER GENERAL.
GOVERNOR.

13



KENYA.

GOVERNMENT HOUSE
NAIROBI,
KENYA

No. 162

CONFIDENTIAL

RECEIVED
30 NOV 1931
OCL OFFICE

6th November, 1931.

Sir,

I have the honour to refer to correspondence terminating with Lord Passfield's Confidential Telegram of the 24th March, 1930, on the subject of a proposed Bill to make provision for the expulsion of undesirable persons.

16094/30
No 2

2. At a meeting of my Executive Council on the 2nd October, this question was again considered, and Council advised that the matter should be referred to you with a view to securing your agreement to the introduction in Legislative Council of the Bill on the lines of the Tanganyika Ordinance referred to in Sir Edward Grigg's Confidential telegram No. 88. of the 19th March, 1930, and without the substitution proposed in that telegram.

16094/30
No 1

3. The Attorney General and the Commissioner of Police are of the opinion that legislation of this nature should be embodied in the Law of this Colony for dealing with flagrant cases of moral turpitude which tend to bring non-natives into contempt, and a list of typical instances which have been drawn up by the Commissioner of Police is enclosed.

4.

THE RIGHT HONOURABLE J.H. THOMAS, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

Amended Conf 1 JUL 1932

Mr. Allen

Mr. Mackay spoke to me about this today - he had seen the pp. in Mr. Howard's room.

I understood his point to be that in Kenya there is a growing number of second-generation whites - no such thing in T.T. Impossible to expel - person born and domiciled in Kenya - nowhere for him to go etc.

Mp. were not available when Mr. Mackay spoke: I now see, however, that the aft. Bill applies only to persons not being natives of the Colony. This seems to dispose of Mr. Mackay's point - but I may have mistaken his meaning.

* But native is defined in the Interpretation Order & does not include a white born & domiciled in the Colony
S.H.A.
11/3

? Wait till he is back in the Co. - Jth Mack.

[Signature]
26/3

11

I asked Mr. MacGregor whether ^{similar} this limitation ^{in the proposed Exemption of undesirable Ordinances} of five years would affect any of the particular cases referred to by the Governor, but he thought not. [The Tanganyika Immigration Ordinance contains no provision similar to Section 4(f) and Section 37 of the Kenya ^{Immigration} Ordinance. ^{Restriction} Ordinance - also the I.I. Exemption of undesirable Ordinance does not include the time limit of five years]

3 n

MEMORANDUM.

As regards the matter referred to in the attached note by Mr. Freeston (No. 2), Mr. MacGregor's point was that the Bill admits of expulsion irrespective of length of residence, and that objection might, for example, be taken by relatives in the case of expulsion of Kenya born or long resident non-natives. He thought that if the Government did not take this point the unofficials would do so. Also, there is the question of the disposal of these undesirable, and Kenya might well consume its own smoke unless of recently imported origin.

Section 4(f) of the Immigration Restriction Ordinance makes reservations in respect of persons who have been formerly domiciled in the Colony or have been resident therein for a period or periods in the aggregate of not less than five years, but Section 37 enables the Governor to make an order to leave and remain out of the Colony in the case of persons who, within five years of entrance, are convicted of murder or an offence involving imprisonment.

Mr. MacGregor quoted as examples the

cases of:

- (a) ^{drug} addict: *(a European woman having immoral relations with a native,*

in which cases the Governor could not under the Immigration Restriction Ordinance make an order even after conviction if the offender had entered the Colony not less than five years earlier, whereas under this Bill the Governor could make such an order without a conviction, no matter how long the person had been in the Colony.

9

The papers attached to those referred to above show that in Kenya objection was taken on 15417/28 to immigration legislation under which a person might be deported as an undesirable immigrant, even though he was not so at the time of his arrival in the Colony. The Ordinance was subsequently amended. In Hong Kong, on 22836/23, objection was raised to a power to deport British subjects without ^{judicial enquiry} ~~notice~~, and the law was amended. The history of this case is summarised by Mr. Martin in his minute of 15.8.31 on 82746/8/31.

No question has arisen, so far as I am aware, but it seems not without importance to ^{notice} ~~notice~~ that the Aliens Order Extension Order-in-Council, 1900, of Gibraltar, permits the Governor to order a British subject to quit Gibraltar whom he may judge undesirable to be therein.

This memorandum does not purport to be a complete summary of the Colonial law on the subject. I have not, for instance, looked into the question as regards West Africa, although there is such legislation at least in Nigeria.

J. G. Roberts

3rd May, 1932.

9

In BRITISH HONDURAS (cap.117, s.16) any person may be deported within two years after landing in the Colony if he is "dangerous to the peace and good order of the Colony or.... causing unrest in the Colony", or convicted of any offence or admitted into a lunatic asylum.

