38355

1938

C0533/500

KENYA

38355

Indian Grievances.

Previous

17338/31

Subsequent

PC

297

14/1

Mr. Costley White

38355

(1097). Wt. 25484/30. 5,000. 10/37.
N.P.Co. G.662/77a.

C.1
INDIANS
NOMINAL

1. Gov. Kenya ——— TEL. N° 7 (RECOVERABLE) ——— 29.1.38.
Finds complaint from Federation ~~of Indian Chambers~~ Indian Chambers of Commerce & Industry of Eastern Africa is regarding reversion of trade and residential plots held on yearly lease — despatch follows.

Sir C. Bottomley

? Wait for the desp.

H. J. Dawe
1.2

Yes. But this will have gone to India & Secretary of State will hear from S.O. before we hear from the Governor.

Cas.
1.2.38 am

2 Gov. Kenya ——— 74 ——— 11.2.38.
Comments on representations of Federation of Indian Chambers of Commerce & Industry of Eastern Africa and gives reasons why he considers they should be told that S. of S sees no reason to intervene.

Under the Crown Lands Ordinance plots of land in trading centres in the Native Reserves were ~~usually~~ normally leased on temporary occupation licences (Section 51 of Cap.140 of the revised edition). Since the introduction of the Native Lands Trust Ordinance of 1930, which makes no provision for temporary occupation licences, it has been the practice to grant leases for one year instead. In townships, where licences up to 33 years are allowed (Section 9(1) of Ordinance IX of 1930), it

it has not in fact been possible usually to grant licences for longer than a year because under the Registration of Titles Ordinance, Cap142, and the Town Planning and Development Ordinance of 1931 it is necessary to survey and to make a development plan of the land before giving long leases. No lease of any kind can, according to the proviso of Section 7 of the Native Lands Trust Ordinance of 1930, be granted "which is objected to by the Local Native Council or by any African Member of the Local Board concerned without the prior approval of the Secretary of State."

No doubt the reason is the imminence of the enactment of the new land legislation.
J.J.P.

It is not made clear in the despatch why the Indians have chosen this particular moment to complain against legal provisions which have been in force since 1930. In the telegram at No.1, however, it is stated that Government is ... "taking proceedings against Indian traders at Isiolo ... for reversion of trading plots...". Hardship may be involved in particular cases of this sort for Indians who have remained undisturbed in the Native Reserves for a number of years, and it is perhaps unfortunate that it has been necessary to move them. It is, however, abundantly clear that legal justification for doing so is complete, and the Governor has no doubt urgent reasons for doing so.

* But I do not think they are being moved. The tel. goes on to say that they are being offered yearly leases under the Native Land Trust Ord.
L.F.M.

? Acknowledge and request the Governor to inform the Federation of Indian Chambers of Commerce of East Africa that their representations have been considered and that the Secretary of State sees no reason to intervene on their behalf.

Clodagh White.
28.2.38.

In general, it seems clear that there is not much substance in the fear of the Indian traders that they will be prejudiced by the change over from temporary occupation licences under the Crown Lands Ordce to yearly leases under the Native Land Trust Ordce. They do not ask for a reversion to the old practice (wh. wd involve amending legislation wh. wd be inconsistent with the principles of the further land legislation now under consn, arising out of the Report of the Land Commission). What they ask is that assuming that they have to come under the Native Lands Trust Ordce, they may be granted long leases, instead of merely annual leases, because (they say) the renewal of an annual licence is too much at the whim of the local Native Council. The fact that the D.O. presides over the local Native Council is, I think, a sufficient guarantee against this, a (as was pointed out in the debate) there is also a right of appeal to the S. of S.

So far therefore as the representations to the S. of S. are concerned, I think that the Govr. can properly be authorised to

reply as suggested.

But there is one point, not included in the representation, but mentioned in the debate, & not disposed of by the Govt. spokesman, wh. seems to call for comment. Both Mr. Shamsud-Deen (p. 123 & p. 130) & Mr. Pandya (pp 128 ff) said that conditions are laid down, as to the buildings wh. are to be erected on these plots, wh. are unduly onerous in the case of annual leases wh. may not be renewed; & I suggest that, when replying as proposed, the Gov. shd. be asked for his observ. on this point.

I agree. AJD

J. J. Paskin
5/3

Mr. Dale.

Any comments, please? Do you consider that the attitude taken up by Govt. is sound from the legal point of view?

A J Dawe
7.3

Mr Dawe

Yes. The Govt. is evidently acting entirely in accordance with the law. The position appears to be that 33 year leases are legally possible, but practical difficulties are caused by the survey and registration requirements.

W. L. Dale.
8.3

Mr. Dawe

We have spoken but since then I have discussed the matter further with Mr. Paskin.

2. We (Mr. Paskin & myself) have come to the conclusion that in one small point only will the new law differ from the present law - see para 6 below.

3. It must be borne in mind that we are dealing with leasing cautions only.

4 Present law

Rules 9 & 10 of Native Lands Trust Bd, 1930, apply.

Rule 9 - L.N.C + Local Board consulted as to selling apart land for a leasing caution.

Rule 10 - Central Board approves selling apart.

Case selling apart approved no necessity to consult L.N.C. & Local Board again - it forms to s.7 Native Lands Trust Bd, 1930, does not apply when land has been already been set apart for leasing ~~caution~~ cautions

This point was brought out in the details, but not very clearly, see p 127 - 1st Col. (Op) - of Commissioners evidence.

s.8(1) Bd. Governor, with advice and consent of Central Board, approves lease

5. New law

Cl. 30(1) Native Lands Trust Bill - When it is proposed to set apart land for a leasing ~~caution~~ the Provincial Commissioner shall consult authorities in Cls. 21(c) & (d) - i.e. L.N.C + Local Board.

Same as present law

P.T.O

Cl 9 - If area to be set apart exceeds 10 acres - as I should imagine it would do in the case of training centres - Treas. Board may still say no and may appear a set back. Same as present law.

Cl 16 When letting apart completed Governor himself grants the lease.

6. Thereby the only difference between the present and new laws is that under the new law the Governor must get the consent and consent of the Board before he grants a lease in a trading centre. But he has power to refer the granting of such leases to the Board see Art. 9 (1)(b) proposed Native Q in C.

7. Thereby I see no point in amplifying the new law in the despatch, which I think should be kept as simple.

H.T. Williams
14.3.38

M. Williams

But, in view of your 4 above, is para. 3 of the draft really to the point? It states that once the land has been set aside as a trading centre the L.N.C does not come into it. Shall we omit para. 3? A.J.Dawe
14.3

Sir C.Bottomley.

This involves some complicated points which I have gone into in discussion with Mr. Paskin and Mr. Willan (Solicitor-General, Kenya). But I do not think that you need be bothered with the details.

The point broadly is that Indian traders fear that their security of tenure of the plots on which their premises stand is less secure under the Native Lands Trust Ordinance, 1930, than it was under the old Crown Lands Ordinance. There appears to be no real ground for this apprehension: and the position has been carefully explained by the Government spokesman in the Legislative Council.

I think that a reply as in draft submitted will meet the case.

? so proceed.

A.J.Dawe

15.3.1938

W.L.G. 15.3.38.

