

Orig. 3 pp. regd. on 38034/1/37.

20. A/COL. SEC., KENYA..... 3 PM..... 14.8.37.
Trs. copies of Report of Select Committee of Leg. Co. apptd. to consider and report upon the provisions of a Bill to regulate residence of labourers on farms. (Spares to Library).

21. GOV. KENYA..... CONF. No. 145..... 27.10.37.
Trs. with comments, Ordinance No. 30 of 1937 together with Legal Report thereon and copy of Bill showing amendments made since it was approved (in No. 2 on 38223/35).

22. SIR ROBERT BROOKE-POPHAM (S/O TO S.O.F.S.)..... 28.10.37.
Comments on points raised in (12).

P.Q., BY MR. CREECH JONES, FOR ORAL REPLY ON WED., 10.11.37.
(REGD. AT No. 3 on P.Q. FILE)

23 A/COL. SEC.

CONF. 341

30.10.37

Sent to Library

The 12 copies of Ordinance No. 30 of 1937.

DESTROYED UNDER STATUTE

If what it works by making the permission of the occupier necessary instead of that of the Government, the latter would be relinquishing responsibility in a way.

The addition of paragraph (d) to Section 4(1) of the Ordinance does not go very far towards meeting the point put to the Governor in the Secretary of State's letter of the 12th of July (No. 12) as to the case of the native who had lived so long on a farm that he had ceased to have any connexion with his Reserve. But I assume that it will be necessary to accept the Governor's view that in practice these cases are dealt with sympathetically by the European farmers concerned.

None of the other amendments made in the Bill seem to call for special comment but, having in mind the arbitrary action recently taken by a number of European farmers to evict natives from their farms, I have thought it desirable to examine the provisions of this Ordinance, which relate to the arrangements for the removal of a resident native labourer who is no longer required to work on the European farm.

Section 4(1) prohibits a native from residing on a farm except in certain circumstances, and

* "right holders" not "resident native labourers"

and Section 7 prohibits an "occupier" from allowing any native to reside on a farm in contravention of the Ordinance. Section 5(7) empowers a magistrate, for good and sufficient reason, to order the removal of a native from a farm; but Section 18 authorises a magistrate to require the "occupier" to remove any native from his farm, and if the native is not so removed, the magistrate himself may remove the native from the farm.

The question which arises is how far, if at all, these provisions authorise a European farmer to use force in removing a native from his farm. Probably they do not, but it seems to me that, having regard to the high-handed action recently taken by a number of European farmers, there is quite a danger that Sections 7 and 18 might well lead some farmers to take forcible action.

(think that that was the intention)

It seems to me that it would have been preferable if the Ordinance had authorised the farmer to give notice to a native to clear off the farm, and had then gone on to provide that if the native did not remove himself, the "occupier" could apply to the magistrate, who would then take such action as was necessary. Provisions on these lines would have avoided the risk of high-handed action on the part of European farmers.

In this connection it may be mentioned, (though I recognise that the cases are by no means parallel) that Clause 49(2) of the draft Native Land Trust Ordinance, authorises the Governor

Governor to order any native, who is not resident in a Native Land Unit, to remove himself into such Unit, and the Secretary of State has directed that a proviso should be added as follows:-

"Provided that no such order shall be made unless the Governor is satisfied that sufficient land for the accommodation of the native in such Native Land Unit is available....."

These powers are for the removal of Native Right Holders, resident on European farms, whose rights are being expunged by the Native Lands Order-in-Council; but I should have thought it would have been preferable to have a corresponding provision (but substituting a magistrate for the Governor) for the removal of a resident native labourer from a European farm.

The only other point to which it seems necessary to draw attention is the Governor's rather curious recommendation that this Ordinance should not be sanctioned until the Governor is in a position to give a satisfactory assurance that alternative land is available for the resident native labourers who are to be ordered to leave the European farms. This is wholly unnecessary. As the Governor has assented to the Ordinance, it is now in force, even though not in operation, and it will be quite sufficient for the Ordinance to be sanctioned but not ~~to be~~ brought into operation until this alternative land is available. This might be pointed out to the Governor in the reply.

The Ordinance ~~would~~ have to be examined by Legal Advisers, but I send on first for ^{consideration} ~~decision~~ of the question of policy in regard to the arrangements for

the removal of natives from European farms.

21.12.1937

There is an idea abroad - it is very prevalent in Kenya - that an Ordinance is not in force until non-dissolution has been signified. As Mr. Paskin says, this is quite mistaken & this Ordinance, not having been reserved, is of full effect. Since, however, it contains a suspending clause & and is not to come into operation until proclaimed the point is not of vital importance, but it should be made, just to get the situation clear.

The question of policy is not, I think, really serious. § 18 of the Ordinance deals with natives who are residing on undeveloped farms - and it definitely envisages the case where the owner is not living in Kenya. § 7 lays down that no occupier shall allow a native to reside on a farm in contravention of the Ordinance. This does not give power to remove him but means that the occupier shall not give him permission to reside otherwise than as provided. If a native resides without such permission then he is committing an offence and can be dealt with.

The safeguard against arbitrary action under § 18 is that the request to the magistrate to give orders to remove which will ensure that it is not exercised lightly. I expect that it really means that the magistrate shall order the occupier to tell the native to remove, ^{as Mr. Paskin suggests,} and then, if he dares, ~~the~~ the magistrate may authorize removal. That represents a real defence against arbitrary acts, but perhaps

we might say that it is presumed that it is not intended to give the occupier power to remove natives forcibly. The Gov. says the clause is meant to prevent "Kiffin farming". The Governor says that it is not intended to remove anyone or to bring the Ordinance into operation until he is able to assume the S. of S. that there is land to which the removed persons can go. That follows what was said in para 4 of the S. of S. despatch of 12 October 1936 and it is obviously just.

As regards the central policy of the whole thing there are some main principles which will help to guide us.

- 1) The reservation of the Highlands - i.e. the arbitrary area designated by the Carter Commission - for Europeans is established principle. To allow natives to acquire rights in that area as tenants or by degrees as prescriptive owners would defeat the whole policy in no time, and lead to great trouble.
- 2) The natives with whom this Ordinance is concerned are not the 'right holders' but those who have drifted in ^{to take employment} they are very necessary to the white farmer but they must be regarded as labour tenants and must not be allowed to acquire rights.
- 3) It is becoming evident from the 'erosion' reports that more control of native stock will be necessary. Therefore it is important to secure full control of resident labourers and their stock.
- 4) From the cattle disease point of view, such control is still more desirable. If there is ever to be a cattle industry in Kenya then there must be measures to control the risk of disease among the European owned herds: therefore again more control of the resident labourer is essential.

5) The Carter Commission ^{is} definitely (§ 1869) that contracts are completely voluntary and natives go to work on the farms because it pays them to do so. They also advised (§ 1864) against leaving labour tenants on European farms after their time was up and that Govt. should find ways to which they can go.

They also stated (§ 1868) that with the additions to the Reserve which they advise and the 'C' area of the game there should be land enough to meet any contingency which is likely to arise for many years to come.

I think then that if the main principles at (1) (2) & (3) are kept in mind with the additional fact that the Governor is not going to move until he is satisfied as to the land being available (In the last sentence of his private letter he says 'good' land and the adjective is of importance) we need have no more hesitation. The fact that these people are not 'original inhabitants' but men who have come in of their own accord and that they will not simply be pushed into a Reserve but will be found land - if they are evicted at all - is enough to meet criticism.

So I would ask next, tell the Gov. that the Ordinance having been assented to is operative though under § 1 it cannot come into force till proclaimed, and that H.M. will not be advised to exercise his power of disallowance. Express satisfaction at the assurance about land in para 6 and say that the Ordinance will of course need to be worked with reasonableness (As the Governor says you can't legislate for everybody and § 2 provides that it may be applied piecemeal to selected areas and as to selected parts of the Ordinance.)

There is a misprint I think in § 8(1). Either 'who' in line 3 or 'and' in line 4 should be omitted.

(Legal advisers to see of course in the low point before the draft is prepared)

This is all right. No one is to be worried out unless there is land to which he can go. And as one

need be worried out if he is too old to
that might be
in firm to see the land provided for him

Subject: Legal advice, as proposed

C.L.S.

30.12

Mr. Dale

Rather than delay this file for Sir Parkinson's return to the office, I send ^{the report} ~~the report~~ you at this stage for legal advice.

O'Keefe

21/12/37

I certainly think something should be said about Sec. 5(1) and the amended provisions: it very much looks as if the occupier is to be entitled to have the trees cut by his own ^{agent} hand. On the other hand the use of the word 'may' may cause 'may' the cost of the removal.

2 on 38223/35

Besides this, paragraphs 7 and 9 of the Secretary of State's despatch on the Bill raised important points which seem to me to have been very inadequately met. In paragraph 9 of the despatch we criticised the power of the Magistrate to order removal under Section 5(7). Paragraph 7 of the despatch (No. 21), with its reference to a "crime", I do not myself understand. It seems to me that probably Kenya did not see the point of our criticism. The provision contained in the former Clause 5(7) dealing with the costs of removal has been omitted, and there is no provision made for hearing the parties. I find no explanation on this point from Kenya.

A phrase

phrase has been added directing the Magistrate to furnish the occupier with the reasons for any orders he makes for removal, but nothing is said about furnishing reasons to the native. One gets the impression from this that the claims of the natives have been entirely overlooked.

Again, in paragraph 7 of our despatch, we said that Clause 4(1) of the Bill which provided that "no native or Somali shall reside on or remain for a longer period than 48 hours on any farm etc. unless" was too drastic. Kenya have dealt with our criticism by simply deleting the reference to 48 hours and the clause now reads "no native or Somali shall reside on or remain on any farm etc. unless ..." and to contravene this provision is an offence. This seems to me simply to make the matter worse. The previous Ordinance (No. 5 of 1925, Section 2) did not contain the word "remain". The effect of this section now seems to be that as soon as the Ordinance is applied to any area a native who does not come within one of the exceptions in Section 4(1) commits an offence. The particular criticism contained in the last sentence but one of paragraph 7 of the despatch seems to have been entirely ignored, but, apart from the injustice of punishing a native in the circumstances particularly mentioned in that paragraph, it is clearly necessary for the native to have time to get a permit so as to bring himself within exceptions (d) or (e). // Mr. Paskin has

indicated

indicated the way in which we dealt with this problem of removal in the draft Native Lands Trust Ordinance, and I suggest that Kenya should be invited to deal with the problem of these natives in a similar way. It is true that Section 5(7) contains the phrase "gives the Magistrate power to order removal for good and sufficient reason", but there is no indication whatsoever what amounts to a good and sufficient reason. It seems a particularly curious phrase to use since any native who is wrongly on a farm under the provisions of this Ordinance commits an offence, and not only that but an occupier, as Mr. Paskin has pointed out, also commits an offence for allowing him to stay there. That is what is (should be) good & sufficient reason for removal in my view. Section 24 evidently contains a misprint. The word "district" the second time it occurs should be "area." // With regard to paragraph 6 of the despatch in which the Governor says that he does not "propose to ask that any advice on this measure should be tendered to his Majesty" and the above minutes on this point, I am not sure that we ought to say what has been suggested. We do not infrequently inform a Governor that pending consideration of a matter a notice is to be tendered to his Majesty in connection with the Ordinance. There are a good many points here which have, I suggest, not been adequately dealt with, and it seems to me a proper case for not tendering any advice to his Majesty for the time being. I very much doubt whether the Kenya Government is under the misapprehension indicated

* See also request made to Mr. Paskin's minute above.

The S. P. only
"Under advice"
when he wants an
order to be dissolved
What is never. I
think the words
have added as a
last here in the
dft. draft. //
meet the Govt. W.P.

W.P.

by Mr. Flood in the first paragraph of his minute, and in any case this Ordinance does not in fact come into operation (under Section 1) until such date as the Governor appoints by notice in the Gazette.

(to) Dale.

5.1.38.

Mr. Pascoe

Sir C. Parkinson would be glad if the Dept would now consider action in the light of Mr Dale's minute.

Cyrenaire
5/1/38

I have now recast & expanded the draft which had been prepared by Mr. Conley - White. I am afraid that I have had it for some time, but both this file & the file on the Native Registration have required a good deal of attention which it has not been possible to give continuously.

It will be seen that that in the Native Registration Order also that amendments have been made without any explanation - one of them in a sense directly contrary to the view expressed by the S. G. in his despatch on the Bill as originally

submitted. That Bill has been reserved & it is therefore, if anything, even more important that the S. G. should be fully informed of the reasons for the amendments that have been made.

I suggest that these considerations should be pointed out to the Gov. Secy. I submit a draft accordingly.

J. J. Pascoe
19/2

Sir C. Bottomley.

I am afraid that it has taken me a few days to digest this: but I think that the drafts now submitted crystallize the position. The point is that Mr. Dale has brought out several defects in the Ordinance as enacted which seem to need correction if the Secretary of State is to preserve a proper balance between the interests of the European farmer and the native; and to be in a position to give a good reply to the protagonists of the native in the House of Commons. As far as I can judge it should be possible to make these amendments without cutting across any legitimate European interests. But there is nothing categorical in the drafts and they leave it open to the Governor to come back if he does not like the suggestions.

One of the difficulties in dealing with this question has been that the Governor has made in the Ordinance important deviations from the draft originally submitted to the Secretary of State without due explanation. He has also not dealt with many of the points put to him in our despatch commenting

38222/37,
amend below.

commenting on the draft. A reference to this has been put in the draft letter for the Secretary of State's signature in the hope that it will infuse greater clarity into future correspondence and so facilitate business.

? Proceed as in the drafts.

A. J. Maw

3.3.38.

Sir C. Popham.

I feel that his valid criticisms are just - even though they make my earlier acceptance of the O22nd seem rather light hearted. In particular the point dealt with in the last para of the draft letter (x in the draft) is important. The phrase that I have not forgotten in translation is hard pressed.

W.S.D.

3.3.38.

Sec. of State.

Left all draft & letter submitted.

W.S.D.

3.3.38

W.S.D. 3.3.38

To Sir R. Brooke-Popham — S.O. = 14 3.38
(22ansd)

25 To: Kenya Conf. 21. Approved. 14 MAR 1938

Notes
C. J. Maw
Library
17/6/38

commenting on the draft. A reference to this has been put in the draft letter for the Secretary of State's signature in the hope that it will infuse greater clarity into future correspondence and so facilitate business.

? Proceed as in the drafts.

A. Mawe

3.3.38.