In the WINDWARDS (St.Vincent, cap.165, s.2; St.Lucia, No.8 of 1821, s.8; Grenada, No.16 of 1821, s.8) an expulsion order may be made by the Governor if he "deems it expedient for the peace and good order of the Colony that an expulsion order should be made against any person". The power does not, however, apply to a British subject who has been resident for two years.

In GUENADA ^{also} there is a similar power under s.4 of No.15 of 1919 in the case, inter alia, of any immigrant who has become a nuisance to the Colony.

In the LEEWARDS (cap.79, s.4) the power in other respects similar to that in the Windwards, is limited in the case of a British subject to a person who has not been resident for three months or more. It is therefore not open to the same objection, and incidentally, in his minute of 4/7/21 on 213/21 St. Lucia, Mr. Buxton expresses the opinion that the Leewards Ordinance was the limit to which this type of legislation should go.

In TRINIDAD (cap.47, s.2) the power is very similar to that in the Windwards. I am not aware whether the other West Indian Colonies have similar powers.

Ordinance 15 of 1930. The Tanganyika Ordinance is modelled on similar legislation in Nigeria and Trinidad.

NYASALAND - 34206/32.
24144/31.

Approval has been given to the introduction of a similar Bill in Nyasaland. The Bill has been criticised in the local press, and has given rise to a Parliamentary Question in reply to which the Secretary of State said, inter alia, "the whole question of such legislation is at present under my consideration".

BERMUDA - 33200/31.

Sir Robert Gower forwarded to the Secretary of State a letter from one of his constituents protesting against his deportation from Bermuda. He had been in the island for about two years, and was apparently deported under s.22(1) of the Immigration Act, 1921, which provides that if, within five years after the arrival of any passenger, not being a returning native, the Immigration Board are of opinion that "such passenger is undesirable", they may order him to leave the island. Mr. Bushe took exception to this section, and in consequence, the law on the subject throughout the West Indies has been examined, and as a result ~~the~~ the powers in Bermuda and those in the Bahamas appear to be far more drastic than those in any other colony in the West Indies or elsewhere. The Bahamas law is very similar to that of Bermuda, but it is slightly less objectionable for the reasons set out in my minute of 15th March. It was copied from the Bermuda legislation in 1927, and no objection was taken to this section ^{when it appeared} in the 1927 Act, or when it was copied by the Bahamas in 1928, or when it was re-enacted in its more objectionable form in the Bermuda Act of last year.

MEMORANDUM.

DEPORTATION OF BRITISH SUBJECTS.

Questions on this subject have arisen almost simultaneously in Kenya, Nyassaland and Bermuda, and it may be convenient that they should not be considered entirely independently, and this memorandum may therefore be of assistance.

KENYA - 17285/21.

Kenya wished to enact an Expulsion of Undesirables Ordinance which would, inter alia, give the Governor-in-Council power to make an expulsion order requiring any person not being a native to leave the Colony if he is convicted of any one of certain offences, ^{or} ~~and~~ ^{is} if it is considered to be conducive to the public good or advisable in the interests of public morals that such an order should be made. The object is to get rid of Europeans whose conduct brings non-natives into contempt. The draft Ordinance contains no provision for a prior judicial enquiry, and although a Board is constituted to enquire into objections, the Governor-in-Council is not required to act upon their recommendations.

* The question has been raised whether there should be any limit to persons with less than 5 years residence

Incidentally, clause 14 requires the master of a ship to afford the deported person a passage to its next port of call, but does not say what is to happen if the authorities of that port will not allow him to land.

There is, in cap.61 of Kenya Ordinances a power to deport a person conducting himself so as to be dangerous to peace and good order after an enquiry by a Judge of the Supreme Court. I should have thought it would have been possible to amend that Ordinance to cover the cases with which it is intended to deal under this Ordinance.

The proposed new Ordinance, however, follows *Tanzania*

I see that cl 14 is taken from the U.K. Alien Order so we can hardly refer to this. *15.3.33*

5

MEMORANDUM.

The position of the Colonies in relation to the deportation of British subjects is chaotic, and I think needs examination.

In this country, of course, no British subject can be deported, and no British subject can be refused admission. Such a position, I realise, is not possible in the Colonies, but, equally, it is desirable, both from the point of view of this country which has to receive deportees, and from the general point of view, that British subjects should not be deported lightly from the Colonies. Nor, in these days, do I think that we can defend deportation on the mere ipse dixit of the Executive.

What we want is a list of reasons for which a British subject can be deported, and a provision for an enquiry before a Judge in Chambers as to whether he has done any of the things in the list. If he finds that he has, the final decision as to whether deportation should take place should rest with the Governor.