Sir C.Bottomley

The point taken in para 3 of the draft despatch seems one of considerable importance from a practical point of view. Doubtless we shall have representations in due course through the S.O. and we should be

in a better position if we had a satisfactory answer here & now to that point. Would it not be worth while, before replying to the despatch & telegram, to raise this point (if you think desirable, by telegraph) & ask for the Governor's observations on it?

[illegible initials]
17.3.38

Mr Dawe

Yes - please have a Dft tel. prepared.

[illegible initials]
17.3.38

Sir C. Bottomley

Dft. submitted.

A. J. Dawe
18.3

3 Tel. to Gov. Kenya No. 29. Cons 18/3/38

4 Gov. Kenya 182 — 29.3.38.
Sends observations on point raised in (No. 3)

The conditions relating to buildings on plots leased to Indians in trading centres within the Native Reserves are usually that within 3 months a building must be put up which is so satisfactory from a developmental and sanitary point of view. This generally means a wood and iron building with cement floor. This does not seem to be an excessively harsh requirement, but presumably what was at the back of the minds of those who complained that the requirements were unduly onerous was that if an Indian was forced to put up a permanent structure like this and was then ejected after the first year was over he would have had little return for his money. In fact however no particular cases of hardship have been complained of to Govt; the standard of buildings is such that approval is withheld only if the essentials of development & health are not fulfilled; and renewal of a lease is refused only in exceptional circumstances & with the concurrence of the Central Land Board.

This would appear to be a sufficient answer to the question put in No 3.

? The draft desp may now issue, but omitting para 3 and referring to No 4 instead of No 2.

P.T.O. [illegible signature] 8/4

Dft. submitted.

H. J. Dawe

8.4

Sir C. Parkinson

Under either system, not much can be expected in the way of buildings and the real point is whether the tenure is actually more insecure under the N.L.T. Ord. than under the Crown Lands Ord. That point is dealt with in para: 4 of No: 2 — unreasonable refusal to renew can be overruled.

W.H.S.

8/4/38

See S of State

—

Dft. despatch now submitted replying to representations from the Fedn. of Indian Chambers of Commerce & Industry of E. Africa in Nos. 1 & 2.

A.C.C.P.

9.4.38

To Kenya 216 – 4 Conf. – 2[illegible] APR 1938

[illegible] 11.4.38

See P.Q. No. 1 for Question asked by Mr C Taylor 25/7 8

Cl. Nominal 6 Kenya Commercial Co Ltd (Rahamtala Kasim) 14.8.38 Complains regarding hotel accommodation for Indians in Kenya

Mr. Paskin.

6

Please see the attached letter to the S. of S. from an Indian Member of the Kenya Legislative Council.

I have not acknowledged it yet, and shall be glad of the Department's advice as to the reply which the Secretary of State should send.

Smith

20.8.38.

Discussed with Mr Dawe ~~[illegible]~~ who suggested a brief ackn. of Mr R. Kasim's letter on the lines ~~[illegible]~~ of enc. draft. Copy sent to Gov. L.C.

[illegible]

23/8/38

7 To Rahamtala Kasim 6 ackd, 23.8.38.

DESTROYED [illegible]

8 To Kenya 515 (w. 6 & 7) (w/o. encl.) A/1. 31.8.38

Directors:
Allibhai Kasim.
Hassan Kasim.
Rahamtala Kasim.
Abdulmohamed M. Kasim.

KENYA COMMERCIAL COY., LTD.

IMPORTERS & EXPORTERS.

BUYERS OF:
COTTON, HIDES, GRAINS, OILS,
SEEDS & OTHER PRODUCES.

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"KENYACOMEX"
Telephone:
No.
Code Used:
"BENTLEY'S"

P. O. Box No. 93.

Ref. No.

Kisumu, 14th August 1938.
Kenya Colony

The Right Honourable
Malcolm McDonald,

10, Downing Street,

London.

Sir,

I wish to introduce myself as an Indian Elected Member of The Kenya Legislative Council.

In a separate cover I beg to enclose a copy of the East African Standard Nairobi in which you will find a letter contributed by me in connection with Hotel accommodation for Indians in Kenya.

I consider the attitude of the local hotel keepers in not admitting Indians (cultured) as very ridiculous. This fact is admitted by a section of the Europeans here. This reflects very adversely [redacted] in the minds of the Indians in India.

It is high time that something should be done to ameliorate this state of affairs by the intervention of the local Government.

I hope you will do what best you can in the matter.

I have the honour to be,

Sir,

Your obedient servant,

Rahamtala Kasim
M.L.C

THE EAST AFRICAN STANDARD

TUESDAY, AUGUST 9, 1938.

INDIAN VISITORS TO KENYA

To the Editor, "E. A. Standard".

Sir,—Many people ask why Kenya questions are frequently criticised in the overseas press particularly in England and India. If the facts are traced the reasons are on petty racial questions. The attitude of European hotel keepers in Kenya is very much deplored. The other day I happened to meet an Indian tourist who happened to visit Kenya from South Africa. In course of conversation I asked his impressions about Kenya. He expressed great disappointment about European hotel keepers in Kenya. He said in South Africa there are certain disabilities in connexion with trading licences and so on but he formed an opinion that there is more colour prejudice in Kenya than in South Africa. He cited an instance that during his motoring in Kenya he met with a mechanical trouble at a place situated in hon and other wild animal infested area. It was late in the evening. The European hotel keeper there refused to accommodate him nor did he give him any assistance. Fortunately there was an Indian duka who gave him all sorts of help. He was shocked to find such an attitude of European hotel keepers towards Indians in Kenya.

I understand that in recent years Indians have experienced racial discrimination in England. The fact was brought to the notice of the Government of India, and on the representation of the Indian Government the Imperial Government took a serious view of the matter and the question has been satisfactorily solved. I understand that Kenya is the only Colony where hotel keepers have adopted a hostile racial attitude towards the Indians. It is only commonsense that only those who can afford to pay their charges and those who are used to European standards and mode of life would be inclined to make use of their hotels and that also by travellers and others who do not wish to inconvenience their friends.

This show of prejudice in such things as hotel accommodation in my view is unfair. It means that in the view of the Kenya Hotel Keepers' Association, out of 300 millions of Indians among whom there are Governors, Maharajas, Princes, Chief Justices, Judges, Prime Ministers, Members of the Legislative Assembly etc., they do not consider anybody fit to put up at their hotels in Kenya. I think that a time has now arrived to find a way out of this question.

When the late Sir Robert Coryndon was the Governor of the Colony the Hotel Keepers showed the same attitute towards Japanese. The Government of Kenya firmly told the hotel keepers to give accommodation to the Japanese, and that those hotel keepers who continued to refuse to accommodate Japanese would have their licences cancelled.

During last month the Secretary of State, Mr. Malcolm MacDonald, in the course of a speech in London said that the greatest danger threatening mankind as it seemed to him was a division between East and West, and the creation of racial rivalries between the people. What they wanted was sympathy and understanding and the most important thing of all would be friendship between Great Britain and India in the work of Government.

Can the Empire afford to lose the sympathy of 306 million people on whom the Empire depends for man power in case of war? Will the Government of Kenya redress this long-felt grievance of the Indian nation?