Sir C. Popham.

I feel that his criticisms are just - even though they make my earlier acceptance of the D.D. seem rather light-hearted. In particular the point dealt with in the last para of the draft letter (7 in the 2 copies) is important. The phrase that "know not Joseph is transitionally hard-headed."

W.S.B.

3.3.38.

Sec. of State.

Dft. dispatch & letter submitted.

W.S.B.

3.3.38

W.S.B.

24

To Sir R. Brooke-Popham. — S.O. — 14.3.38 (22ansd)

25 To: Kenya Comf. 21 Amosud. 14 MAR 1938

Notes
C. M. A. S.
Library
17/6/38

C. O.

17
14

Mr. Costley-White 27/1/38

Mr. Paskin 10/2
Mr. Dale 22.2
Mr. Dawe 3.3

Answered 3 am
1938 file

Sir H. Moore.

Sir G. Tomlinson.

Downing Street.

X Sir C. Bottomley. 3.3

SA

1st March,
February, 1938.

Sir J. Shuckburgh.

→ Permu. U.S. of S. 3.38

Parly. U.S. of S.

Secretary of State. W.M. 7.3.38

2 DRAFTS for conson.

Sir,

K E N Y A

CONFIDENTIAL

Governor.

Copy Kenya 10 am 39 file

(21)

I have etc. to ack. the receipt of your ~~Confidential~~ despatch No.145 of the 27th of October,1937. and to inform you that I have given careful consideration to the provisions of the Resident ~~Native~~ Labourers Ordinance, 1937. I approve your proposal that the Ordinance should not be brought into operation until you are in a position to give a satisfactory assurance that alternative land is available for the accommodation of resident labourers who may be required to move from the farms on which they

FURTHER ACTION.

have been living. In the meantime I have

the following observations to offer on the

provisions of the Ordinance, *some of which may*
entail the issue of an amending Ord. ce.

2. I observe that paragraph (d) of

~~Section~~ Section 4(1) has been amended so as to

enable a native or Somali who, from age or

infirmity, is incapable of continuous

employment, to remain on a farm with the

permission of the "occupier" instead of that

of a Magistrate as was provided in the original

draft Bill. I understand that the reason for

this amendment was that it was considered that

a provision which would have enabled a magistrate

to permit a native to remain on a farm against

the wish of the occupier was inconsistent with

the intention that resident native labourers

should be employees and not tenants. As,

however, you are aware, I have been much concerned

with the hardship which might be caused by the

eviction of aged natives who had resided so

long on a farm that they had lost all connection

with their reserve. Under ~~Section~~ Section 4(1) (d) as

it now stands, such a native is made even more

dependent

*(provision generally
not to be inserted
in the Bill, not
known)*

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

dependent upon the sympathetic
consideration of his case by the a
European farmer ~~concerned~~ than he would
have been, under the Bill as originally
submitted, and I feel considerable doubt
whether an amendment which produces this
result can be justified on the grounds
mentioned above. I had hoped that it

DRAFT.

*Moreover the effect of paragraph (d) as
drafted seems to be no different from that of
paragraph (a), since in both cases the written
permission of the occupier is necessary*

would have been possible to devise an
amendment which would have made the
position of such natives ^{more} less insecure.

~~But as~~ ^{But as} however this has not been found

possible, I incline strongly to the
view that ~~Section~~ Section 4(1) (d) should again

be amended to enable an aged or infirm
native to remain on a farm with the
permission of ~~either the occupier or a~~
magistrate.

3. In paragraph 7 of my
confidential despatch (4) of the 18th
of October, 1966, I ^{invited} called attention to
the provision whereby under Clause 4(1)
of the Bill it was made an offence for

FURTHER ACTION.

(2) on
38222/65

any native to reside on a farm for more than forty-eight hours unless he fulfilled certain conditions, and ^{J. 2013} considered that this provision ^{appeared to be} was too drastic. I observe that the reference to forty-eight hours has been ^{now} deleted ^{from the} and does not appear in section 4(1) of the Ordinance. The effect of the Section as it now stands would appear to be that any native who is not covered by one of the exceptions will commit an offence immediately upon the ^{application} coming into force of the Ordinance. It would seem necessary to allow a native an adequate period of time, during which no offence would be committed, in which either to remove himself from a farm or to obtain a permit to remain on it. In the paragraph of my despatch referred to above a case was suggested - that of a native who had settled on an unoccupied farm

in ignorance of the fact that he was breaking the law - in which forty-eight hours would seem to be an insufficiently long period for this purpose.

in paragraph 3 of your despatch, you refer to section 25(2) which is to specify the time and it will be understood that the period is to be a reasonable and sufficient time to have. There is no indication of section 25(1) and (2) which are to be read together.

More than appears to be the conflict between the provisions of section 4(1) and (2) and section 25(1). Upon the former a native who enters a farm is to be removed and who remains on the farm is to be removed. There is no indication of section 25(1) and (2) which are to be read together.

G.O. h.b.
Mr.
Mr.
Mr.
Sir H. Moore.
Sir G. Tomkinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Perms. U.S. of S.
Parly. U.S. of S.
Secretary of State.

DRAFT.

FURTHER ACTION.

Note that this suggestion has not been adopted and that no explanation of it rejected is given in your despatch.

4. In paragraph 3 of your despatch you have expressed the view that it is unnecessary to restrict the very wide powers of removal given to Magistrates under ~~Section~~ Section 5(7). I find some difficulty in accepting this view. I have to confess that I am unable to see that the reason given for your view is a sufficient justification for leaving the magistrate with such wide powers. I also observe that the provision dealing with the costs of removal has been omitted, but no reason has been given for this omission. Is it now the intention that the costs of any such removal should, in all cases, be borne by the Government? In paragraph 9 of my despatch of the 12th of October, 1936, I suggested that provision should be inserted for the parties to be heard before an order of removal is made. No reason is given for the non-adoption of this suggestion. Further, a phrase

phrase has been added hereby, on request,
the "occupier", but not the native, shall be
furnished by a Magistrate with the reasons
for removal. The impression created by
this sub-section is that the interests of the
native have, in these respects, been unduly
subordinated to those of the "occupier".

It is true that a Magistrate may only order
removal for "good and sufficient reason",

but there is no indication of what ^{constitutes} ~~amounts~~
a good and sufficient reason. ^{on how far this expression must be interpreted in the}
~~it seems open to question whether these words~~

are altogether satisfactory per se. For
example not only is ^{an} offence committed by
any native who is wrongly on a farm under the
provisions of this Ordinance, but an offence is

also committed by an ^{occupier} employer who allows him
to remain. ^{there would always be, in that case,}
In such a case there is clearly
a "good and sufficient reason" for the Magistrate
to order his removal, though it would be
unnecessary to rely on these words in such
a case.

5. I turn now to the question of the
procedure

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

procedure by which a native is to be
"removed". Under ~~Section~~ ^{Section} 4(1) it is
unlawful for a native to reside or
remain on a farm except in certain
circumstances. Under ~~Section~~ ^{Section} 7 it is
unlawful for an "occupier" to allow a
native to reside on a farm in
contravention of the Ordinance. Under
~~Section~~ ^{Section} 5(7) a Magistrate may order
the removal of a native from a farm
for good and sufficient reason, and
under ~~Section~~ ^{Section} 18 a Magistrate is
empowered to order an "occupier" to
remove a native from an undeveloped
farm, and, if the "occupier" fails to
do so, the Magistrate or anyone he may
authorise in that behalf may remove the
native. Both ~~Sections~~ ^{Sections} 7 & 18 impose on
the occupier the obligation to remove
a native from his land in certain
circumstances. I assume that it is
not intended to authorise an occupier
to take forcible action on his own

account for the removal of a native from his

land, but it is easy to imagine that some

European occupiers might ^{suppose} imagine that these

~~Sections~~ confer on them the authority to do

so. In this connection I would recall the action

which was taken, without any such authority as

these ^{Sections} ~~Sections~~ might be supposed to confer, by

a number of farmers in removing native right-

holders from their farms. I suggest for your

consideration that a provision should be inserted

to make it clear that an occupier is not authorised

to do more than to give notice to a native to remove

himself from a farm; and that, in the event of the

native declining or neglecting to remove himself, the

occupier should apply to a Magistrate for an order

for the removal of the native; and that possible

measures for the removal of a native should only be

taken by a person duly authorised by the Magistrate.

In conformity with the proviso which I have

suggested (in the memorandum enclosed with my

confidential (6) despatch of the 28th of October 1937)

should be added to Clause 49(2) of the draft Native

Lands Trust Bill, I suggest that it should also be

prescribed in the Ordinance that no such order

shall

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

shall be made unless the Magistrate

is satisfied that sufficient ^{suitable land} ~~land~~ is

available for the accommodation of

the native, ~~in a suitable Native Land~~

~~Unit~~

Unless you desire to offer ^{above comments} any observations on the suggestions

in this despatch I suggest that an

early opportunity should be taken to

~~introduce~~ ^{insert} an amending Ordinance with

a view to the Ordinance, as so

amended, being ready to be brought

into operation as soon as you are

able to give the assurance

condition mentioned in paragraph 6 of

your despatch of the 27th of October,

is fulfilled. In this connection I

would observe that, when an

Ordinance contains a suspending

provision, such as that in Clause 1

of this Ordinance, it is normally

unnecessary, in addition, for me to

defer tendering advice to

His Majesty in respect of the

DRAFT.

6. Section 24 (2) (b), which authorises a Magistrate to "cancel any permit given by an occupier in contravention" of the Ordinance, is not entirely understood. The intention may be to refer to permits given in contravention of Section 21, and if so that should be made plain, since as drafted the section is difficult to interpret in conjunction with section 4 (1) (a).

7. A small error appears in section 34, when "district" should apparently be "and" the second time it occurs and in section 5 (1) where either the word "who" in the third or "and" in the fourth line appears to be superfluous.

FURTHER ACTION.

(No. 14 on 38005/6/37)

detailed

P.T.O.

Ordinance

Ordinance, though it is sometimes convenient to take this course in cases when it is desirable for an Ordinance to be appended before it is brought into force.

9. In the meantime no notification will be sent to you with respect to the exercise of the power of disallowance in connection with the Ordinance

(Signed) W. C. MASEY GORE

38225/37

C. O.

Mr. Paskin 19/2

Mr. Dale 22/2

Mr. Dawe. 3.3

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 3.3

Sir J. Shuckburgh.

Permt. U.S. of S. G. 3.28

Parly. U.S. of S.

Secretary of State. 10/7 2.3.38

For signature by the Secretary of State.

DOWNING STREET.

7 March, 1938.

DRAFT.

AIR CHIEF MARSHAL

SIR ROBERT BROOKE-POPHAM,
G.C.V.O., K.C.B., C.M.G.,
D.S.O., A.F.C.

KENYA. By bag.

Dear Robert Popham

I hope that you will forgive me for not having replied earlier to your confidential despatch of the 27th and your private letter to me (21) of the 28th October, 1937, about the Resident Labourers Ordinance. The measure gave rise to some delicate considerations both politically and technically: and I am afraid that a detailed scrutiny has taken rather a long time. But I am now sending an official despatch by to day's mail in which I am offering a number of comments on the Ordinance and asking you

2 D/H

To go by same mail as despatch in draft herewith.

FURTHER ACTION.

you

you on some points to consider the possibility of amendment.

You will see that the object of my suggestions is to safeguard rather more explicitly the position of the natives. I have tried to arrive at a scrupulously fair balance between the interests of the European farmer and the African labourer, and I do not think that there is anything in my suggestions to which the European ^{might} can reasonably object. You know the critical interest with which legislation about natives is followed in the House of Commons, and I think that, unless some amendment of the Ordinance is made, the legislation ~~will~~ ^{will} provoke ~~some~~ justifiable strictures. If you find that there are difficulties, I should be greatly obliged if you would explain them fully in your answering despatch. I did not find it too easy to disentangle the position as left by your despatch of the 27th October because the

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

(2) in
/35 file

DRAFT.

FURTHER ACTION.

Ordinance as passed showed important changes from the original draft without ~~any~~ explanation being given in your covering despatch. Also, amendments which I had suggested in my Confidential (4) despatch of the 12th October, 1936, had not been adopted - again without ~~any~~ explanation. As regards the immediate point of your letter of the 28th October, 1937, I quite appreciate how difficult it is to get a good solution of the problem presented by the native who has become so firmly rooted on a European farm that he would find ^{it hard to make} difficulty in making a fresh start elsewhere. But I trust that you will feel able to fall in with my suggestion that his fate should not be left entirely in the hands of a European farmer who may be a newcomer to the estate with no interest in a man who may have given long years of loyal

service to a previous occupant.

45

(Signed) W. ORMSBY GORE.

AIR MAIL.

CONFIDENTIAL.

Ref. No. S.F. ADM. 8/1/2/1. III.

14
22
GOVERNMENT HOUSE,

Nairobi,

Kenya.

28th October, 1937.

Dear Ormsby Gore

12
In your letter of the 12th July, enclosing copies of correspondence with Mr. Creech Jones about the Resident Native Labourers Bill, you asked me to consider whether some arrangement might be devised to meet the case of a resident native labourer who, after many years in the service of his employer, might be turned off the farm in his old age.

Clause 4 (1) (d) of the bill introduced into the Legislative Council permitted the continued residence on a farm of "a native or a Somali who, from age or infirmity, is incapable of continuous employment and is closely related to a family lawfully residing on such farm, and who has obtained written permission from a magistrate or attesting officer by endorsement on a resident labourer's contract or otherwise". Under this clause a time-expired squatter could continue to live on the farm whether the occupier wanted him there or not. Although such a provision would have met the difficulty on paper, it was clearly not consonant with the intention that under this bill resident native labourers should be employees and not tenants. In Select Committee the clause was amended so as to permit the continued residence of "a native or Somali who, from age or infirmity, is incapable of continuous employment and who has received the written permission of the occupier", and that is how it reads in the Ordinance as passed, which is being sent you with an official despatch.

10
I imagine that, in the case of the gardener referred to in your letter to Creech Jones of the 25th June, it would be regarded as unreasonable to provide by law that his employer might be compelled against his will, to allow him to go on living in his cottage after his employment had ceased. The effect of any such provision, applied to the conditions of a Kenya farm, would undoubtedly

THE RIGHT HONOURABLE
W. ORMSBY GORE, P.C., M.P.,

be ...

be to make things more difficult for any time-expired squatter living on a farm against the wishes of the occupier, whereas if the occupier were left to give his own permission he would probably give it, as he does in many cases now.