We have impressed this already upon Kenya and Hong Kong, but I gather that Kenya is now proposing to depart from it, and the provisions in some of the other Colonies seem to me not to be satisfactory.

The whole question is one of considerable importance, and if it is to be taken up, I think that the best method would be to set up a small Office Committee, with a view to drafting model provisions which we should then send to the Colonies for adoption.

Downing Street,
May, 1932.

(Sd/-) H.C.B.

9/5/32

17385/31. Kenya.

C. D.
R 30 JUN
D

6

C. O.

Mr. Priestman.

30/6
30/6

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET,

July 1932.

Sir,

I have, etc., to refer to your confidential despatch No.162 of the 6th November, 1931, forwarding for my consideration a copy of a draft Bill to make provision for the expulsion of undesirable persons.

2. The powers of Colonial Govts. in relation to the deportation from their territory of British subjects are forming the subject of a general review which will necessarily take some time, but I think it desirable to await its completion before formulating my decision on the proposals put forward in your despatch under ~~copy~~ reference.

I have, etc.,

(Sgd.) P. CUNLIFFE-LISTER

DRAFT. (No.1)

KENYA

CONFIDENTIAL

copy to
90/54/32/92
done

4 }
5 } Memoranda

In 90154/32 General it has been
decided that the whole question of deportation
of British subjects from Cde shd. be
examined by C.O. C'ty in October.

No 1 on this remains unanswered.

Aft. comm. to Gov. ~~advis~~ of 10/11/32,
saying that the powers of Ad. Govts
in relation to the deportation from
their territories of British subjects
forming the subject of a general review;
that this review will necessarily take
some time, but that S. of S. thinks
it desirable to await its completion
before forming his decision on the
proposals put forward by Gov.

JA

27/6/32

~~10/11/32~~
10/11/32

To Gov. Conf. (1 Annul) - 1 JUL 1932

done

copy 6

on 90154/32/28

~~10/11/32~~

objection crossed.

So far as I can see, Kenya,
the only question to be considered is
whether there are political objections
to such legislation in Kenya which
do not exist in T.T.

On this point I am not
competent to comment, but subject
to course of that point

? introduction into Leg. Co.
may be approved.

A.H.D.

12.2.32

J. H. H.

No legal observations.

J. C. Hwang 1/1/2

Practitioner 9/3
J. H. H.

must
* But this is what the
Klein & Co Kenya
Lawyers Association Ordinance
is intended to do
with 457/207/1931/1348

J.H.H.
14/3

The main point is this. Section 2(b)
of the Tanganyika Ordinance admits of expulsion
"if the Governor-in-Council deems it to be conducive
to the public good or advisable in the interests of
public morals that such an order should be made."

16094/30.

When Kenya asked sanction to introduce
a Bill on the lines of the Tanganyika Ordinance they
wished to substitute "maintenance of peace and good
order" for the words underlined in the Tanganyika
section quoted above. This proposal was held to raise
important issues, and the then Secretary of State did
not feel able to approve publication, and they asked
for a reasoned explanatory despatch.

The matter then dropped until the
present despatch was received.

The Governor now wishes to adopt the
Tanganyika Ordinance but without the substitution
mentioned above. I know of no reason to suppose that
apart from that suggested substitution objection
would have been taken to legislation in Kenya on the
lines of that in T.T., and the introduction of the
Bill may now be approved but suggesting, for the
reasons given in the attached ^{note}, that the Governor
should consider the addition of a new sub-clause to
Clause 3 providing that no order shall be made
for the expulsion from the Colony of any person who
has been resident therein for a period or periods in
the aggregate of not less than five years: ^{and}
that it would be appropriate that it will be necessary
for persons expelled to be sent to their countries of
origin (that alone cannot be sent to the country
or to British ports.

No 3

7th Jan 37
25/1/37 - 25
23/1/37

J.H.H.
28/3/32

1. In. Kenya — 162 — 6/11/57. 2
Conf

Pro. for consens. draft Bill to make provision for the expulsion of undesirable persons

It is proposed that power should be given to the Governor in Council by legislation to expel non-natives whose manner of living is such as to create a grave moral scandal but which is not such as to constitute an offence under the Immigration Restriction Ordinance, the Deportation Ordinance or §4 of the Criminal Law Amendment Act [It is not proposed to cover only cases ~~detected~~ of actual sexual intercourse]

Copies enclosed

The objects of this Bill and of the T.T. Ordinance — see ① on 18526/27 — are identical and the texts, which I have carefully compared, are the same except for necessary and non-material verbal differences

The T.T. draft was considered on 29567/29 and no