Yours etc.,
RAHAMTALA KASIM.

Nairobi,
August 7, 1938.

38355/38.

C. O.

Mr. Dawe. 8/4/38.
Mr.
Mr.
Sir H. Moore.
Sir G. Tomlinson.
X Sir C. Bottomley. 8/4
Sir J. Shuckburgh
Permt. U.S. of S. 9.4.38
Parly. U.S. of S.
Secretary of State 11.4.38

C. D.
R 12 APR
D

DOWNING STREET.

20. April, 1938.

DRAFT.

KENYA.

No. 216.

Governor.

Sir,

I have etc. to acknowledge the receipt of your despatch No.182 (4) of the 29th March regarding the representations made by the Federation of Indian Chambers of Commerce and Industry of Eastern Africa on the subject of leases under the Native Lands Trust Ordinance, 1930.

2. I should be obliged if you would now cause the Federation to be informed that I have carefully considered the representations contained in the telegram which was (2) transcribed in your despatch No.74 of the 11th February: that I do not

FURTHER ACTION.

(*801—150) Wt. 13951—47 10,000 6/37 T.S.
(*1632—150) Wt. 32179—71 20,000 44/37

not feel that there is any adequate ground for the apprehension that Indian traders holding yearly leases under the Native Lands Trust Ordinance have, in practice, any less security of tenure than they had under the Crown Lands Ordinance: and that I see no reason to intervene in the policy which is being pursued in this matter by the Kenya Government.

I have, etc.

(Signed) W. ORMSBY GORE

KENYA
No. 182.

GOVERNMENT HOUSE
NAIROBI
KENYA

4

29 March 1938.

Sir,

I have the honour to acknowledge the receipt of your telegram No.29 of the 18th March, concerning representations by the Federation of Indian Chambers of Commerce and Industry of Eastern Africa in regard to temporary occupation licences under the Crown Lands Ordinance (cap.140 of the Revised Edition) and leases under the Native Lands Trust Ordinance, 1930.

2. The usual form of Condition attached to the leases in question is to the effect that the grantee shall erect within a stated period, generally 3 months, a building or buildings to the approval of the District Commissioner or the Medical Officer of Health.

It is not possible to lay down standard specifications in this connection, since the type of building required must depend on the circumstances of each individual case. The state of development of the trading centre concerned, if any, must be taken into account, and the purpose of the relevant Condition is to secure the necessary measure of development and to ensure that the type of building is suitable from the health and sanitation point of view.

Generally a wood and iron building with a cement floor is required, but in outlying trading centres no insistence is made even on this low standard of construction being attained.

3./

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

3. In the absence of the receipt by this Government of any specific and detailed complaint in respect of any particular place or any particular lease, it is in the circumstances somewhat difficult to refute the general criticism that the conditions laid down relating to buildings to be erected on the plots are unduly onerous for annual leases which may not be renewed.

I am, however, satisfied that approval is not withheld in respect of any building which fulfils the essentials of development and health, having regard to all the circumstances of each individual case including the fact that the lease is for one year only in the first instance and thereafter is renewable from year to year.

I would add that a request by a grantee for renewal is refused only in exceptional circumstances and for good and sufficient reason, and in the event of the Local Land Board opposing renewal reference to the Central Board is necessary before such refusal can take effect.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

R Brooke-Popham

AIR CHIEF MARSHAL
GOVERNOR.

C. O.

Mr. Dawe. 15/3/38.
Mr.
Mr.
Sir H. Moore.
Sir G. Tomlinson.
X Sir C. Bottomley. 16.3.
Sir J. Shuckburgh.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Wait - all minutes taken [illegible]

DOWNING STREET.

March, 1938.

DRAFT.

KENYA.

NO.

Governor.

Sir,

I have etc. to acknowledge the receipt of your despatch No.74 (2) of the 11th February regarding the representations made by the Federation of Indian Chambers of Commerce and Industry of Eastern Africa on the subject of leases under the Native Lands Trust Ordinance, 1930.

2. I shall be obliged if you ~~would~~ will cause the Federation to be informed that I have carefully considered their representations: that I do not feel that there is any adequate ground for the apprehension that

FURTHER ACTION.

(7800—150) WL 12953—47 10,000 6/37 T.S. 696
(72206—150) WL 22452—36 10,000 9/37 T.S. 696

that Indian traders holding yearly leases under the Native Lands Trust Ordinance have, in practice, any less security of tenure than they had under the Crown Lands Ordinance: and that I see no reason to intervene in the policy which is being pursued in this matter by the Kenya Government.

~~2. I assume that you will keep a careful watch upon the manner in which the Local Native Councils exercise their powers in the granting of leases to Indian traders and that, if necessary, steps will be taken to ensure that these traders will be fairly treated and given no ground for reasonable complaint.~~

3. I note from pages 123, 128 and 130 of the transcript of the Legislative Council debate enclosed in your despatch that the spokesman for Indian interests stated that the conditions laid down relating to the buildings to be erected on the plots are unduly onerous ~~...~~

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.

DRAFT.

FURTHER ACTION.

for annual leases which may not be renewed. This criticism does not appear to have been dealt with in the replies made on behalf of Government and I should be obliged if you would furnish me with your observations upon it.

I have, etc.

(*Plot—250) Wt. 13052—47 10,000 6/57 T.S. 695
(*1204—250) Wt. 23452—56 10,000 9/57 T.S. 698

38355/38 Kenya

33

16

C. O.

Mr. Dawe. 18.3.38.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 18.3 at once

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

R 19 MAR

No. 19

Coded & sent 10.0pm 18/3/38

Amd. (4)

(2)

DRAFT. Code Telegram.

GOVERNOR,

NAIROBI.

X The air mail only takes 3 or 4 days.

Your despatch No. 74.

Leases for Indian traders. I note from pages 123, 128 and 130 of Legislative Council debate that spokesmen for Indian interests stated that conditions laid down relating to buildings to be erected on plots are unduly onerous for annual leases which may not be renewed. This criticism does not appear to have been dealt with in replies made on behalf of Government. I should be glad to have your observations on the point by mail.

FURTHER ACTION.

(*801—150) Wt. 13052—47 10,000 6/37 T.S. 696
(*1632—150) Wt. 32179—71 20,000 12/37 T.S. 696

KENYA
No. 74

GOVERNMENT HOUSE
NAIROBI
KENYA

217

// February 1938.

Sir,

I have the honour to refer to my telegram No.7 of the 29th January, forwarding representations by the Federation of Indian Chambers of Commerce and Industry of Eastern Africa in regard to temporary occupation licences under the Crown Lands Ordinance (cap.140 of the Revised Edition) and leases under the Native Lands Trust Ordinance, 1930. The telegram in question reads as follows:-

> "Following telegram is sent at request of Federation of Indian Chambers of Commerce and Industry of Eastern Africa Begins.
> Government taking proceedings against Indian traders at Isiolo and other trading centres in Native Reserves for reversion of trading and residential plots held on yearly temporary occupation licences under Crown Lands Ordinance and offer yearly leases under Native Land Trust Ordinance. Indian traders have carried on trades for nearly thirty years in places feeling more security tenure under Crown Lands Ordinance administered by British officers but yearly leases under Native Councils and Boards where one single native has vast powers of veto is considered to be no security at all and constitutes betrayal by British Administration of Indian traders who has settled down to trade in good faith relying on British administration all appeals to Government to grant thirty three years leases under Native Land Trust Ordinance have failed. Request instructions to local administration for issuing thirty three years leases in accordance with Native Land Trust Ordinance and recommendations of Carter Land Commission Report. Ends.
> Despatch follows recoverable."