The claims of old men who have lived and brought up their families on farms to be allowed to remain there in their old age are widely recognized in practice, particularly when the sons work on the farm. Even when there are no sons working on the contract, the old man is rarely turned off the farm if he wishes to stay and has deserved well of his employer. There is, therefore, little or no hardship on this account in practice. I admit that the possibility of hardship remains, as in fact it does with the gardener, but is it ever practicable to legislate for every case? We've got to be fair to the European as well as to the African.

A problem that we feel is more pressing than that of the old man is that of the young member of the family who has no connection with the Reserve, cannot obtain employment on the farm or on a neighbouring farm and thus drifts into a town and is literally homeless. For this class of native and for Kikuyu resident native labourers (other than "right-holders" provided for in the Land Commission's proposals) who may be dispossessed under this Ordinance, as well as for the few unfortunate aged, it is clearly important that land should be provided where they can go and settle and become useful members of the community under something approaching as nearly as possible tribal control. Various proposals are afoot for making good land available for this purpose, and in the despatch I do not ask that the Ordinance should be either confirmed or brought into operation until I can give you a satisfactory assurance on this point.

Yours sincerely,

BBrocke-Popham

AIR MAIL

KENYA

No. 145

CONFIDENTIAL.



21
GOVERNMENT HOUSE

NAIROBI

KENYA

27 October, 1937.

RECEIVED
3 OCT 1937
C O REGY

Sir,

With reference to your despatch Confidential (4) of the 12th October 1936, I have the honour to forward two authenticated copies of Ordinance No. XXX of 1937, entitled "An Ordinance to Regulate the Residence of Labourers on Farms", together with a Legal Report thereon by the Acting Attorney General. A copy of the bill showing the amendments made since the bill was approved in your despatch under reply, and during its passage in the Legislative Council, together with an explanatory memorandum, are also enclosed.

2. It will be observed that in accordance with your suggestion, the phrase "resident labourer" has been substituted for "squatter" throughout the bill. A further proviso has been added to Clause 21 (1) to the effect that no resident labourer shall be required to work for more than two hundred and seventy days in any year unless he so desires. The reference to the period of forty eight hours in Clause 4 (1) has been deleted.

3. In the ninth paragraph of your despatch under reply you observed that it is for consideration whether the exercise by a magistrate of the power to evict (Clause 5 (7)), should not be restricted to circumstances in which eviction is necessary in order to prevent a breach ...

*Answered... (25)
Copy to Kenya. 16 Oct 37/16*

THE RIGHT HONOURABLE
W. ORMSBY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

breach of the peace. I agree that the power given to the magistrate is large, but the proposed restriction is not considered necessary to ensure that this power is reasonably exercised. In circumstances in which a crime has actually been committed but there is no question of preventing a breach of the peace, it may be reasonable to exercise the power of removal as an alternative to the termination of the contract by the giving of three months' notice.

4. You requested, in the tenth paragraph of your despatch, that you might be informed of the reason for Clause 18. This clause is designed to prevent "Kaffir" farming, and to provide machinery for the removal of natives from areas which are not considered to be under effective control.

5. Clauses 26 and 27 have been amended so as to provide penalties of a fine not exceeding Shs. 150/- and two months' imprisonment in default, both for the more serious offences committed by the resident labourer, and for offences committed by the occupier. The necessary provision to exclude resident labourers from the provisions of the Employment of Servants Bill will be made in the latter Bill, and the minor amendment suggested by you in paragraph 12 of your despatch has been made.

6. This Ordinance passed its third reading in the Legislative Council on the 11th August, and I assented to it in His Majesty's name on the 3rd September. The Ordinance will not, however, be brought into operation until notification is received that His Majesty's power of disallowance will not be exercised. Until I am in a position to give you a satisfactory assurance that alternative land is available to meet the cases referred to in paragraph 4 of your despatch - steps to this end are being taken - I do not propose to

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3
ask that any advice on this measure should be tendered to His Majesty or that the Ordinance should be brought into operation.

7. Twelve printed copies of the Ordinance are being forwarded by surface mail, and copies of the official report of the debate which took place during the introduction of the bill will be sent to you as soon as the proofs are available.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R. Brooke-Popham

AIR CHIEF MARSHAL.

G O V E R N O R .

LEGAL REPORT

THE RESIDENT LABOURERS BILL, 1937

This Bill is designed to give effect to the recommendations contained in the Report of the Committee appointed to review the Resident Native Labourers Ordinance, 1925, and to report what amendments were necessary for its improvement.

The Bill, prior to its introduction into Legislative Council, was submitted to the Secretary of State, and was, subject to certain suggested amendments, approved by him in his despatch Kenya Confidential (4) of the 12th October, 1936.

A copy of the Bill showing the amendments made since the Bill was approved by the Secretary of State and during its passage in Legislative Council, together with an Explanatory Memorandum, is enclosed herewith for transmission to the Secretary of State.

As the Bill was approved by the Secretary of State and, as it is not intended to bring it into operation until the Secretary of State signifies that His Majesty will not be advised to exercise his powers of disallowance, I am of opinion that His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

11th day of August, 1937

H. S. Wilson
ACTING ATTORNEY GENERAL

COPY
OF
THE RESIDENT LABOURERS BILL, 1937, SHOWING
THE AMENDMENTS MADE SINCE THE BILL WAS
APPROVED BY THE SECRETARY OF STATE IN
HIS DESPATCH KENYA CONFIDENTIAL (4),
OF THE 12TH OCTOBER, 1936

72-4-38-2237

EXPLANATION:

- (a) The words and clauses underlined in blue-black ink are the amendments made after the bill was approved by the Secretary of State in his despatch Kenya Confidential (4) of the 12th October, 1936, and before the bill was introduced into the Legislative Council.
- (b) The words and clauses underlined in red ink are the amendments made during the passage of the bill in the Legislative Council.
- (c) The figures shown in pencil are the serial numbers of clauses of the bill approved by the Secretary of State.

ORDINANCE No. XXX of 1937

An Ordinance to Regulate the Residence of Labourers on Farms

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 Resident Labourers Ordinance, 1937, and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint. Short title and commencement.

2. This Ordinance or any part thereof shall apply to such districts or areas, and from such date or dates, as the Governor in Council may, from time to time, by proclamation in the Gazette, appoint. Application of Ordinance.

3. In this Ordinance—

“attesting officer” means a person appointed as such by the Governor in Council under the provisions of section 32 of this Ordinance; Interpretation.

“cattle” means any bull, cow, steer, heifer or calf or any other animal which the Governor may, by order, declare to be cattle for the purposes of this Ordinance;

“family” means the wife or wives and the unmarried children, if any, of a native or Somali;

“farm” means any area of land held under a grant, lease, or licence from the Crown (other than an area of land situated in a municipality, township or trading centre which is held under a title, or a licence, the terms of which preclude either expressly or impliedly such area of land from being used for agricultural purposes) and shall include any area of land set apart by the Government of the Colony for the purposes of

experimental farming, and, except for the purposes of sub-section (10) of section 5 and of sections 18 and 19 of this Ordinance shall include a forest area:

Provided that if, under section 2 of this Ordinance, the Governor in Council by proclamation applies the provisions of this Ordinance to the Protectorate of Kenya or to any district thereof, or to any area therein, this definition shall, so far as such Protectorate, district or area, as the case may be, is concerned, be deemed to include such land as may be held under a Certificate of Title granted under the Land Titles Ordinance and is specified in such proclamation;

Cap. 143.

"forest area" means any area declared, under section 3 of the Forest Ordinance, to be a forest area;

Cap. 149.

"local authority" means a municipality established under the Local Government (Municipalities) Ordinance, 1928, a district council established under the Local Government (District Councils) Ordinance, 1928, in respect of the respective areas of jurisdiction so conferred upon them, and, where there is no municipality or district council, means the district commissioner;

No. 19 of 1928.

No. 21 of 1928.

"mission" means any mission recognized as such by the Governor;

"occupier" means the owner or lessee or any other person having a legal right to occupy a farm or Railway land, and includes any manager or agent (other than a native or a Somali, except with the approval of a district officer), of such occupier, and in respect of forest areas and Railway land, includes the Conservator of Forests and the General Manager of the Kenya and Uganda Railways and Harbours respectively;

"Railway land" means any land the control of which vests in the High Commissioner for Transport;

"resident labourer" means a native or a Somali who has entered into a contract under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925;

"stock" includes cattle, sheep, goats, and such other animals or birds as the Governor may, by order, declare to be stock for the purposes of this Ordinance.

No. 5 of 1925.

4. (1) No native or Somali shall reside on or remain on any farm or on any Railway land, unless he—

(a) is the occupier thereof or a member of the family of the occupier thereof; or

When natives or Somalis may reside on a farm.

(b) has duly entered into a contract, still unexpired, with the occupier or his predecessor in title under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925; or

No. 5 of 1925.

(c) is in actual employment on such farm or Railway land, in pursuance of a contract made under the provisions of any law for the time being in force in the Colony relating to the employment of servants, or is a member of the family of a native or Somali so employed; or

(d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and who has received the written permission of the occupier; or

(e) is the holder of a permit in writing in that behalf given to him by the occupier and, in the case of a permit authorizing residence for a period of more than fourteen days, is also the holder of a permit from the district commissioner; or

(f) in the case of a forest area, is the holder of a grazing permit issued to him by the Conservator of Forests under the provisions of any law for the time being in force relating to the granting of such permits.

(2) Nothing in sub-section (1) of this section contained shall apply to a native residing by right in the Lembus or Mt. Elgon forest areas.

(3) Any person who contravenes the provisions of this section shall be liable, on conviction, to a fine not exceeding ten pounds, and in default of payment to imprisonment for a period not exceeding two months.

5. (1) When a native or Somali has entered into a contract, as in this section provided, the members of his family may during the period of such contract reside on the farm or Railway land, as the case may be.

Contract of service to work on a farm.

(2) A contract under this section shall be in writing, shall be executed by the occupier and by the native or Somali and by all the male members of such native's or Somali's family who are of the apparent age of sixteen years or over, shall be attested by a magistrate or by an attesting officer, shall be in the form of the agreement set out in the First Schedule to this

Ordinance, subject to such variations, not inconsistent with the provisions of this Ordinance, as the magistrate or attesting officer may approve, and shall provide—

- (a) for a term of not less than one year and not exceeding five years, notwithstanding anything to the contrary contained in any law for the time being in force in the Colony relating to the employment of servants;
- (b) for the renewal or variation of the contract, by endorsement by the parties thereto, with the approval of a magistrate or attesting officer;
- (c) for the native or Somali and any male member of his family resident on the farm or Railway land who is of the apparent age of sixteen years or over, and who is not working under any law for the time being in force in the Colony relating to the employment of servants, to work for the occupier for not less than 180 days at the election of the occupier in any one year during the term of such contract, and for the occupier to provide employment and to pay wages to each such person for the number of days specified in the contract;
- (d) for the occupier to give notice in writing to every male member of such family who, during the continuance of the contract, may attain the age of sixteen years, to the effect that, on the expiration of three months from the date of receiving such notice such male member will be required either (i) to enter into a contract under this Ordinance with the occupier; or (ii) to enter, under any law for the time being in force in the Colony relating to the employment of servants, into a contract with the occupier or some other employer in the vicinity; but that if such male member enters into any such contract with some other employer he shall cease to reside on the occupier's land except with the permission of the occupier; or (iii) to cease to reside on the occupier's land;
- (e) for the female members of the family who are willing and able to work to serve the occupier if he offers suitable work at a reasonable rate of wages;
- (f) for the supply by the occupier of building material for the family's huts;

- (g) for the use by the family of land for cultivation and, when agreed upon, for grazing on such part of the occupier's farm as the occupier may direct;
 - (h) for the kinds of crops which may be grown by the native, or Somali, or his family;
 - (i) for the number of stock which may be grazed by the native, or Somali, or his family;
 - (j) for the rates of pay and other consideration to be paid or given to the native or Somali and any member of his family for the period of actual employment;
 - (k) for the termination of the contract by not less than three months' notice on either side: Provided that the term of residence on a farm shall in no case be less than one year except with the approval of a magistrate;
 - (l) in the event of termination of the contract in accordance with the last preceding paragraph, for the removal by the family of crops cultivated by such family or for payment by the occupier of compensation in lieu thereof: Provided that no crop shall be planted after notice of termination has been given by either party;
 - (m) in the case of missions, for the regular attendance of the children of the family at school for the purpose of education within the meaning of section 20 of this Ordinance.
- (3) Any contract under this section may, with the consent of the parties thereto, relate to any number of farms provided that such farms are in the same ownership or occupation and a magistrate certifies that he is satisfied that proper control can be exercised over the resident labourers resident on such farms as are not in the personal occupation of a European.
- (4) The original of every contract made under this section shall be filed in the office of the district commissioner of the district in which the parties reside and one copy of the contract shall be handed to the occupier and one copy to the head of the contracting resident labourer's family.
- (5) A magistrate or attesting officer may refuse to attest any contract which does not provide for a fair remuneration in money, having regard to the local rates of wages, or any contract which, in his opinion, is likely to lead to a breach of the provisions of this Ordinance.

(6) A magistrate or attesting officer may for good and sufficient reason refuse to attest any contract entered into by a native or Somali whom he considers to be an undesirable.

(7) A magistrate may, subject to the provisions of the proviso to section 18 of this Ordinance, for good and sufficient reason (which he shall furnish to the occupier on request) order the removal of a native, or a Somali, or a resident labourer, and/or his stock, from any farm or Railway land.

(8) (a) A magistrate or attesting officer may, when he deems it necessary before attesting any contract under this section, require the occupier to give security for the payment of the wages of the native or Somali with whom the contract is to be made.

(b) Such security may be given by a bond in the form set out in the Second Schedule to this Ordinance, or to the like effect, with one or more sureties approved by the magistrate or attesting officer.

(9) When notice of termination of a contract has been given by either party thereto the occupier shall forthwith notify the district commissioner accordingly.

(10) On a change of occupancy of a farm the contract shall be deemed to have been assigned to the new occupier and to be a contract between the new occupier and the resident labourer.

6. An occupier, before entering into a contract under this Ordinance with a native who is residing in a native reserve, shall give notice in writing to the district commissioner of the district in which such native is residing that he proposes to enter into a contract with such native.

7. No occupier shall allow any native or Somali to reside on a farm or Railway land in contravention of the provisions of this Ordinance.