2. Prior to 1930 plots in trading centres in Native Reserves were normally granted and held on Temporary Occupation licences on the terms indicated in sections 51-53 of the Crown Lands Ordinance. This procedure could, however, no longer be followed after the introduction/

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

KENYA
No. 74

GOVERNMENT HOUSE
NAIROBI
KENYA

2[17]

// February 1938.

Sir,

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> "Following telegram is sent at request of Federation of Indian Chambers of Commerce and Industry of Eastern Africa begins. Government taking proceedings against Indian traders at Isiolo and other trading centres in Native Reserves for reversion of trading and residential plots held on yearly temporary occupation licences under Crown Lands Ordinance and offer yearly leases under Native Land Trust Ordinance. Indian traders have carried on trades for nearly thirty years in places feeling more security tenure under Crown Lands Ordinance administered by British officers but yearly leases under Native Councils and Boards where one single native has vast powers of veto is considered to be no security at all and constitutes betrayal by British Administration of Indian traders who has settled down to trade in good faith relying on British Administration all appeals to Government to grant thirty three years leases under Native Land Trust Ordinance have failed. Request instructions to local administration for issuing thirty three years leases in accordance with Native Land Trust Ordinance and recommendations of Carter Land Commission Report. Ends.
> Despatch follows recoverable."

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

introduction of the Native Lands Trust Ordinance, 1936, which provides for the grant of leases but does not include provision for the issue of temporary occupation licences on the lines laid down by the Crown Lands Ordinance. Licences granted before the enactment of the Native Lands Trust Ordinance are, however, safeguarded under section 23 of that Ordinance until such time as they are terminated in accordance with the terms of such licences.

Under the Native Lands Trust Ordinance, a lease for one year, which may be renewed from year to year, is regarded as the equivalent of the temporary occupation licence under the Crown Lands Ordinance.

The position is that in townships in Native Reserves long leases up to 33 years can be granted in accordance with section 9(1) of the Native Lands Trust Ordinance and generally are granted when demanded. In trading centres, however, such leases are seldom demanded owing to the expense of survey and registration required in respect of leases for a longer period than 12 months (sections 40 - 41 of the Registration of Titles Ordinance, Cap. 142 of the Revised Edition). Moreover, section 23 of the Town Planning and Development Ordinance, 1931, prohibits the issue in trading centres of leases for longer than one year until a development plan has been prepared and approved. The preparation of a development plan entails survey and many trading centres in Native Reserves have not yet been surveyed.

3. It should be observed that there has been a tendency on the part of certain licensees to regard temporary occupation licences as conferring a greater security of tenure than they do in fact. Section 51(3) of the Crown Lands Ordinance lays down that, unless it is expressly provided otherwise, such licences shall continue for one year and thenceforward until the expiration of any three months' notice to quit, provided that such notice to quit may be served upon the licensee at any time after the expiration

of/

introduction of the Native Lands Trust Ordinance, 1936, which provides for the grant of leases but does not include provision for the issue of temporary occupation licences on the lines laid down by the Crown Lands Ordinance. Licences granted before the enactment of the Native Lands Trust Ordinance are, however, safeguarded under section 23 of that Ordinance until such time as they are terminated in accordance with the terms of such licences.

Under the Native Lands Trust Ordinance, a lease for one year, which may be renewed from year to year, is regarded as the equivalent of the temporary occupation licence under the Crown Lands Ordinance.

The position is that in townships in Native Reserves long leases up to 33 years can be granted in accordance with section 9(1) of the Native Lands Trust Ordinance and generally are granted when demanded. In trading centres, however, such leases are seldom demanded owing to the expense of survey and registration required in respect of leases for a longer period than 12 months (sections 40 - 41 of the Registration of Titles Ordinance, Cap. 142 of the Revised Edition). Moreover, section 23 of the Town Planning and Development Ordinance, 1931, prohibits the issue in trading centres of leases for longer than one year until a development plan has been prepared and approved. The preparation of a development plan entails survey and many trading centres in Native Reserves have not yet been surveyed.

3. It should be observed that there has been a tendency on the part of certain licensees to regard temporary occupation licences as conferring a greater security of tenure than they do in fact. Section 51(3) of the Crown Lands Ordinance lays down that, unless it is expressly provided otherwise, such licences shall continue for one year and thenceforward until the expiration of any three months' notice to quit, provided that such notice to quit may be served upon the licensee at any time after the expiration

of/

of nine months from the date of the licence.

4. The main point underlying the Federation's representations is the apprehension of the power given to Local Native Councils and Local Land Boards by the Native Lands Trust Ordinance, 1930. I consider, however, that the Federation exaggerate the effect of the powers of veto conferred on "one single native", since even if the Local Native Council or an African member of the Local Board objects to the grant of any particular lease, such objection can be overridden by the Central Board provided your approval is obtained.

5. A motion in connection with this subject was introduced by the Hon. Shamsud-Deen at the last session of the Legislative Council, and I enclose for your information an advance copy of the debate. I invite attention particularly to the statement by the Ag. Commissioner for Local Government, Lands and Settlement to the effect that it would be unwise in the development of many districts to fix lengthy periods of leases. Many factors may alter the whole situation subsequently, but when development reaches a sufficiently advanced stage then long leases may be granted.

6. In the circumstances I trust that you will see your way to authorize an intimation to the Federation that you have considered their representations but see no reason to intervene in the policy pursued by this Government.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

R Brooke-Popham

AIR CHIEF MARSHAL
GOVERNOR.

Wednesday 15th December, 1937 (Continued)

During the debate on the second reading various members mentioned the point about hunting by means of aeroplanes and motor cars, and new clause 28 (1) is an endeavour to prevent hunters either in an aeroplane spotting game or in a motor car chasing up to within 500 yards for the purpose of killing such game. Whether it will always be possible to see that this provision is carried out we are not prepared to say, we hope it will. At any rate, it will be a guide to sportsmen of what is expected of them in this country.

New clause 34 (1) clears up a question which has been worrying the public for some considerable time. Hon. members are aware of the case occurring at Nakuru where a settler shot some birds during the close season and was in due course convicted, and there was a great deal of discussion in the newspapers and elsewhere about it. We have now made it perfectly clear that one will be permitted to shoot these animals mentioned (they are actually birds) in schedule 5 of the Bill only when such animals are actually destroying crops. The old provision with regard to the shooting of other animals in the vicinity of your crops or animals wherever they may be, for the purposes of protection, remains. We hope that will clear up the point, and we have put in a provision to say that where anyone is obliged to shoot these animals for the protection of his crops he should report it at once to the nearest District Commissioner and the animals will be deemed to belong to Government. The object, of course, is to ensure that people do not have a shooting party under the pretence that they are protecting their crops.

New clause 37 (7) merely regulates what has been going on for some considerable time with regard to marked ivory. Why it did not appear in the law before I am not in a position to say, because there was a convention many years ago between the various nations that all ivory exported should be marked in a particular way. It has been done, but no provision appeared in the old law dealing with it, and we have now inserted it.

New clause 53 makes it discretionary on the Governor to refuse a licence to any person who has been convicted of offences against the game laws of this Colony or the neighbouring colonies. As the law stands at present if an unfortunate man happened to export some ivory without marking it, he would offend against the game laws, be fined Sh. 2.50 possibly or cautioned, and the Governor had no discretion to say that he would grant a licence. We have therefore made it discretionary.

Under clause 54, at the discretion of the Game Warden, it is permitted that half the fine in cases of conviction may go to the informer.

There are various minor details in the schedules which we have altered, but there is nothing of any importance, except that we have clarified the headings and deleted certain birds or animals which were in fact vermin and do not require protection.

MR. WALLACE seconded.

The question was put and carried.

THIRD READING

MR. HARRAGIN moved that the Bill be read a third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SHOP LEASES, NATIVE RESERVES

MR. SHAMSUD-DEEN: Your Excellency, I beg to move:—

"This Council is of the opinion that leases for shops, etc., in all trading centres in the native reserves should be granted to all non-natives for periods not exceeding 33 years but calculated according to the period equivalent to their residence in such native reserves prior to the passage of the Native Lands Trust Ordinance, 1930, and that the yearly licence system in vogue at present should not be applicable to any non-native who was present in the native reserve prior to the passage of the Native Lands Trust Ordinance."

I think that the justice and reasonableness of this motion are obvious, and it hardly requires any stress to be laid on the immediate necessity of some sort of

security of tenure being granted to the non-natives who are trading in native reserves.

At the present moment, the practice is that in substitution for the temporary occupation licences granted to these non-natives in reserves under the Crown Lands Ordinance, 1915, all these people are now offered a form of yearly lease under the Native Lands Trust Ordinance which is no more than merely a licence for a year. The form which they are asked to execute in place of the old temporary occupation licence is a peculiar sort of form which does not appear in the rules or the Native Lands Trust Ordinance, 1930, itself. It simply says—I have a copy of the form to which I shall refer presently in detail—that this form is liable to be renewed every year by the local native councils.

"Special conditions.—This grant shall be renewable annually at the discretion of the local board provided that reference be made to the Central Board in any case where the local board does not recommend renewal and subject to the fulfilment of the prescribed building conditions."

It adds:—

"If this grant is renewed the rent may be revised as often as the grant is renewed, and may be increased or decreased at the absolute discretion of the local board and, subject to the increase or decrease of rent the renewed grant shall be held on and be subject to the same terms and conditions as apply to this grant. The grantee undertakes that the buildings erected on plot shall be approved by the medical officer of health . . ."

and so on. It attaches several conditions not in the Ordinance or the rules.

Most of these people have been in the native reserves for as long as 30 years, before the passage of the Native Lands Trust Ordinance, 1930, and they have had renewed the temporary occupation licences granted by Government from year to year *ipso facto*, unless there were very special reasons for the cancellation of such licences. But to all intents and purposes they felt quite secure in erecting reasonably permanent buildings on such plots. It is a very drastic change in that the control of the administrative officers is now transferred to the local native councils. I do not wish to cast any reflection on those councils, but I submit it will be some generations before the responsibility of administration and justice to other communities is fully appreciated by their members. While the non-natives were granted temporary occupation and the licences were administered and controlled by British officers, they felt the security of the same nature as they would have on a long lease.

Unless there were some special circumstances, those temporary licences never had to be cancelled, but it is an entirely different thing when the renewal now from year to year is within the power of local native councils. These councils, as most hon. members realize, are in many cases actually competitors of the traders in native reserves, and it is but human nature that they should try to eliminate as much competition as is possible from the reserves. Besides, the members of the councils can easily be displeased over trivial matters, and the renewal of the yearly lease or licence can easily be refused.

These people have not only been carrying on trade in the native reserves for a very long period, from the very inception of British administration in this Colony, but they have made their homes there, and have their wives and children with them, and now that they are to be subjected to anomalies not in accordance with the law by a yearly lease is, to say the least of it, a most unjustifiable step. Moreover, conditions are attached for buildings and so forth. I do not think you can find anybody in this world foolish enough to erect any building of any description on such a slender lease renewed from year to year by a local native council.

According to the law, there is no such thing as a yearly lease. Section 7 of the Native Lands Trust Ordinance lays down the method by which application has to be made, and the only provision for a yearly licence is under section 8 (1) (*b*), which says:—

"Subject to the provisions of the last preceding section, it shall be lawful for

the Governor in Council, with the advice and consent of the Central Board—

(b) to grant licences to and to enter into contracts with persons not being members of the tribe for which the land has been set aside relating to—

(i) the grazing of cattle in a native reserve;

(ii) the removal of timber or other forest produce from a native reserve;

(iii) the taking of sand, lime, stone and other common minerals (excluding salt) from a native reserve;

for periods not exceeding twelve months at any one time."

That is only for those three purposes that the law contemplates the granting of a licence for a period not exceeding one year, but to all intents and purposes the law provides that leases shall issue for periods up to 33 years.

Section 9 says:—

"Leases under section 8 of this Ordinance may be for any period not exceeding thirty-three years and shall be granted for such period and subject to such terms and conditions as may be prescribed by rules made under this Ordinance, provided, however, that in exceptional cases with the prior consent of the Secretary of State leases may be granted for a longer period which shall not in any event exceed ninety-nine years."

That gives Government not only very wide powers but is also an indication of the intention of those who made this law, that it is only fair that non-natives should be given a lease up to 33 years in ordinary cases. As I have submitted, one year's lease renewable by a local native council is no security at all.

Section 23 of the same Ordinance says:—

"Nothing in this Ordinance contained shall be deemed to affect the validity of any title to land within the area of a native reserve granted before the commencement of this Ordinance, and all such titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance under which such titles were granted as if this Ordinance had not been enacted:

Provided, however, that all land comprised in any such title shall be deemed to be included in the native reserve in which it is geographically situated, and all rents accruing therefrom shall be paid in the manner provided for in section 8 (3) of this Ordinance."

That shows that whatever title a man may have, it may be only a temporary occupation licence under the Crown Lands Ordinance, 1915, they are not affected by the passage of this Ordinance at all. All that is necessary is that any rent payable should go to the local native council.

I have carefully drafted this motion so that it is not a sort of sweeping instruction, but I have said in it that these people, who were trading in the reserves before the passage of the Native Lands Trust Ordinance, should at least be granted leases for the term of years they were in the reserves before the passage of that Ordinance. A man who has lived there for 3, 4, or 5 years prior to the passage of the Ordinance should be granted a lease for a corresponding period, but if he were there for 30 years, when the whole Colony was opened up to civilisation, and they worked under conditions which required the recognition of Government, it is only fair that they should be granted a licence for 33 years or whatever the period is that he has been there.

Hon. members will note that this is by no means a motion based on any racial considerations: it refers to all non-natives, and equity and justice require that the intention of the law should be carried into practice. All those people who have sat down there in good faith and justice from the British administration, should not now be transferred and subject to what I might call the idiosyncrasies of local native councils which have vast powers now.