8. (1) When a native has entered into a contract of service under the provisions of section 5 of this Ordinance, or where a native resident labourer who has been given a certificate under section 11 of this Ordinance and recommences work under his contract, it shall be the duty of the occupier forthwith to endorse in blue or blue-black ink upon such native's registration certificate, in the column respectively provided therefor, the following particulars—

(a) the name of the employer and district in which the native is employed;

Notice to District Commissioner is necessary in certain cases before contract is entered into.

When natives or Somalis may not reside on farms.

Resident labourers' contracts to be endorsed on registration certificate.

(b) the nature of the native's employment, preceded by a capital letter R, to denote that he is a resident labourer;

(c) the date of commencement of the contract;

(d) the rate of wages in cash; and

(e) whether or not rations are provided.

and to comply with the provisions of section 9 of the Native Registration Ordinance.

Cap 127

(2) Every male native who is a party to a contract made under the provisions of the Resident Native Labourers Ordinance, 1925, shall, within one month after the date of the application of this Ordinance to the area in which he is residing under such contract, produce his registration certificate to the occupier.

No. 5 of 1925

(3) Such occupier shall thereupon make an endorsement upon the registration certificate as is required by sub-section (1) of this section and shall forthwith render a return to the Chief Registrar of Natives, as required under section 9 of the Native Registration Ordinance, showing the registration numbers and the names of every registered native resident upon his land.

Cap 127

(4) Any person who fails to comply with the provisions of this section shall be deemed to have committed a breach of the provisions of this Ordinance.

9. (1) On the termination of a contract entered into under the provisions of section 5 of this Ordinance or of a contract to which the provisions of sub-section (2) of section 8 of this Ordinance applies, or where the occupier has given a certificate under the provisions of section 11 of this Ordinance, the occupier shall endorse in blue or blue-black ink the date of such termination, or the date on which such certificate is given, as the case may require, in the column provided in the native resident labourer's registration certificate for the date of discharge.

Termination of contract to be endorsed on registration certificate.

(2) It shall be the duty of the native resident labourer, on the termination of any such contract, or upon receipt of the certificate given under the provisions of section 11 of this Ordinance, to request the occupier to make such endorsement, but failure on the part of the native resident labourer to make the request shall not relieve the occupier of the responsibility for making such endorsement.

(c) every head of cattle over the age of twelve months kept by such native or Somali on the farm or Railway land is legibly branded, within thirty days after the date of its arrival on the farm or Railway land, by the occupier at his own expense with his brand together with the letter "S".

(2) (a) The written consent of the occupier and the written approval of a magistrate or attesting officer required by paragraph (b) of sub-section (1) of this section shall specify the number of stock which such native or Somali may keep on the farm or Railway land.

(b) In arriving at such number the occupier and the magistrate or attesting officer shall, subject to any order made under the provisions of section 21 of this Ordinance in force in the area in which the farm or Railway land is situated, have regard to the reasonable needs of the native or Somali and the members of his family residing with him.

(3) Any native or Somali—

(a) who, if residing under the provisions of paragraph (d) or paragraph (e) of sub-section (1) of section 4 of this Ordinance, keeps upon a farm or Railway land any stock in respect of which he has not received the written consent of the occupier and the written approval of a magistrate or attesting officer; or

(b) who keeps on a farm or Railway land any stock in excess of the number which he is authorized to keep in pursuance of such written consent of the occupier and such approval of the magistrate or an attesting officer; or

(c) who keeps on a farm or Railway land any head of cattle which is not branded in accordance with the provisions of this section,

shall be guilty of an offence against this Ordinance.

(4) The provisions of sub-sections (2) and (3) of this section relating to the number of stock which a native or a Somali may lawfully keep upon a farm or Railway land shall not apply to the stock of a native or Somali who before the commencement of this Ordinance has entered into a contract, which is still unexpired, under section 5 of the Resident Native Labourers Ordinance, 1925, and who, under the provisions of sub-section (1) of this section, lawfully has such stock on the

farm or Railway land: Provided that every such native or Somali shall, within three months after the date of the application of this Ordinance to the area in which he is residing, furnish a record to the occupier who shall forward a return to a magistrate or attesting officer specifying the number of each kind of stock which such native or Somali is keeping on such farm or Railway land.

(5) In assessing the number of cattle, sheep and goats kept on a farm or Railway land no account shall be taken of cattle under the age of twelve months.

(6) No occupier shall, after the expiration of a period of six months from the date of the application of this Ordinance to the area in which such occupier's land is situate, brand any head of cattle kept on his land by a native or Somali lawfully residing thereon if such head of cattle is already branded with any recent registered brand denoting ownership unless and until such cattle have been re-branded as provided for in sub-section (10) of this section.

(7) It shall be the duty of an occupier to maintain his brand on every head of cattle in a legible condition.

(8) Any occupier who commits a breach of sub-sections (6) or (7) of this section or who suffers any stock to be kept on his land in contravention of the provisions of this Ordinance shall be guilty of an offence.

(9) (a) Nothing in this section contained shall be construed as entitling any person to move or to compel the movement of stock in contravention of any restrictions in force under any law for the time being in force in the Colony relating to the diseases of animals.

(b) If, at the time of the termination of any contract made under section 5 of this Ordinance or under the Resident Native Labourers Ordinance, 1925, or of any agreement or engagement between an occupier and a native or a Somali under the law for the time being in force in the Colony relating to the employment of servants, any such restrictions are in force prohibiting the movement of stock from any farm or Railway land, such stock shall remain on the farm or Railway land without charge, and the owner of such stock may also remain on such farm or Railway land until such restrictions are removed or unless other arrangements are made for the care or disposal of such stock to the satisfaction of the parties and of a magistrate; and in any such case any such

contract shall be deemed to remain in force until such restrictions are removed or until such other arrangements are made, as the case may be.

10. (a) No cattle over the age of twelve months owned by a native or a Somali and kept on a farm or Railway land in accordance with the provisions of this Ordinance shall be removed from a farm or Railway land unless the owner has first produced them to the occupier who shall, at his own expense, cause such cattle to be re-branded with his own brand reversed.

(b) Any owner of cattle who moves or permits to be moved from a farm or Railway land any such cattle which have not been so re-branded, and any occupier who on request refuses or fails so to re-brand any cattle, shall be guilty of an offence.

(11) Where the owner of any stock has committed a breach of the provisions of this section, or where a person in possession of any stock has, with the connivance and consent of the owner of the stock, committed a breach of the provisions of this section, a magistrate may, in addition to imposing any other penalty provided in this Ordinance, order that the stock in respect of which the offence has been committed be confiscated.

(12) All stock kept on a farm or Railway land by a native or a Somali shall be deemed for the purposes of this Ordinance to be the personal property of such native or Somali.

(13) Nothing in this section contained shall apply to any stock depastured by a native or a Somali in any forest area under the authority of a grazing permit issued to him by the Conservator of Forests under any law for the time being in force relating to the granting of such permits.

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Registers to be produced.

17. (1) A magistrate, or a veterinary officer authorized in writing by the Director of Veterinary Services, or a labour officer, or a police officer of or above the rank of assistant inspector, or any person duly authorized by a magistrate in that behalf may—

(a) enter upon a farm or Railway land and demand from the occupier the production of any register or records which are required to be kept under the provisions of this Ordinance;

(b) take all reasonable and proper steps to satisfy himself as to the correctness of any particulars entered therein; and

(c) demand from such occupier an explanation of any apparent discrepancies therein.

(2) Any occupier who knowingly makes a false entry in any register or records or refuses to produce any register or records or to furnish any explanation when lawfully called upon to do so, or who shall knowingly furnish a false explanation, shall be guilty of an offence.

18. A magistrate may by notice served upon the occupier or, if the occupier has no address in the Colony or if such address is unknown, by notice published in the Gazette, require the occupier of a farm which is not, in his opinion, under such occupation as to ensure the observance of the provisions of this Ordinance, to remove any native or Somali found residing on such farm, together with his stock, if any, within twenty-eight days from the date of the service of such notice or from the date of the publication of the notice in the Gazette, as the case may be; and if such native or Somali, together with his stock, if any, is not so removed then a magistrate, or such other person as he may authorize in that behalf, shall remove such native or Somali, together with his stock, if any, and send him to a native reserve or to such other place as the magistrate may determine: Provided that, when the magistrate is satisfied that such native or Somali is employed by the occupier of such farm on another farm in the same occupation or ownership under a contract of service or under a resident labourer's contract, he shall allow such native or Somali, together with his stock, if any, to remain on such farm.

Removal of natives or Somalis from undeveloped farms.

19. (1) (a) No payment in money or in kind shall be demanded or taken from any native or Somali for the right to reside on any farms or to cultivate any land or to graze any stock on any farm, or for the use of salt-licks, fuel or water, on any farm.

Prohibition against payment by natives or Somalis

(b) No occupier shall enter into a contract with a native or Somali lawfully residing on his farm whereby the occupier shares any profit derived by such native or Somali from his cultivation or from the increase or produce of his stock on the farm of such occupier.

(2) Manure produced on a farm by the stock of a resident labourer or fertilizers produced by the activities of a resident labourer on a farm, shall be the property of the resident labourer during the period of his contract: Provided that, if such manure or fertilizer is not reasonably required for the purposes of the resident labourer's cultivation on such farm, the occupier may use such manure or fertilizers for the purpose of his own cultivation free of cost other than the cost of transporting the manure or fertilizers from one place on the farm to another.

(3) Nothing in this section contained shall be deemed to render illegal the purchase by an occupier at a reasonable price of the stock of a resident labourer or the produce of a resident labourer's stock or cultivation.

(4) No native or Somali may sell or dispose of any crops or produce of cultivation produced on a farm without having first notified the owner or occupier of his intention to do so.

20. Natives or Somalis employed on farms in the occupation of missions and engaged in receiving or imparting industrial or technical instruction with or without literary or theological instruction or training for not less than one hundred and eighty days in each year shall be exempt from the provisions of section 4 of this Ordinance if such instruction or training is under proper and responsible control to the satisfaction of a magistrate.

21. (1) Subject to the provisions of section 2 and of section 22 of this Ordinance a local authority may, in respect of any farm or group of farms within the area of its jurisdiction, by order published in the Gazette and in a newspaper circulating within such area—

- (a) limit the number of resident labourers to be engaged on any farm or group of farms;
- (b) prohibit the keeping of stock by natives or Somalis on any farm, either generally or in respect of any specified kind of stock, or limit the numbers of any specified kind of stock which may be kept on a farm by resident labourers, or prescribe the conditions under which native or Somali stock shall be kept;
- (c) prescribe the minimum number of days in a year on which a resident labourer shall work and for which he shall receive wages; Provided that such number of days shall in no case be less than one hundred

Natives or
Somalis
employed on
mission lands.

Local option.
Power to make
orders.

and eighty, and provided further that no resident labourer shall be required to work for more than two hundred and seventy days in any year unless he so desires.

(2) In making any order as aforesaid the local authority shall have regard—

- (a) to the wishes of the occupiers of farms, or any group of farms within the area to be affected by such order, so far as such wishes can be reasonably and conveniently ascertained;
- (b) to the reasonable labour requirements of farm;
- (c) to the reasonable needs of resident labourers on such farms; and
- (d) to the value of the interests, and the extent, of each farm within the area to be affected by such order together with the nature of farming operations conducted on each such farm.

(3) When such an order has been made it shall be the duty of the occupier of a farm to which such order applies, within one month after the date of the publication of the order in the Gazette in accordance with the provisions of sub-section (7) of section 22 of this Ordinance, to give three months' notice of termination of such contracts as may be necessary to make the said order effective, and failure to give such notice shall be an offence against the provisions of this Ordinance.

(4) Any occupier who fails to comply with any order made under the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and may, in addition to any penalty to which he may be liable, be ordered to pay the costs of removing from his farm any resident labourer, such resident labourer's family and/or such resident labourer's stock, and, in default of payment, such costs may be recovered by distress levied in accordance with the provisions of section 318 of the Criminal Procedure Code.

(5) For the purposes of this section "farm" shall include Railway land.

(6) Notwithstanding anything contained in this section it shall only be competent for a local authority to make an order in respect of such portion of a forest area or Railway land as abuts on, and is in the immediate vicinity of, a farm (other than a forest area or Railway land) in respect of which such local authority has made or is making an order of a similar nature.

Orders by local authorities, how to be made.

22. (1) No order shall be made or amended by a local authority unless and until a copy of such proposed order or amending order has been deposited at the office of the local authority for inspection by any person at all reasonable times, and unless and until a notice, setting forth the general purport of the proposed order and stating that a copy thereof is open to inspection, shall have been published in the Gazette and in some newspaper circulating in the district and exhibited in a conspicuous place at or near the public entrance to the local authority's offices thirty days prior to the meeting of the local authority to be held for the purpose of making such order or such amending order.

(2) Any objection to any such order shall be lodged with the clerk to the local authority within twenty-eight days after the date of the publication of the notice as aforesaid.

(3) After any order has been made or amended by a local authority such order or amending order shall be submitted to the Commissioner for Local Government through the Provincial Commissioner for the approval of the Standing Committee, together with—

Submission of orders for approval of Standing Committee.

(a) a copy of the minutes of the meeting of the local authority at which the order or amending order was adopted;

(b) a certificate by the clerk to the authority that the provisions of sub-section (1) of this section have been complied with; and

(c) copies of any objections against the adoption of the order which may have been lodged in writing with the clerk, or, if no objections have been lodged, a statement to that effect.

(4) When the Standing Committee has approved of any order, with or without amendment, such order shall be published in the Gazette.

(5) Any person aggrieved by such order may within one month from the date of publication under sub-section (4) of this section submit to the Governor in Council a written objection to the order.

(6) As soon as possible after the expiration of a period of one month from the date of publication of the order under sub-section (4) of this section, the Governor in Council shall, after considering such written objections, if any, as may have been made under the last preceding sub-section, confirm, refer back to the local authority or reject such order.

Governor in Council to confirm or vary order.

(7) If the Governor in Council confirms any such order he shall cause the order to be so certified by the clerk to the Executive Council who shall then cause the order to be published in the Gazette, and as and from the date of such publication such order shall have the full force of law in the area to which it relates.

(8) For the purposes of this section the expression "Standing Committee" means—

(a) in the case of an order made by a local authority which is a municipality, the Standing Departmental Committee for Local Government established under the Local Government (Municipalities) Ordinance, 1928;

No. 19 of 1928.