I will not take up the time of Council by referring extensively to the Kenya Land Commission Report, which strongly deprecated such powers and details in such matters being always referred to local native councils. The Commission

considered it was really a sort of admission of weakness on the part of the British administration to transfer their control to the natives, especially in respect of the non-native population. Your Excellency knows, by now especially, that the Indian community who are denied all opportunity of taking any advantage in the development of the land, at any rate in the highlands, and are restricted to trading, and if their condition of trading is to be reduced in such a manner that from year to year they have to be at the mercy of local native councils, I submit it is a very drastic change which creates a sense of insecurity in the minds of the people who have been for such a long time trading in the reserves.

The Land Commission report lays stress on such very clear powers being given to the African members of local boards, and they condemn such a procedure. The power given to the African members is such that I do not think any European or Indian on any local board or authority has such power at all.

Section 7 of the Native Lands Trust Ordinance lays down the procedure for granting licences, and in the proviso says:—

> "Provided that in no case shall any lease or licence be granted which is objected to by the local native council or by any African member of the local board concerned without the prior approval of the Secretary of State."

That gives such a member vast power to turn down an application, and all that is necessary is for one single African member to object and Your Excellency can do nothing in this matter and must refer it to the Secretary of State for the Colonies. A careful study of the Ordinance will show anybody that it was never the intention of the law that such small matters should be referred to local native councils.

Rule 13 says:—

> "In cases where land in a native reserve has been occupied in good faith by non-natives with the consent of the natives concerned and of the Government before the making of these rules, the Chief Native Commissioner on the recommendation of the local native council concerned and of the local board may authorize the issue of a lease under these rules.
>
> 14. Subject to the provisions of the Native Lands Trust Ordinance, 1930, licences shall be in such form as may be from time to time approved by the Central Board."

I therefore submit that it is ridiculous, when a particular area has been set aside for the purpose of a trading centre or a railway siding, that application should have to be made every time to a local native council, and all this procedure and troublesome routine should have to be gone through. At the present moment, all that is really necessary, if a person wants to apply for a piece of land for erecting a go-down on the railway siding, shall be that he applies to the General Manager and an intimation is also sent to the district commissioner for the purpose of the rent being paid to the local native council. No other reference need be made to any local native council or any local board or any person at all, because that area is already set aside for the purpose of the railway, etc. But the present practice is that if anyone has to apply for a small plot of land it takes months, in some cases years, before the application is passed through the local native council and the boards concerned. The same thing applies to trading centres. Where they have been set aside and used for the exclusive purpose of trading and public service, there is no need for these details to be referred to local native councils or boards, because Rule 9 of the Ordinance gives the provincial commissioner power to grant leases.

I have had representations made to me by almost every trader in the native reserves. They say that if they are going to be subject to these yearly renewals of licences by local native councils instead of temporary occupation licences granted them under the Crown Lands Ordinance, 1915, they consider it is a matter of very grave injustice, and there is no security for them at all, and they will seriously have to consider whether under these circumstances it is advisable for them to continue and remain and carry on business as traders.

I hope my colleagues and the unofficial European members of this Council will

realize that there are no racial considerations involved in this motion at all, and that I have simply set out the injustice of a new and novel practice that allows this to be inflicted on non-native people in the reserves. If a free vote were allowed to the unofficial members, I am quite sure that a number of them would also be in favour of the motion. I hope, for the last time in the life of this Council, that I shall have the support of some of the European unofficial members, especially as the motion applies equally to all non-natives and there is no racial question involved.

MR. ISHER DASS seconded.

COL. KIRKWOOD: Your Excellency, I rise to oppose this motion. I think it is a most drastic suggestion, and there has been nothing said by the hon. mover to justify an alteration in the Native Lands Trust Ordinance as suggested by this motion. It also claims vested interests in the licences held by non-natives in the native reserves now and prior to the Ordinance being brought into force.

The general principle of all trading licences is on the basis of 12 months in and out of the reserves. I fail to see what justification there is for an alteration in that principle. It is also going to take a profit away from Government if licences are granted on the basis suggested in the motion, and Government would be failing in its duty not only to the natives but to the Colony in general if they accepted the motion in any shape or form.

ACTING COMMISSIONER FOR LOCAL GOVERNMENT (MR. MORTIMER): Your Excellency, as hon. members are aware, the control of leasing of land in native reserves is governed by the Native Lands Trust Ordinance. The provisions of that Ordinance vest the power in Your Excellency to grant such leases with the advice and consent of the Central Lands Trust Board. No delegation of the powers conferred by that Ordinance and no restriction of the unfettered right of the Governor and members of the board could, of course, be effected without some amending legislation.

The new Native Lands Trust Ordinance which is intended to supersede the present one is in draft now and will shortly be published for comment and criticism, but it is not proposed in that new Ordinance to introduce any measures which would in any way restrict the power of the Governor and the Central Lands Trust Board in the matter of granting leases in native reserves.

The acceptance of this motion as drafted and placed before this Council would require that leases for 33 years or for some shorter or longer period, according to some rather obscure calculation, should be granted to all non-natives who happened to be residing in a native reserve before 1930 in whatever capacity, whether as shopkeepers, clerks, shop assistants, mechanics, itinerant traders, or what not, and that they should be granted leases in some trading centre, not necessarily the one in which they were previously living. Of course, that would be absurd, and is not at all what the hon. mover of the motion intended.

I do not wish, therefore, to make any capital out of the somewhat loose wording of the motion, but rather to deal with the intention of the motion as explained by its mover.

One can have a good deal of sympathy with the desire of the Indian and other non-native traders in native reserves in wishing to have some security of tenure, some reasonable security. It comes as rather a surprise, however, to learn that the temporary occupation licences issued under the Crown Lands Ordinance are regarded by traders as being equivalent to perpetual leases, for these licences expressly state that they are subject to termination at three months' notice at any time. In that respect therefore they differ not at all from the yearly leases which are at present issued in native reserves.

The hon. mover seemed to suggest that the yearly leases were illegal. That, of course, is not the case. He himself quoted from the relevant section of the Ordinance, section 9, which states that leases in native reserves may be for any period up to 33 years and may be subject to such rules and conditions and terms as may be prescribed. Therefore, there is nothing illegal in the form of the yearly leases

which is now being used. The form of the lease has to be prescribed by rule.

In one other small matter the hon. mover was in error when he stated that every single application for a lease in a trading centre in a native reserve had to be referred to the local native council and the local land board and the natives concerned. Rule 10 of the Native Lands Trust Ordinance, 1930, lays it down expressly that—

> "When any area has been duly approved and set apart by the Central Board for the purpose of a trading centre it shall be marked out into plots in such manner as the district commissioner (subject to the directions of the provincial commissioner) may direct, and in such case it shall not be necessary to obtain the further sanction of the natives concerned to the grant of any individual lease or licence in respect of a plot situate in such area."

In the present form of yearly lease now in use in trading centres, reference is made not to a local native council when renewal takes place but to a local board, which is a very different body.

To deal with the general principle of whether it is right and proper to grant long leases for all plots in trading centres in native reserves, I would refer first of all to the very wise provision of the Town Planning and Development Ordinance, which provides that no building leases for longer periods than one year shall be granted except in accordance with statutory town planning schemes or approved development plans. There have been too many mistakes made in the past in permitting small townships to develop on permanent lines, without sufficient regard for future requirements, to permit this wise principle to be departed from lightly.

Then, again, leases for longer periods than one year require that the piece of land shall be rigorously surveyed, and that, of course, is a rather expensive matter. When one thinks of the cost of the survey of the individual plot and the cost of taking out the title, having it registered and stamped, as compared with the very small cost of taking out the present form of yearly lease, I am surprised to learn that many traders in native reserve trading centres desire a change to a form of long lease. Probably they have not counted the cost. There is so far no general evidence of a real demand for such a change.

Further, I would say there has been no evidence of any real hardship or general grievance. There have been two or three cases, I know, where claims have been made that the traders have been treated arbitrarily and unjustly. Those cases have been considered on their merits, and will in future be considered with a due regard to what is reasonably right and just.

Trading centres are usually small and somewhat unimportant, and of a temporary nature. I submit that it is unwise in the early stages of the development of a district to fix for any lengthy period the focal points of trade in those districts. Changes may take place, changes in policy, changes in the type of crops grown by the natives, the establishment of a ginnery or wattle bark factory may alter the whole situation in a very short time, and so render abortive the provision already made of permanent leases. Because of the impermanence and relative smallness of the great majority of trading centres in native reserves, the expense of preparing development plans and of the subsequent survey of individual plots is not justified.

It was in view of these considerations that the Central Lands Trust Board adopted the principle that leases in trading centres should be, in general, for longer periods than one year. As an individual trading centre grows in importance and size and as its permanence appears to be reasonably assured, then consideration will be given to the raising of the status of that particular trading centre to that of a Class B township. Subsequently, when opportunity offers and survey staff is available, the preparation of a development plan will proceed and plots will be marked out and surveyed, and will be available for long leases. In the meantime, with the great majority of trading centres in native reserves, no such action appears to be at present justified.

I regret, therefore, that the motion cannot be accepted by Government.

MR. PANDYA: Your Excellency, it appears that the main issue which is the subject of this motion has not been properly understood from the debate which I have heard so far. I find that the real intention for which the motion has been moved has not been realized by the hon. the Acting Commissioner for Local Government, but before I begin my speech I should like to refer to one point made by the hon. member for Trans Nzoia, who opposed the motion.

I do not know whether he paid any attention to the speech of the hon. mover, but he referred to the trading licences which were being issued in the native reserves and outside native reserves for a period of twelve months. This motion has nothing to do with trading licences; it is purely and simply a motion dealing with plots on temporary occupation licences, and the hon. Member for Trans Nzoia is completely opposed to a thing which he does not understand. (Laughter.)

With regard to one or two points made by the hon. the Acting Commissioner for Local Government, I think the main issue —I would not say has been temporarily forgotten or has not been replied to, but the hon. member, I think inadvertently, has not dealt with the main issue. The issue is, what has happened since this Native Lands Trust Ordinance was passed in 1930, and what are the reasons for the change in the policy of Government in regard to the issue of these temporary occupation licences?

So far, those licences have always been issued by administrative officers, and I think the hon. mover made it quite clear that he had no objection to that procedure. Therefore, when the hon. the Commissioner for Local Government went into details with regard to long leases not being, in certain cases, in the interests of the traders, that did not come into the picture at all. The point is, what has happened? Why have these temporary occupation licences got to be referred to local native councils?

The case is made out here that, according to the Ordinance, the Governor in Council declares a trading centre, and afterwards the licences are automatically issued by the administrative officer. If this principle is applied, why then in certain cases is reference made to the local native council? I think that is the real issue. If that reference is only made in instances where trading centres have not been declared, I think the obvious course is for Government to declare that area as a trading centre.

Those are the only two issues on which the case is based, and this also brings in the general principle that, in matters of administration concerning non-natives as to trading and other things, what authority is being transferred to local native councils? This is one instance; there are a number of other instances, but this is one in which the local native councils have come into the picture, and it has not been explained what happens if that authority refuses a temporary occupation licence the next year.

The hon. the Acting Commissioner for Local Government said that it was in the interests of the traders themselves that they should have temporary occupation licences, but then there are conditions attached which the hon. mover explained, and if you wish to attach conditions which necessitate that the building should be of a more or less permanent nature, where is the safeguard of the temporary nature? The objection is this. On the one side you are insisting on certain conditions being fulfilled, on the other side you are giving them temporary occupation licences which may not be renewed the next year.

The difference was, I think, made clear by the hon. mover that the traders would be absolutely happy to carry on with the administrative system of temporary occupation licences. They consider it is quite safe to assume that they would be automatically renewed, but that safety is not in existence when the local native councils are brought into the picture. That is the whole issue.

Before the Native Lands Trust Ordinance was passed, in very many instances it was made clear to us that, as that Ordinance was passed, 33 years' leases would be issued. In many instances, I suppose, they have been so issued, and there is no question of this principle applying everywhere in the same way. But this motion only applies to small centres

where the issue of 33 years' leases has been refused and the power has been delegated to local native councils.

Council adjourned for the usual interval.

On resuming:

ARCHDEACON BURNS: I have very little to say on this motion, because all that I would have said has been more ably stated by the Commissioner for Local Government, Lands and Settlement. But I would remind the mover of this motion that trading centres are in the reserves and they have been excluded from the native reserves as such. They are not like townships or anything like that. Though we oppose a long lease if there is any reason for doing so, they are in their rights to make application to the Central Lands Trust Board for a longer lease than one year, and they could get it if the Central Lands Trust Board is backed up by the Local Lands Board and the Native Councils. There they have the way open to them of getting a longer lease.

Then there is one other point I would briefly touch upon. Supposing such a lease was given and for some reason a change of crop caused the shifting of the population. That centre would cease to be a trading centre for the man who had got a 33 years' lease and who had put up a permanent building on the land. I presume he would expect to get some compensation for the money that he had expended in putting up that building. Who would be responsible for the paying of the money that he had expended in that way?

I think the natives have a right to have a say in the disposal of the sites in their reserve. They are not the only authority, for they have as president the administrative officer of the district who would see that no injustice was done to the man who had been there for a long period of years and whose character and conduct were such that they desired to have his application considered. The natives cannot have it all their own way.

They cannot disregard an application for land as long as the president presiding over the meeting thought otherwise. So that I do think that those who require a longer lease should have the door open to them by making application to the Central Lands Trust Board, and in that way everything be done in order, when it may be thought feasible for them to get a longer lease.

We are trying to teach the native to do things justly and rightly, and I do hope the hon. mover will not think that it is unjust to give them some say in the disposal of the sites in their reserves.

MR. HOSKING: Your Excellency, I think that all the points were so ably covered by my hon. colleague that I risk being tedious in a twice-told tale by repeating what he has already said, but I would again draw the attention of the hon. member Mr. Pandya to Rule 10 under the Native Lands Trust Ordinance:

> "When any area has been duly approved and set apart by the Central Board for the purpose of a trading centre it shall be marked out into plots in such manner as the district commissioner (subject to the directions of the provincial commissioner) may direct, and in such case it shall not be necessary to obtain the further sanction of the natives concerned to the grant of any individual lease or licence in respect of a plot situate in such area."