(b) in the case of an order made by any other local authority, the Standing Departmental Committee for Rural Areas established under the Local Government (District Councils) Ordinance, 1928;

No. 21 of 1928.

23. A labour officer may institute or appear or both institute and appear on behalf of any resident labourer in any civil proceedings by such resident labourer against an occupier in respect of any matter or thing or cause of action arising out of the contract between such resident labourer and such occupier.

Power of labour officer to institute and appear in civil proceedings.

24. (1) Proceedings in respect of any offences against the provisions of sections 4, 7, 13, 14, 15, 16, 17 and 19 of this Ordinance may be instituted by the Police or by any person authorized in writing by a magistrate.

Institution of proceedings for offences.

(2) A magistrate may, in his discretion—

(a) rescind any contract made under this Ordinance where it has been proved to his satisfaction that there has been a breach of the terms thereof, or, on the application of one party to the contract, when the other party has been convicted of a criminal offence against the first mentioned party to such contract or of a criminal offence involving serious moral turpitude; and

(b) cancel any permit given by an occupier in contravention of the provisions of this Ordinance.

Provided that in any such case the native or Somali shall retain his rights over growing crops unless the occupier elects to give him reasonable compensation therefor. In the event

of any dispute as to the amount of compensation payable the magistrate shall determine the amount thereof.

(3) Compensation payable under this section may be paid to the magistrate by an occupier, but if proceedings have been instituted by the occupier for damages against the native or Somali, the magistrate shall not pay out the compensation to the native or Somali until the liability of the native or Somali to pay damages has been determined; and if the native or Somali is found to be liable to damages, such damages may be set off against the amount paid to the magistrate by the occupier.

25. A resident labourer shall on conviction be liable to a fine of one hundred shillings or in default of payment to imprisonment for any term not exceeding one month—

- (1) if he, after having entered into an agreement under this Ordinance, fails or refuses without lawful cause to enter upon his duties at the stipulated time;
- (2) if he, without lawful cause, absents himself from the place proper and appointed for the performance of his work on any day when the occupier may lawfully require him to work;
- (3) if he, during any time when he is lawfully required to work, is intoxicated and thus unfit to perform his work;
- (4) if he neglects or refuses to perform any work which it was his duty to have performed, or if he carelessly or improperly performs any work which from its nature it was his duty under his agreement to have performed carefully and properly;
- (5) if he, without leave and for his own purposes, makes use of any horse, vehicle or other property belonging to the occupier;
- (6) if he uses any abusive or insulting language or is guilty of insulting behaviour to the occupier or to any person lawfully placed by the occupier in authority over him, calculated to provoke a breach of the peace;
- (7) if he refuses to obey any command of the occupier, or of any person lawfully placed by the occupier in authority over him, which command it was his duty to obey;

Penalties for offences committed by resident labourers.

(8) if he grows upon the farm or Railway land any crop which by his contract he is prohibited from growing;

(9) if he, after the termination of his contract and subject to the provisions of paragraph (k) of sub-section (2) of section 5 and sub-section (9) of section 16 of this Ordinance, fails within a reasonable and specified time to leave the farm or Railway land and to remove his family and stock therefrom.

26. A resident labourer shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for any term not exceeding two months—

- (1) if he wilfully or by wilful breach of duty or through drunkenness does any act tending to the immediate loss, damage or serious risk of any property placed by any other person in his charge for delivery to or on account of his occupier;
- (2) if, by wilful breach of duty or by neglect of duty or through drunkenness, he refuses or omits to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by the occupier in his charge, or placed by any other person in his charge for delivery to or on account of his occupier;
- (3) if, being employed as a herdsman—
 - (a) he fails to report to the occupier the death or loss of any animal placed in his charge at the earliest opportunity after he has discovered, or at the earliest opportunity after he should in the ordinary course of duty have discovered, such death or loss;
 - (b) he fails to preserve for the use or inspection of the occupier any part or parts of an animal which such resident labourer alleges to have died, to preserve such part or parts and is unable to prove to the satisfaction of the court the death of the animal which he alleges to have died;
 - (c) he alleges the loss of any animal placed in his charge and it is proved by the occupier to the satisfaction of the court that such animal could

Penalties for more serious offences committed by resident labourers.

not, in the circumstances of the case, have become irretrievably lost without the act or default of the resident labourer.

- (4) if, being employed in any capacity other than that of a herdsman, he alleges the loss of any property placed in his charge by or for the occupier and it is proved by the occupier to the satisfaction of the court that the property in question could not have been lost without the act or default of the resident labourer.

27. (1) An occupier shall be liable to a fine not exceeding one hundred and fifty shillings and in default of payment to imprisonment for a term not exceeding two months if he is convicted of any of the following acts or omissions, that is to say—

- (a) if he fails to pay the wages due to a resident labourer;
 (b) if, before or after the expiration of the contract, upon demand made and without lawful cause, he refuses to deliver or to permit to be taken away any property belonging to a resident labourer lawfully remaining or being upon such occupier's land;
 (c) if he fails knowingly or on demand—

- (i) to provide any resident labourer of his with proper medicines during illness; and
 (ii) to provide any resident labourer of his, who is seriously ill, either with medical attendance or, if the resident labourer consents, to send such resident labourer to the nearest hospital.

Provided that an occupier's liability in respect of the costs of medical attendance or of hospital treatment shall not extend beyond a period of thirty days.

(2) Upon any complaint brought before a court under the provisions of this Ordinance the magistrate may, in addition to any jurisdiction he might have exercised if this Ordinance had not been enacted, exercise all or any of the following powers:—

- (a) He may adjust and set off one against the other all such claims on the part either of the occupier or of the resident labourer arising out of, or incidental to, the relation between them as the magistrate may find to be subsisting, whether such claims are liquidated or unliquidated, and whether such claims are

Penalties for offences committed by occupier.

Discretionary powers of magistrates

To adjust and set off claims.

for wages, damages or otherwise; and he may direct the payment of such sum as he finds due by one party to the other party.

- (b) He may direct fulfilment of the contract, and, in case where he might award damages for any breach of contract, he may, in lieu either of the whole of the damages which would otherwise have been awarded or some part of the damages, direct the party committing such breach to find security to the satisfaction of the magistrate for the due performance of so much of the contract as remains unperformed; and if the party neglects or refuses to find security, he may commit him to prison until he finds it, but the term of imprisonment shall not exceed three months.

To direct fulfilment of the contract.

- (c) He may rescind the contract upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages or other sums due, as he thinks fit.

To rescind the contract and apportion wages, etc.

28. Any person who is guilty of an offence against this Ordinance or who commits or knowingly permits a breach of the provisions of this Ordinance or any Rules made thereunder for which no specific penalty is provided shall be liable, on conviction, to a fine not exceeding thirty pounds and in default of payment to imprisonment for a term not exceeding three months.

General penalty.

29. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force in the Colony, on a complaint or suit against an occupier in respect of wages due to more than one of his resident labourers the magistrate may permit one complaint or one plaint to be made or filed by a labour officer or by one of such resident labourers on behalf of all such resident labourers and their claims to be proved by such labour officer or by such resident labourer accordingly:

Joinder in cases of non-payment of wages.

Provided that the complaint or plaint shall have annexed thereto a schedule setting forth the names of such resident labourers, their addresses and descriptions and the details of wages due to each such resident labourer.

(2) All such claims shall rank equally between themselves, and shall be paid in full, unless the amount recovered from the occupier be less than the total amount of the claims with costs, in which case, after payment of the costs, all such claims shall

abate in equal proportions among themselves and be paid accordingly. Costs given against the resident labourers shall be paid by such resident labourers or by any of them in such proportions as the Court shall direct.

(3) The provisions of section 203 of the Criminal Procedure Code shall not apply to any proceedings instituted under this Ordinance in respect of the non-payment of wages to any resident labourer.

Costs.

80. In any complaint under this Ordinance the process of the court for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that, if at the trial the complaint shall appear to the magistrate to be frivolous or vexatious, the party complaining shall be liable to pay a fine not exceeding ten pounds and to defray the cost of the process and of the witnesses in the case, and in default of payment of such fine and costs, shall be liable to imprisonment for any period not exceeding one month. Such fine and costs may be imposed upon the occasion of such trial and without any fresh action or proceeding for the recovery thereof.

Rules.

81. (1) The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

(2) All rules made under this section shall have the same force and effect as if they had been enacted in this Ordinance and shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being so laid before the Legislative Council praying that any such rule shall be revoked or amended, such rule shall thenceforth be deemed to be revoked or amended, but without prejudice to anything done thereunder.

Appointment of attesting officers.

82. The Governor in Council may appoint any fit and proper person to be an attesting officer for the purposes of this Ordinance.

No stamp duty shall be chargeable for the attestation of any contract.

83. Notwithstanding anything to the contrary contained in any law for the time being in force in the Colony, the attestation of any contract entered into under the provisions of this Ordinance shall be exempt from all stamp duty and any attestation fee prescribed by any Rules of Court.

34. It shall be the duty of every occupier in any district or district to which this Ordinance is applied, and who at the date of the application of the Ordinance to such district or area is a party to any contract made under the provisions of the Resident Labourers Ordinance, 1925, within one month after such date to give six months notice of the termination of such contract:

Provided that such notice shall not be necessary if any such contract will expire by effluxion of time or by notice before the expiration of the said period of six months.

35. The Resident Native Labourers Ordinance, 1925, is hereby repealed.

Subsisting contracts to be terminated

Repeal. No. 5 of 1925.

FIRST SCHEDULE

Memorandum of Agreement made this day of 19..... by and between (A) of (B) (hereinafter referred to as "the occupier") and (C) registered number of (D) (hereinafter referred to as "the resident labourer"), whereby it is agreed:

1. That this agreement shall have effect from the day of 19..... and shall be for a term of years ending on the day of 19..... unless lawfully determined earlier.

2. That the resident labourer, together with his wife or wives and children shall reside and may graze stock on such part only of the occupier's land at (E) as the occupier may direct during the period of this agreement.

3. That during the period of this agreement the resident labourer and every male member of his family who is of the apparent age of sixteen years or over and is resident on the occupier's land, and who is not working under any law for the time being in force in the Colony relating to the employment of servants, shall each work for the occupier at such times as the occupier may direct, for not less than (F) days at the election of the occupier in each period of twelve months, and that the occupier shall provide employment for the resident labourer and for such male members of his family for such number of days. The occupier shall give notice to every male member of such family who during the continuance of the contract may attain the age of sixteen years that

on the expiration of three months from the date of receiving such notice he will be required either to enter into a contract under the Resident Labourers Ordinance, 1937, with the occupier, or under any law for the time being in force in the Colony relating to the employment of servants with the occupier or some other employer in the vicinity, or to cease to reside on the occupier's land.

4. That the time during which the resident labourer is required to work for the occupier shall be so arranged as to allow the resident labourer reasonable time to sow, cultivate and reap his own food crops.

5. That the occupier agrees to pay to the resident labourer, and to the male members of the resident labourer's family of and above the age of sixteen years employed by the occupier, wages at the rate of not less than for every ⁽⁷⁾ and ⁽⁸⁾

6. That the occupier shall provide good and sufficient building material for the erection of huts for the accommodation of the resident labourer and his family.

7. That the occupier shall provide the resident labourer with sufficient and suitable land for the cultivation of food crops for himself and his family, and for grazing the following numbers of stock, namely ⁽⁹⁾ provided that the resident labourer shall not plant or cultivate any of the following crops, namely or allow them to be planted or cultivated under his control, and that he shall not cultivate land other than that allocated to him by the occupier.

8. That with the consent of a magistrate or an attesting officer this agreement may be terminated by either the occupier or the resident labourer giving to the other three calendar months' notice, provided that the resident labourer shall suffer no prejudice in regard to the care and reaping of his crops or in regard to the removal of his family or stock and provided that the occupier may demand the fulfilment by the resident labourer of any conditions of this agreement to which the resident labourer may be liable in respect of his obligation to work.

9. On the expiration or termination of this agreement from whatever cause, the resident labourer shall be entitled to remove all his movable property from the land, but shall not remove any buildings. In respect of buildings or other im-

movable property the resident labourer shall be entitled to any reasonable compensation for materials contributed by him.

*10. That the resident labourer shall cause his children to attend regularly at the school provided by the occupier on the said land.

†(Any other conditions).

As witness the hand of the parties hereto:—

Witness to the signature of the occupier.

Witness to the signature or mark of the resident labourer.

SCHEDULE

I/We being member(s) of the family of,
(the resident labourer) do hereby agree to abide by the terms of
the agreement dated between him and,
..... (the occupier)

Signature(s) or Mark(s).	Registered No.	Nature of Service.	Remuneration.

I hereby certify that the contents of this agreement have been read and explained by me to the resident labourers the signatories to this agreement, and that they appear to have executed this agreement with a full knowledge of its contents

The day of 19

Magistrate or Attesting Officer

(1) Full name of occupier

(2) Address

(3) Full name of native, as given on Registration Certificate, or of Somali

(4) Insert name of native's or Somali's district, location and chief

(5) Insert name and/or Land Office number of farm

(6) Not to be less than 180 days, but may be more if agreed

(7) Day, month or thirty-day card worked

(8) Insert conditions as to rations or other considerations if agreed upon or strike out if inapplicable

(9) Number of each kind of stock to be specified

* This clause to be inserted only in the case of missions or farms on which schools are provided, otherwise to be struck out.

† Any other conditions agreed to by the parties which do not contravene the provisions of this or any other Ordinance. Such conditions, if any, shall be numbered consecutively.

SECOND SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937

Form of Bond under section 5 (8)

Be it known unto all men by these presents that we
 (1) are jointly and severally bound
 unto (2) and to any one or more
 of them in the sum of (3) to be paid to
 the said (4) their and each of their
 heirs, executors, administrators, and assigns. For which pay-
 ment well and truly to be made as liquidated damages and not
 as a penalty, we bind ourselves jointly and severally; and our
 heirs, executors and administrators, and every one of them
 firmly by these presents.

Sealed with our seals, dated this day of
 19.....

The condition of the above written obligation is such that
 if (5) (hereinafter called
 "the occupier") the employer of the said (6)
 (hereinafter called "the resident labourer") do pay to each of
 the resident labourers performing their part of the agreement
 after-mentioned the several sums of money set opposite to their
 respective names in the schedule to an agreement made and
 entered into between the occupier and the resident labourer at
 on the day of 19..... and
 attested by (7) in regular
 (8) payments to be calculated from the
 day of 19..... and to execute,
 carry out and perform his part of the said agreement in all
 respects, then this obligation to be void, otherwise to be in
 full force and virtue.

Signed, sealed and delivered in the presence of:—

(To be signed and sealed by each of the obligants
 and attested, if practicable, by the officer attesting the
 relative agreement).

- (1) Insert names and description of occupier and one or more sureties resident
 within the jurisdiction.
 (2) Name and description of the resident labourer.
 (3) Insert sum, not less than half the total amounts (less any advances), due
 by the contract.
 (4) Repeat names of resident labourers.
 (5) Name of occupier.
 (6) Name or names of resident labourers.
 (7) Official name of officer before whom agreement is signed.
 (8) Weekly or monthly, etc., as the case may be.

THIRD SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937

Resident Labourer's Certificate

(Under section 11)

I hereby certify that
 has during the period of twelve months commencing on the
 day of 19..... completed
 the days' work stipulated in this
 contract. His obligation to work under the terms of this
 contract commences again on the day of
 19.....

Signature of Occupier and date

FOURTH SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937

Permit granted under the Provisions of section 4 (1) (e) to

Reside on Alienated Lands

Bearer s/o

Native Registration Certificate No.

Somali

is hereby permitted to reside on
 for (days), i.e. from
 (to)
 Date

Signature of Occupier

All permits to reside on any land for a period exceed-
 ing fourteen days must be countersigned by the District
 Commissioner in charge of the area in which such land
 is situated.
 Approved.

District Commissioner

Date District

FIFTH SCHEDULE

THE RESIDENT LABOURERS ORDINANCE, 1937

Register of Cattle and Stock (section 15)

Description of land*.....
 Occupier's Name.....
 Registration No. and Name of Native or Somali.....
 No. of Contract.....
 Date and Duration of Contract.....
 Occupier's Registered Brand.....

NUMBER OF STOCK ALLOWED ON CONTRACT

Cattle..... head. Sheep and Goats..... head.

Date	Number of Cattle		Number of Sheep & Goats	Remarks
	Branded	Unbranded		

N.B.—Separate pages must be kept in respect of each native or Somali who has stock on the farm.
 * In the case of a farm give L.R. No.

Passed in the Legislative Council the eleventh day of August, in the year of our Lord one thousand nine hundred and thirty-seven.

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.

Acting Clerk to the Legislative Council.

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EXPLANATORY MEMORANDUM

THE RESIDENT LABOURERS BILL, 1937

Abbreviation

"Original Bill" means the Bill approved by the Secretary of State in his despatch Kenya Confidential (4) of the 12th October, 1936.

Clause of the Bill.	Corresponding Clause of the Original Bill.	Remarks.
1.	1.	In accordance with the suggestion of the Secretary of State the phrase "resident labourer" has been substituted for "squatter" throughout the Bill.
2.	2.	
3.	3.	<p>The definition of "farm" has been amended so as to exclude all land in a municipality, township or trading centre which is not held under a title for agricultural user. The proviso to the definition is new and refers to land held in the Coast area under the Land Titles Ordinance (Chapter 143 of the Revised Edition, Kenya).</p> <p>This definition has been further amended by inserting the words "held under any grant, lease or licence from the Crown" in the first line thereof, thereby making it quite clear that the Bill does not apply to native reserves.</p> <p>It will be observed that the definition of "local authority" contains no reference to the district committee. As this body is not a statutory one it is considered that it should not be referred to in an Ordinance.</p> <p>In the definition of "occupier" in the original Bill the words "any manager or agent of the occupier" appeared. The words in brackets have been added in order to prevent an employer evading his liabilities under the law by designating an employee as his agent. The words "unalienated Crown land" have been deleted from the definition and throughout the Bill. There are no resident labourers on unalienated Crown land, as distinct from Railway land and forest areas, and unlawful occupation of Crown land can be dealt with under the Crown Lands Ordinance (Chapter 140 of the Revised Edition, Kenya).</p> <p>The definition of "Railway land" has been amended as the High Commissioner for Transport does not own, but merely has the control of, land.</p>

Clause of the Bill.	Corresponding Clause of the Original Bill.
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Remarks.

4.	4.	<p>Sub-clause (1) of this Clause has been amended by deleting therefrom the reference to the period of 48 hours.</p> <p>Paragraph (d) of sub-clause (1) has been amended so as to make it unnecessary for an aged or infirm native or Somali to obtain the permission from a Magistrate or attesting officer to reside or remain on a farm.</p> <p>Sub-clause (3) is new and has been inserted to give effect to the suggestion of the Secretary of State contained in paragraph 7 of the despatch above referred to.</p>
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What is the meaning of this clause?

5.	5.	<p>The words "subject to such variations, not inconsistent with the provisions of this Ordinance, as the magistrate or attesting officer may approve" which have been added to sub-clause (2), are designed to make the First Schedule more elastic.</p>
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The gist of sub-clause (3) is that two conditions should be fulfilled, viz, (a) the farm must be in the same ownership or occupation, (b) and a magistrate is to be satisfied that proper control can be effected. It is not considered necessary to stipulate that farms should be in same district or contiguous.

Under sub-clause (6) a magistrate can only refuse to attest a contract for good and sufficient reason, and under sub-clause (7) the magistrate must furnish his reason to the occupier if requested to do so.

6.		<p>This Clause is new and is designed to ensure that natives and their families are not recruited from the reserves without the knowledge of the District Commissioner concerned.</p>
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7.	6.
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8)	7)
9)	8)

These clauses have been re-arranged and the only amendment is a provision that the registration certificate shall be endorsed as to whether or not rations are provided.

In Clauses 8 to 10 all references to Somalis have been deleted because although under the Native Registration Ordinance a Somali is required to register they have never in fact been registered, and in due course the Native Registration Ordinance will be amended to give legal effect to the present practice.

Clause of the Bill.	Corresponding Clause of the Original Bill.	Remarks.
10.	9.	
11.	10.	Clause 11 of the original Bill has been deleted. This Clause is no longer necessary as, under Clause 9, the registration certificate of the resident labourer must be signed off when he has been granted a certificate under Clause 11.
12.	12.	The penalty in this Clause has been reduced - i.e. imprisonment may only be given in default of payment of any fine imposed.
13.	13.	A labour officer has been empowered to demand the production of contracts, but the power of police officers in this respect has been limited to assistant inspectors and police officers above that rank. Sub-clause (2) is new.
14.	14.	It is considered that a labour ticket will be of great use in case of dispute as to the number of days worked.
15.	15.	
16.	16.	Considerable verbal amendments have been made to this Clause. Sub-clause (1)(a) has been amended by deleting therefrom all reference to Clause 1 (1)(c), which relates to contracts under the Employment of Servants Ordinance. Servants employed under that Ordinance will therefore not be permitted to keep their stock on a farm. Sub-clause (1)(d) has been amended by making it unnecessary to brand cattle with the farm number as well as with the occupier's brand and the letter "S". It is considered that to add the farm number would spoil the skin. The age of cattle which have to be branded has been raised from six months to twelve months in paragraph (c) of sub-clause (1); and consequential amendments have been made in sub-clauses (5) and (10). The same paragraph has been amended by prescribing a period of thirty days after arrival within which to brand cattle. Sub-clause (13) is new. It is the practice for the Conservator of Forests to grant permits for the right to graze cattle in forest areas and in the absence of this sub-clause, cattle so depastured would fall within the other provisions of the Clause.
17.	17.	

Clause of
the Bill. Corresponding
Clause of the
Original Bill.

Remarks.

18. 18. This Clause has been amended so as to give a magistrate power to remove the stock of a resident labourer as well as the resident labourer from undeveloped farms.
19. 19. Sub-clause (1) has been redrafted in order to prohibit the taking of money etc. from a native or Somali for a right to reside on a farm. Under the Clause as originally drafted it was only an offence in the case of a native or Somali actually residing on the farm. Sub-clause (2) has been redrafted to cover fertilizers which have been produced by the work of resident labourers as well as the manure produced by a resident labourer's stock. Sub-clause (4) is new and is designed to put a check on the numerous thefts of occupier's crops.
20. 20.
21. 21. This Clause has been considerably altered. The power of a local authority to prohibit resident labourers on a farm has been deleted and such local authority may now only limit the number of resident labourers to be engaged on a farm. The local authority in paragraph (c) of sub-clause (1) may only prescribe the ~~limits~~ minimum number of days, within the limits of 180 and 270 days, on which resident labourers may work on farms. In paragraph (a) of sub-clause (2) the local authority need only have regard to the wishes of the occupiers in the area to be affected by the order, instead of to the wishes of the occupiers in the whole area under the jurisdiction of the local authority. A new paragraph (d) to sub-clause (2) has been added. This is designed to prevent the interests of the owners of a large farm, situated in the midst of several small farms, from being over ridden by the wishes of the owners of these small farms. Sub-clause (4) has been replaced and deals with the costs of removing resident labourers, their families and stock from farms when an occupier has failed to carry out the orders of a local authority under sub-clause (1) of this clause. Sub-clauses (5) and (6) are new. The order of a local authority will be binding in respect of forest areas and railway land when such area or land abuts on or is in the immediate vicinity of a farm in respect of which an order has been made. In the original Bill this power was conferred upon the Governor in Council.

Clause of the Bill.	Corresponding Clause of the Original Bill.	Remarks.
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- | | | |
|-----|-----|---|
| 22. | 22. | Sub-clause (1) has been amended by increasing the period of notice from fourteen days to thirty days with a consequential amendment from thirteen to twenty-eight days in sub-clause (2). The word "vary" has been deleted from the last line of sub-clause (6) and now the Governor in Council must either confirm, reject or refer the order back to the local authority. |
| 23. | | New. This Clause empowers a Labour officer to institute civil proceedings on behalf of resident labourers.

Clause 23 of the original Bill has been deleted, as, under the amendment to Clause 21, the order of a local authority will be binding in respect of forest areas and railway land. See comments on Clause 21. |
| 24. | 24. | Verbal amendments only. |
| 25. | 25. | -do- |
| 26. | 26. | The penalty in this Clause has been reduced to two months in default of payment of a fine. |
| 27. | 27. | In paragraph (a) of sub-clause (1) the words "on demand" have been deleted. Paragraph (c) has been entirely re-drafted and the position now is that if a resident labourer is seriously ill the occupier must either call in a doctor or, if the resident labourer consents, send the resident labourer to the nearest Hospital. It is considered that if a resident labourer refuses to go to Hospital the employer should be under no liability to provide him with medical attendance. The liabilities for the costs of medical attendance or hospital charges, as the case may be, has been limited to a period of thirty days. |
| 28. | 28. | The general penalty has been reduced. |
| 29. | | This Clause is new and is designed to enable one suit to be filed in respect of proceedings for wages due to any number of resident labourers in the service of the same employer. |
| 30. | 29. | |
| 31. | 30. | Sub-clause (2) is new, and is self-explanatory. |
| 32. | 31. | |

Clause of the Bill.	Corresponding Clause of the Original Bill.	Remarks.
33.	32.	It is considered that no attestation fees should be payable in respect of attesting contracts.
34.		It is considered that existing contracts should be terminated and new contracts entered into under the provisions of this Ordinance.
35.	33	
Schedules		A few amendments have been made to the First to Fourth Schedules, and the Fifth Schedule has been redrafted, in a more simplified form.

R E P O R T
OF
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE
PROVISIONS OF A BILL TO REGULATE THE
RESIDENCE OF LABOURERS ON FARMS

Your Excellency,

We, the members of the Select Committee appointed to consider and report upon the provisions of Bill to Regulate the Residence of Labourers on Farms, have the honour to submit our Report.

2. We met on three occasions i.e. on the afternoon of the 3rd August, on the morning and afternoon of the 4th August, and on the morning of the 5th August.

3. We recommend that the Bill be amended in the following respects -

(1) That Clause 1 be amended by substituting a comma for the full stop which occurs at the end thereof, and by adding, immediately after such comma, the following words -
"and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint."

(2) That Clause 3 be amended -
(a) by deleting therefrom the definition of "farm" and substituting therefor the following -
"farm" means any piece of land held under grant, lease or licence from any authority, whether that authority is a State or a Municipality, township or trading centre which is held under a title, or a licence, the terms of which preclude either expressly or implicitly such use of land from being

used for agricultural purposes) and shall include any area of land set apart by the Government of the Colony for the purposes of experimental farming, and, except for the purposes of sub-section (10) of section 5 and of sections 18 and 19 of this Ordinance shall include a forest area:

Provided that if, under section 2 of this Ordinance, the Governor in Council by proclamation applies the provisions of this Ordinance to the Protectorate of Kenya or to any district thereof, or to any area therein, this definition shall, so far as such Protectorate, district or area, as the case may be, is concerned, be deemed to include such land as may be held under a Certificate of Title granted under the Land Titles Ordinance and is specified in such proclamation;

and

(b) by deleting therefrom the words "farm, a forest area, unalienated Crown land" which occur in the second and third lines of the definition of "occupier" and substituting therefor the word "farm".

(3) That Clause 4 be amended -

(a) by deleting therefrom the words and con-
"for a longer continuous period than forty-
eight hours on any farm or on any forest area,
or on any unalienated Crown land," which occur
in the first, second and third lines of sub-
clause (1) thereof and substituting therefor
the words "on any farm";

- (b) by inserting immediately after the word and comma "unexpired," which occur in the first line of paragraph (b) of sub-clause (1) thereof the words "with the occupier or his predecessor in title";
- (c) by deleting the words and commas ", forest area, unalienated Crown land" which occur in the first and second lines of paragraph (c) of sub-clause (1) thereof;
- (d) by deleting therefrom paragraph (d) of sub-clause (1) thereof and substituting therefor the following paragraph -

"(d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and who has received the written permission of the occupier; or";

- (e) by substituting a semi-colon for the colon which occurs at the end of paragraph (e) of sub-clause (1) thereof and inserting immediately after such semi-colon the following -

"or (f) in the case of a forest area, is the holder of a grazing permit issued to him by the Conservator of Forests under the provisions of any law for the time being in force relating to the granting of such permits."

- (f) by deleting therefrom the proviso to sub-clause (1) thereof and substituting therefor the following new sub-clause -

"(2) Nothing in sub-section (1) of this section contained shall apply to a native residing by right in the Lembus or Mt. Elgon forest areas."

and

- (g) by renumbering sub-clause (2) thereof as sub-clause (3).

(4) That Clause 5 be amended -

(a) by deleting therefrom the words and comma "also reside on the farm, forest area, unalienated Crown land" which occur in the third and fourth lines of sub-clause (1) thereof and by substituting therefor the words "during the period of such contract reside on the farm";

(b) by deleting therefrom the words "native's or Somali's family over the apparent age of sixteen years" which occur in the third and fourth lines of sub-clause (1) thereof and substituting therefor the words "such native's or Somali's family who are of the apparent age of sixteen years or over";

(c) by inserting the words "of Rangeland" between the word "land" and the word "who" which occur in the second line of paragraph (c) of sub-clause (2) thereof;

(d) by substituting the word "land" for the word "farm" where it occurs in the fourteenth and fifteenth lines of paragraph (d) of sub-clause (2) thereof;

(e) by inserting between the word "grazing" and the semi-colon, which occur in the second line of paragraph (g) of sub-clause (2) thereof, the words "for stock, for use as a farm and for grazing of stock";

(f) by deleting therefrom paragraph (h) of sub-clause (2) thereof, and substituting therefor the following paragraph -

- (i) for the lands on which may be grown by the native, or Somali, or his family;
- (i) for the number of stock which may be grazed by the native, or Somali, or his family;

(g) by deleting therefrom the words "or as
"may, in his discretion," which occur in the
first line of sub-clause (6) thereof and
substituting therefor the words "may for good
and sufficient reason"; and

(h) by deleting therefrom sub-clause (7) thereof
and substituting therefor the following sub-
clause -

"(7) A magistrate may, subject to the
provisions of the proviso to section 18 of
this Ordinance, for good and sufficient
reason (which he shall furnish to the
occupier on request) order the removal of a
native, or a Somali, or a resident labourer,
and/or his stock, from any farm or Railway
land."

(5) That Clause 6 be deleted and the following Clause be
substituting therefor -

6. An occupier, before entering into a
contract under this Ordinance with a native who
is residing in a native reserve, shall give notice
in writing to the district commissioner of the
district in which such native is residing that he
proposes to enter into a contract with such
native."

"Notice to
district
commissioner
is necessary
in certain
cases before
contract is
entered into.

(6) That Clause 7 be amended by inserting the words "or
Railway land" between the word "farm" and the word
"in" which occur in the second line thereof.

(7) That Clause 8 be amended -

(a) by deleting therefrom the words "or Somali"
where they occur in the first line of sub-
clause (1) thereof, in the second line of

- (b) by inserting immediately after the word and comma "unexpired," which occur in the first line of paragraph (b) of sub-clause (1) thereof the words "with the occupier or his predecessor in title";
- (c) by deleting the words and commas ", forest area, unalienated Crown land" which occur in the first and second lines of paragraph (c) of sub-clause (1) thereof;
- (d) by deleting therefrom paragraph (d) of sub-clause (1) thereof and substituting therefor the following paragraph -

"(d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and who has received the written permission of the occupier; or";

- (e) by substituting a semi-colon for the colon which occurs at the end of paragraph (e) of sub-clause (1) thereof and inserting immediately after such semi-colon the following -

"or (f) in the case of a forest area, is the holder of a grazing permit issued to him by the Conservator of Forests under the provisions of any law for the time being in force relating to the granting of such permits."

- (f) by deleting therefrom the proviso to sub-clause (1) thereof and substituting therefor the following new sub-clause -

"(2) Nothing in sub-section (1) of this section contained shall apply to a native residing by right in the Lembus or Mt. Elgon forest areas.";

- (g) by renumbering sub-clause (2) thereof as sub-clause (3).

(4) That Clause 5 be amended -

- (b) by inserting immediately after the word and comma "unexpired," which occur in the first line of paragraph (a) of sub-clause (1) thereof the words "with the occupier or his predecessor in title";
- (c) by deleting the words and commas ", forest area, unalienated Crown land" which occur in the first and second lines of paragraph (c) of sub-clause (1) thereof;
- (d) by deleting therefrom paragraph (d) of sub-clause (1) thereof and substituting therefor the following paragraph -

"(d) is a native or a Somali who, from age or infirmity, is incapable of continuous employment and who has received the written permission of the occupier; or";

- (e) by substituting a semi-colon for the colon which occurs at the end of paragraph (e) of sub-clause (1) thereof and inserting immediately after such semi-colon the following -

"or (f) in the case of a forest area, is the holder of a grazing permit issued to him by the Conservator of Forests under the provisions of any law for the time being in force relating to the granting of such permits."

- (f) by deleting therefrom the proviso to sub-clause (1) thereof and substituting therefor the following new sub-clause -

"(2) Nothing in sub-section (1) of this section contained shall apply to a native residing by right in the Lembus or Mt. Elgon forest areas.";

and

- (g) by renumbering sub-clause (2) thereof as sub-clause (3).

- (4) That Clause 5 be amended -

- (a) by deleting therefrom the words and comma "also reside on the farm, forest area, unalienated Crown land" which occur in the third and fourth lines of sub-clause (1) thereof and by substituting therefor the words "during the period of such contract reside on the farm";
- (b) by deleting therefrom the words "native's or Somali's family over the apparent age of sixteen years" which occur in the third and fourth lines of sub-clause (2) thereof and substituting therefor the words "such native's or Somali's family who are of the apparent age of sixteen years or over";
- (c) by inserting the words "or Railway land" between the word "farm" and the word "who" which occur in the second line of paragraph (c) of sub-clause (2) thereof;
- (d) by substituting the word "land" for the word "farm" where it occurs in the fourteenth and sixteenth lines of paragraph (d) of sub-clause (2) thereof;
- (e) by inserting between the word "grazing" and the semi-colon, which occur in the second line of paragraph (g) of sub-clause (2) thereof, the words "on such part of the occupier's farm as the occupier may direct";
- (f) by deleting therefrom paragraphs (h) and (i) of sub-clause (2) thereof, and substituting therefor the following paragraphs -

- (h) for the kinds of crops which may be grown by the native, or Somali, or his family;
- (i) for the number of stock which may be grazed by the native, or Somali, or his family;

(g) by deleting therefrom the words and commas "may, in his discretion," which occur in the first line of sub-clause (6) thereof and substituting therefor the words "may for good and sufficient reason"; and

(h) by deleting therefrom sub-clause (7) thereof and substituting therefor the following sub-clause -

"(7) A magistrate may, subject to the provisions of the proviso to section 18 of this Ordinance, for good and sufficient reason (which he shall furnish to the occupier on request) order the removal of a native, or a Somali, or a resident labourer, and/or his stock, from any farm or Railway land."

(5) That Clause 6 be deleted and the following Clause be substituting therefor

6. An occupier, before entering into a contract under this Ordinance with a native who is residing in a native reserve, shall give notice in writing to the district commissioner of the district in which such native is residing that he proposes to enter into a contract with such native."

(6) That Clause 7 be amended by inserting the words "or Railway land" between the word "farm" and the word "in" which occur in the second line thereof.

(7) That Clause 8 be amended -

(a) by deleting therefrom the words "or Somali" where they occur in the first line of sub-clause (1) thereof, in the second line of

"Notice to district commissioner is necessary in certain cases before contract is entered into."

- paragraph (a) of sub-clause (1) thereof, in the first line of sub-clause (2) thereof and in the sixth line of sub-clause (3) thereof;
- (b) by deleting therefrom the word "or Somali's" where they occur in the seventh line of sub-clause (1) thereof and in the first line of paragraph (b) of sub-clause (1) thereof;
- (c) by inserting the word "native" between the letter "a" and the word "resident" which occur in the third line of sub-clause (1) thereof; and
- (d) by substituting the word "land" for the word "farm" which occurs in the last line of sub-clause (3) thereof.

(8) That Clause 9 be amended by inserting the word "native" between the word "the" and the word "resident" where they occur in the ninth line of sub-clause (1) thereof, in the first and fifth lines of sub-clause (2) thereof and in the second and seventh lines of sub-clause (3) thereof.

(9) That Clause 10 be amended -

- (a) by deleting therefrom the words "or Somali" where they occur in the second, third, seventh and eighth lines thereof; and
- ~~(b) by substituting the word and figures "16, 17 and 19" for the figures and word "17, 18 and 20" which occur in the fourth and fifth lines thereof.~~

(10) That Clause 12 be amended by deleting therefrom the words "or to imprisonment not exceeding two months or to both such fine and such imprisonment" which occur in the second and third lines thereof

- and by substituting therefor the words "and in default of payment to imprisonment for a term not exceeding two months".
- (11) That Clause 13 be amended by deleting therefrom the words "any police officer of or above the rank of assistant sub-inspector" and substituting therefor the words "any labour officer, or any police officer of or above the rank of assistant inspector".
- (12) That Clause 15 be deleted.
- (13) That Clauses 16 to 29, both inclusive, be renumbered as 15 to 28 respectively.
- (14) That Clause 16, now renumbered as 15, be amended
- (a) by substituting the word "land" for the word "farm" which occurs in the fifth line thereof; and
 - (b) by substituting the figures "21" for the figures "22" which occur in the fourth line thereof.
- (15) That Clause 17, now renumbered as 16, be amended
- (a) by inserting the words "or Railway land" immediately after the word "farm" wherever it occurs in sub-clauses (1) to (5) inclusive and in sub-clauses (9), (10) and (12) thereof;
 - (b) by substituting the word "any" for the word "such" where it first occurs in the seventh line of paragraph (b) of sub-clause (9) thereof;
 - (c) by substituting the word "land" for the word "farm" wherever it occurs in sub-clauses (6) and (8) thereof;

- (d) by deleting therefrom paragraph (b) of sub-clause (1) thereof and by re-lettering paragraphs (c) and (d) as (b) and (c) respectively and by substituting the brackets and letter "(b)" for the brackets and letter "(c)" in line three of paragraph (a) of sub-clause (2) thereof;
- (e) by substituting the word "magistrate" for the words "district commissioner" where they occur in paragraph (c) (now paragraph (b)) of sub-clause (1) thereof and in paragraph (c) of sub-clause (3) thereof;
- (f) by substituting the word "twelve" for the word "six" which occurs in the first line of paragraph (d) (now paragraph (c)) of sub-clause (1) thereof, in the third line of sub-clause (5) thereof and in the first line of paragraph (a) of sub-clause (10) thereof;
- (g) by inserting the words and commas "within thirty days after the date of its arrival on the farm or Railway land," between the word "branded" and the word "by" which occur in the third line of paragraph (d) (now paragraph (c)) of sub-clause (1) thereof;
- (h) by deleting therefrom paragraph (b) of sub-clause (2) thereof, and substituting therefor the following -
- "(b) In arriving at such number the occupier and the magistrate or attesting officer shall, subject to any order made under the provisions of section 21 of this Ordinance in force in the area in which the farm or Railway land is situated, have regard to the reasonable needs of the native or Somali and the members of his family residing with him."

(i) by deleting therefrom paragraph (a) of sub-clause (3) thereof and by relettering paragraphs (b), (c) and (d) thereof as paragraphs (a), (b) and (c) respectively;

(j) by substituting the word "cattle" for the word "stock" which occurs in the second line of sub-clause (5) thereof;

(k) by deleting therefrom the words "all purposes to be the personal property of such native or Somali, until the contrary be proved" which occur in sub-clause (12) thereof and substituting therefor the words "the purposes of this Ordinance to be the personal property of such native or Somali";

(l) by adding thereto the following ^{new} sub-clause as sub-clause (13)

"(13) Nothing in this section contained shall apply to any stock depastured by a native or a Somali in any forest area under the authority of a grazing permit issued to him by the Conservator of Forests under any law for the time being in force relating to the granting of such permits."

(16) That Clause 18, now renumbered as 17, be amended -

(a) by deleting therefrom the words "a police officer of or above the rank of assistant sub-inspector" which occur in the second and third lines of sub-clause (1) thereof, and substituting therefor the words "a labour officer, or a police officer of or above the rank of assistant inspector"; and

- (b) by inserting the words "or Railway land" immediately after the word "farm" which occurs in the first line of paragraph (a) of sub-clause (1) thereof.

(17) - That Clause 19, now renumbered^{as} 18, be amended by inserting the words and commas "together with his stock, if any," immediately after the word "farm" which occurs in the seventh line thereof, immediately after the word "Somali" which occurs in the tenth and twelfth lines thereof and in the last line of the proviso thereto.

(18) That Clause 20, now renumbered^{as} 19, be amended -

- (a) by deleting therefrom paragraph (a) of sub-clause (1) thereof and substituting therefor the following paragraph -

"(a) No payment in money or in kind shall be demanded or taken from any native or Somali for the right to reside on any farm, or to cultivate any land or graze any stock on any farm, or for the use of salt-licks, fuel or water, on any farm."

- (b) by deleting therefrom the first two lines of sub-clause (2) thereof and substituting therefor the following -

"(2) Manure produced on a farm by the stock of a resident labourer, or fertilizers produced by the activities of a resident labourer on a farm, shall be the property of the resident labourer."

(19) That Clause 22, now renumbered^{as} 21, be amended -

- (a) by substituting the figures "22" for the figures "23" which occur in the second line thereof;

- (b) by deleting therefrom paragraph (a) of sub-clause (1) thereof and by relettering paragraphs (b), (c) and (d) of such sub-clause as paragraphs (a), (b) and (c) respectively;
- (c) by deleting therefrom the letter "a" which occurs in the fifth line of paragraph (c) (now relettered as paragraph (b)) of sub-clause (1) thereof;
- (d) by inserting immediately after the word "the" which occurs in the first line of paragraph (d) (now relettered as paragraph (c)) of sub-clause (1) thereof the word "minimum";
- (e) by deleting therefrom the words "within the area of its jurisdiction" which occur in the first and second lines of paragraph (a) of sub-clause (2) thereof and substituting therefor the words "or any group of farms within the area to be affected by such order";
- (f) by deleting the word "and" which occurs at the end of paragraph (b) of sub-clause (2) thereof;
- (g) by substituting a semi-colon for the full stop which occurs at the end of paragraph (c) of sub-clause (2) thereof and by adding the word "and" immediately after such semi-colon;
- (h) by adding at the end of sub-clause (2) thereof the following new paragraph -
 - "(d) to the value of the interests, and the extent, of each farm within the area to be affected by such order together with the nature of farming operations conducted on each such farm."
- (i) by deleting therefrom the figures and words "25 of this Ordinance to give" which occur in the fifth line of sub-clause (3) thereof and by substituting therefor the figures and words "22 of this Ordinance, to give three months"; and

(j) by deleting therefrom sub-clause (4) thereof and substituting therefor the following -

"(4) Any occupier who fails to comply with any order made under the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance and may, in addition to any penalty to which he may be liable, be ordered to pay the costs of removing from his farm any resident labourer, such resident labourer's family and/or such resident labourer's stock, and, in default of payment, such costs may be recovered by distress levied in accordance with the provisions of section 318 of the Criminal Procedure Code."

No. 10 of 1930.

(20) That Clause 23, now renumbered as 22, be amended -

(a) by deleting therefrom the word "fourteen" which occurs in the tenth line of sub-clause (1) thereof and substituting therefor the word "thirty";

(b) by deleting therefrom the word "thirteen" which occurs in the second line of sub-clause (2) thereof and substituting therefor the word "twenty-eight";

(c) by deleting therefrom the word "vary" which occurs in the sixth line of sub-clause (6) thereof and substituting therefor the words "refer back to the local authority"; and

(d) by deleting the words "confirms, with or without amendment," which occur in the first and second lines of sub-clause (7) thereof and substituting therefor the word "confirms".

(21) That Clause 24, now renumbered as 23, be amended -

- (a) by substituting the figures "21" for the figures "22" which occur in the third line thereof; and
 - (b) by deleting therefrom the words "unalienated Crown land" which appear in the fourth line thereof and in the third line of paragraph (c) thereof.
- (22) That Clause 25, now renumbered as 24, be amended -
- (a) by deleting therefrom the figures, comma and word "17, 18 and 20" which occur in the second line of sub-clause (1) thereof and substituting therefor the figures and word "17 and 19";
 - (b) by deleting therefrom the word "either" which occurs in the fourth line of paragraph (a) of sub-clause (2) thereof and substituting therefor the word "one"; and
 - (c) by deleting therefrom the word "him" which occurs in the sixth line of paragraph (a) of sub-clause (2) thereof and substituting therefor the words "the first mentioned party to such contract".
- (23) That Clause 26, now renumbered as 25, be amended -
- (a) by deleting the words "on the farm" which occur in the third line of paragraph (1) thereof;
 - (b) by inserting between the word "farm" and the word "any" which occur in the first line of paragraph (8) thereof the words "or Railway land";
 - (c) by substituting the figures "16" for the figures "17" which occur in the third line of paragraph (9) thereof; and
 - (d) by inserting between the word "farm" and the word "and" which occur in the fifth line of

paragraph (9) thereof the words "or Railway Land".

(24) That Clause 27, now renumbered as 26, be amended -
(a) by deleting therefrom the words "he fails, after having received an order from the occupier" which occur in the first and second lines of paragraph (b) of sub-clause (3) thereof and substituting therefor the words "he fails"; and

(b) by deleting therefrom the word "irrevocably" which occurs in the fifth line of paragraph (c) of sub-clause (3) thereof and substituting therefor the word "irretrievably".

(25) That Clause 28, now renumbered as 27, be amended -
(a) by deleting therefrom the words and commas "on demand," which occur in paragraph (a) of sub-clause (1) thereof;

(b) by deleting therefrom paragraph (c) of sub-clause (1) thereof and substituting therefor the following -

"(c) if he fails knowingly or on demand -

(i) to provide any resident labourer of his with proper medicines during illness; and

(ii) to provide any resident labourer of his, who is seriously ill, either if the resident labourer consents, with medical attendance or to send such resident labourer to the nearest hospital:

Provided that an occupier's liability in respect of the costs of medical attendance or of hospital treatment shall not extend beyond a period of thirty days."

(c) by deleting therefrom paragraph (d) of sub-clause (2) thereof.

(26) That Clause 29, now renumbered as 25, be amended by deleting therefrom the words "one hundred pounds, or to a term of imprisonment for a term not exceeding two months, or to both such fine and such imprisonment" which occur in the fifth, sixth and seventh lines thereof and substituting therefor the words "thirty pounds and in default of payment to imprisonment for a term not exceeding three months".

(27) That the following new Clauses be inserted as Clauses 29 and 30 and the present Clauses 30 to 34 be renumbered as 31 to 35 respectively

"Powers of labour officer to institute civil proceedings.

29. A labour officer may institute or ~~institute~~ ^{both} or ~~institute and appear~~ on behalf of any resident labourer in any civil proceedings by such resident labourer against an occupier in respect of any matter or thing or cause of action arising out of the contract between such resident labourer and such occupier.

Joinder in cases of non-payment of wages.

30.(1) Notwithstanding anything to the contrary contained in any other law for the time being in force in the Colony, on a complaint or suit against an occupier in respect of wages due to more than one of his resident labourers the magistrate may permit one complaint or one plaint to be made or filed by a labour officer or by one of such resident labourers on behalf of all such resident labourers and their claims to be proved by such labour officer or by such resident labourer accordingly:

Provided/

Provided that the complaint or plaint shall have annexed thereto a schedule setting forth the names of such resident labourers, their addresses and descriptions and the details of wages due to each such resident labourer.

(2) All such claims shall rank equally between themselves, and shall be paid in full, unless the amount recovered from the occupier be less than the total amount of the claims with costs, in which case, after payment of the costs, all such claims shall abate in equal proportions among themselves and be paid accordingly. Costs given against the resident labourers shall be paid by such resident labourers or by any of them in such proportions as the Court shall direct.

No.10 of 1930.

(3) The provisions of section 205 of the Criminal Procedure Code shall not apply to the proceedings instituted under this Ordinance in respect of the non-payment of wages to any resident labourer."

(28) That Clause 31, now renumbered as 32, be deleted and the following Clause be substituted therefor -

"Rules.

52.(1) The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

(2) All rules made under this section shall have the same force and effect as if they had been enacted in this Ordinance and shall be laid as soon as conveniently may be before the Legislative Council; and is a

resolution is passed within forty days of their being so laid before the Legislative Council praying that any such rule shall be revoked or amended, such rule shall thenceforth be deemed to be revoked or amended, but without prejudice to anything done thereunder."

- (29) That the following new Clause be inserted as Clause 35 and that Clause 34, now renumbered as 35, be renumbered as Clause 36 -

"Subsisting contracts to be terminated.

35. It shall be the duty of every occupier in any district or area to which this Ordinance is applied; and who at the date of the application of the Ordinance to such district or area is a party to any contract made under the provisions of the Resident Labourers Ordinance, 1925, within one month after such date to give six months' notice of the termination of such contract:

No.5 of 1925

Provided that such notice shall not be necessary if any such contract will expire by effluxion of time or by notice before the expiration of the said period of six months."

- (30) That the First Schedule be amended -
 - (a) by substituting the word "land" for the word "farm" wherever it occurs in Clauses 2, 5 and 9 thereof;
 - (b) by deleting therefrom the words "in writing" which occur in the eleventh line of Clause 3 thereof; and
 - (c) by deleting therefrom the number, brackets and words "(3) Full name of native or Somali as

given on Registration Certificate" which occur at the foot of the Schedule thereto, and substituting therefor the following -

"(3) Full name of native as given on Registration Certificate, or of Somali."

(31) That the Fifth Schedule be amended -

(a) by substituting the figures "15" for the figures "16" which occur in the third line thereof;

(b) by deleting therefrom the words "Name of Farm" which occur in the fourth line thereof and substituting therefor the asterisk and words "Description of land^(a)"; and

(c) by inserting at the foot of the Schedule the asterisk and words -

"^(a)In the case of a farm give L.R. NO."

We have the honour to be,

Your Excellency's obedient servants,

- SD. H.O. WILLIAMS (CHAIRMAN)
- SD. H.R. MONTGOMERY (MEMBER)
- SD. E.B. HOSKING (MEMBER)
- SD. T.D. WALLACE (MEMBER)
- SD. F.W. CAVENDISH-BENNING (MEMBER)
- SD. J.G. KIRKWOOD (MEMBER)
- SD. ROBERT DE V. SHAW (MEMBER)
- SD. E. CASTELL LONG (MEMBER)
- SD. H.G. BURNS (MEMBER)
- SD. A.C.B. DE SOUSA (MEMBER)

Nairobi,

7th August, 1937.

Subject to the reservations contained in the attached Minority Reports.

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MINORITY REPORT

We consider that an additional sub-section should be added to section 20 of the Ordinance, becoming section 20(4), to read as follows -

"No native or Somali may sell or dispose of any crops or produce of cultivation produced on a farm without having first obtained written permission to do so from the owner or occupier, such permission not to be unreasonably withheld."

We further consider that a proviso should be added to section 24, to read as under -

"Provided that, in cases where such forest areas, unalienated Crown land or Railway land are situate within the boundary of the area of jurisdiction of a local authority, orders made by such local authority shall be held to be directly applicable to such areas."

SD. J. G. KIRKWOOD

SD. F. CAVENDISH BENTUCK

Nairobi,

7th August, 1957

Robert de V. Shaw
E. Caswell Long

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SELECT COMMITTEE OF LEGISLATIVE COUNCIL
ON THE BILL TO REGULATE THE RESIDENCE
OF LABOURERS ON FARMS

MINORITY REPORT

Mr. Chairman,

We, Members of the above Committee, beg to submit the following note of dissent and request that it be incorporated in the relative Report.

1. We disagree with the deletion of Clause 15 of the Bill. It was held in Select Committee that labour tickets were not required by Natives who, it was said, usually lost them or handed them over to employers for custody. It was also held that registers to be kept by occupiers under the proposed Ordinance would constitute legal evidence of the number of days worked by resident labourers.

The inclusion of the said clause in the Bill might have been made for some cogent reasons, and no mention of those reasons was made in Committee by official members who supported the deletion, neither any excuse for the deletion was given by them save the suggestion that the occupier would ordinarily be a reasonable employer.

We consider that the Native ought to be protected against possible unscrupulous employers. Labour tickets would help the Native if he had to sue his employer for wages due after the completion of the contractual day, month or thirty-day card worked.

2. It was unsuccessfully moved in Committee that the following addition be made to paragraph (c) of sub-clause (2) of Clause 22 -

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-2-

"due regard being had to the views of such resident labourers expressed either through Government representatives or through their own representatives."

The powers which the said paragraph confers on the local authority could be used arbitrarily when the interests of the occupiers conflicted with those of the resident labourers. The local authority is a body representing solely the interests of the occupiers and composed of members appointed by those. The decision of such a body on what would constitute "the reasonable needs" of the resident labourers in the employment of such occupiers must sometimes be objected to as partial. Some one who is not directly interested ought to be a judge of the requirements of a labourer, and that some one could not be the agent or the representative of the occupier who engages labour primarily in his own interests.

5. Dr. de Sousa disagrees with the decision of the majority of the Committee to alter the term "assist supervisor" in Clauses 15 and 16(1) of the Bill, thereby requiring that the duties imposed on police officers under the Ordinance shall only be exercised by European Police Officers.

The alteration sanctions the unjustified racial prejudice of European farmers against Asiatic Police Officers and does not take into consideration the fact that there are in the Colony Asiatic occupiers of farms who engage resident labourers and who may likewise object to European Police Officers performing their duties on farms occupied by Asiatics. It ignores the need that would necessarily arise for an increased European Police Force if the requirements of the Ordinance are to be adequately met without the assistance

of the existing Asiatic Police Force.

Yours faithfully,

SD. H.G. BURNS

SD. A.C.L. DE SOUSA

Nairobi,

7th August, 1957.

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OPERATOR. ⇨ EM
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EMULSION NO. ⇨ 341081
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MINORITY REPORT

We consider that an additional sub-section should be added to section 20 of the Ordinance, becoming section 20(4), to read as follows:-

"No native or Somali may sell or dispose of any crops or produce of cultivation produced on a farm without having first obtained written permission to do so from the owner or occupier, such permission not to be unreasonably withheld."

We further consider that a proviso should be added to section 21, to read as under:-

"Provided that, in cases where such forest areas, unalienated Crown land or Railway land are situate within the boundary of the area of jurisdiction of a local authority, orders made by such local authority shall be held to be directly applicable to such areas."

SD. J. G. KIRKWOOD

SD. P. CAVENDISH BENTLEY

*Asked to V. Shaw
E. Cassell Long*

Nairobi,
7th August, 1957

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SELECT COMMITTEE OF LEGISLATIVE COUNCIL
OF THE BILL TO REGULATE THE RESIDENCE
OF LABOURERS IN PARIS

MINORITY REPORT

Mr. Chairman,

We, Members of the above Committee, beg to submit the following note of dissent and request that it be incorporated in the relative Report.

1. We disagree with the deletion of Clause 15 of the Bill. It was held in Select Committee that labour tickets were not required by Natives who, it was said, usually lost them or handed them over to employers for custody. It was also held that registers to be kept by occupiers under the proposed Ordinance would constitute legal evidence of the number of days worked by resident labourers.

The inclusion of the said clause in the Bill must have been made for some cogent reasons, and no mention of those reasons was made in Committee by official members who supported the deletion, neither any excuse for the deletion was given by them save the suggestion that the occupier would ordinarily be a reasonable employer.

We consider that the Native ought to be protected against possible unscrupulous employers. Labour tickets would help the Native if he had to sue his employer for wages due after the completion of the contractual day, month or thirty-day period worked.

2. It was unsuccessfully moved in Committee that the following addition be made to paragraph (c) of sub-clause (2) of Clause 22 -

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"due regard being had to the views of such resident labourers expressed either through Government representatives or through representatives of their own."

The powers which the said paragraph confers on the local authority could be used arbitrarily when the interests of the occupiers conflicted with those of the resident labourers. The local authority is a body representing solely the interests of the occupiers and composed of members appointed by those. The decision of such a body on what would constitute "the reasonable needs" of the resident labourers in the employment of such occupiers must sometimes be or suspected to be partial. Some one who is not directly interested ought to be a judge of the requirements of a labourer, and that some one could not be the agent or the representative of the occupier who has an interest primarily in his own interests.

3. Mr. de Souza disagrees with the decision of the majority of the Committee to alter the term "assistant sub-inspector" in Clause 15 (1) of the Bill, thereby requiring that the duties imposed on police officers under the Ordinance shall only be exercised by European Police Officers.

The alteration sanctions the unjustified racial prejudice of European farmers against Asiatic Police Officers and does not take into consideration the fact that there are in the Colony Asiatic occupiers of farms who engage resident labourers and who may likewise object to European Police Officers performing their duties on farms occupied by Asiatics. It is not as the need that will necessarily arise for an increased European Police Force if the requirements of the Ordinance are to be adequately met without the assistance

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of the existing Asiatic Police Force.

Yours faithfully,

SD. H.G. BURNS

SD. A.O.L. DE SOUSA

Nairobi,

7th August, 1937

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