And in the form of the lease are special conditions. The first one is that this grant shall be renewable only at the discretion of the local board, not the local native council. I think the hon. member Mr. Pandya is under a misapprehension on that point:—

> "Provided that reference be made to the Central Board in any case where the local board does not recommend renewal and subject to the fulfilment of the prescribed building conditions."

I think the hon. member will agree that all precautions necessary are in the actual form of the lease.

I have nothing to add to what my hon. colleague has already said, and I think any misapprehension has been cleared up.

MR. SHAMSUD-DEEN: Your Excellency, there does seem a certain amount of misunderstanding in the minds of unofficial members! If what the hon. the Chief Native Commissioner said just now is really the intention of Government to

be carried into practice, I have nothing further to say, but my point is that Rule 10 is being disregarded. What that rule says is what I am saying. Why refer to either the local board or any native authority at all?

If you read a further rule, all these trading centres which were there before the passing of the Ordinance have been set aside for the purpose of trading centres. Then why refer to native authorities at all? I can quite see the justification for reference to native boards and other councils of any new applications, but these people of whom I am speaking have resided in these particular places for 30 years, and it has taken Government a long time to make up their minds whether they are to be township centres or trading centres or not. There is a possibility of their being changed into anything by a stroke of the pen, which is all the more reason why people who have been there for such a long time should be given some sort of security.

As regards local native councils not appearing in the licences, I will only make reference to the fact that in Rule 17 it is contemplated that the Central Board or a local board may refer to a local native council, so that the local native councils do come in. Even the constitution of the local board provides that whenever necessary and whenever there is a native capable of speaking English or understanding it, the Governor can co-opt him in order to get a native member on such board. When the native is co-opted, if he votes against anything, the Governor of the Colony and everybody have no power.

As regards the difficulties of future development coming in the way of such long leases, I submit a very simple clause can solve the difficulty, one similar to that inserted in all leases, that where it is necessary for the purposes of the railway, telegraphs, or any other purpose land can be acquired. Its absence is no excuse at all. If the development of the country is going to be indefinitely held up for want of a decision or determination on the part of Government or native authorities, I submit that it is really intentionally holding up development.

Then, again, the hon. the Acting Commissioner for Local Government has expressed a doubt as to whether there is a popular demand for long leases or dissatisfaction with the present system now being varied. I submit that that would form a very proper subject for an inquiry, and if an assurance to that effect could be given me by Government I would withdraw the motion. But I think Your Excellency will see that at the present moment, where a drastic change is proposed to be made, it is only fair that all those concerned should be consulted and their views ascertained.

I admit that my motion could perhaps have been worded more concisely and precisely, but I never meant it to imply that anybody who lived in a native reserve in one place could go anywhere and ask for a lease of a new plot. I do not want the indiscriminate issuing of long leases, and I am only pleading for those people who have remained in a particular part of a native reserve continuously for 33 years, that they should at least be granted a further lease for a corresponding period.

As far as town planning conditions are concerned, even a 99 years' lease does not come in there. Take the case of the Indian Bazaar, Nairobi, all the people had 99 years' leases, and now they are being called on to erect particular kinds of buildings or conform to the laws of the local authority, and they have to carry them into effect. That is no reason, however, for holding up the security of tenure of these people.

I would only ask those hon. members who have expressed their opinion that yearly leases are quite reasonable, to put themselves in the same position, and consider what they would feel if, after thirty years' residence in a particular native reserve, they were offered a yearly lease on conditions to build. What would their feelings be?

As regards the provision in the Ordinance that leases may be issued for any period, I submit that if it is carried to its logical conclusion there is nothing to prevent Government saying six months or one month, but the minimum period of one year contemplated in this law is for a licence and not for a lease. I submit it is only fair that the Ordinance should be read as a whole and its intention put into practice.

I submit, in answer to hon. members who have said the present practice can continue, that it is a contravention of the law, inasmuch as section 23 says: —

"Nothing in this Ordinance contained shall be deemed to affect the validity of any title to land within the area of a native reserve granted before the commencement of this Ordinance, and all such titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance."

If there has been any contravention of this section, unless something new has happened, I submit that that contravention is illegal.

I can quite see the point made by the hon. the Acting Commissioner for Local Government that all land in native reserves should be controlled by the native authorities. That is explained in the law. But it is to the contrary as far as land previously held is concerned, and while all rents should be paid to the revenues of local native councils there should be no other control in their hands. But any new applications for leases should be dealt with as it has been proposed.

I again lay emphasis on this matter, that if there is any doubt as regards the desire of the non-native people in the reserves not to be transferred from one system to another, an inquiry should be held. As regards the survey, I am quite certain these people in the native reserves would rather go to the extent of paying the survey fees in order to get a safeguard and prefer to have a longer lease than the present system of what is nothing more than a yearly licence. There is a provision in the law that where the boundaries of a plot are too well known the requirements of a survey could be dispensed with, but even if Government insist on a proper survey, I think all those people would be only too pleased to pay the survey fees, but they must have some security of title than is given them at the present time.

DR. DE SOUSA: On a point of order, Your Excellency, according to Standing Rule and Order No. 26 all motions of which due notice has been given the Clerk to Council should be laid on the table for one day. Is it in order to discuss this motion?

MR. HARRAGIN: I understand that notice of motion was given on the 12th August.

MR. SHAMSUD-DEEN: On a point of explanation, I think it did appear in the Order of the Day on that date, but I was not aware the motion was coming up this morning, otherwise I would have come better prepared to speak to it.

MR. HARRAGIN: On a matter of explanation, Sir, there is no difficulty about this motion at all. Notice of motion was given a considerable time ago, and this was a convenient day when Your Excellency decided the motion would be debated. Admittedly we cannot debate a motion on the same day that notice is given, but it can be debated at any time afterwards, after twenty-four hours.

DR. DE SOUSA: Notice of motion was not given during this session.

The question was put and negatived.

MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) BILL

IN COMMITTEE

MR. HARRAGIN moved that the Council do resume in committee of the whole Council the consideration, clause by clause, of the Medical Practitioners and Dentists (Amendment) Bill.

MR. WALLACE seconded.

The question was put and carried.

Council went into committee.

His Excellency moved into the chair.

Clause 2

MR. HARRAGIN: Your Excellency, I beg to move that clause 2 of the Bill be amended by deleting lines 4 to 13 and by substituting therefor: —

"7A. For the purposes of this Ordinance, the practice of dentistry shall be deemed to include the performance of any such operation and the giving of any such treatment, advice or attendance as is usually performed or given by dentists, and any person who performs any operation or gives any treatment, advice, or attendance on or to any person as preparatory to or for the purpose of or in connexion with the

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19
END

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 29th. January, 1938. Received 1.7 p.m. 29th. January.

No.7.

Following telegram is sent at the request of the Federated ~~Malay States~~ of Indian Chamber of Commerce and Industry of Eastern Africans begins. Government taking proceedings against Indian trade at Isiolo and other trade centres in native reserves for reversion of trade and residential plots held on yearly temporary occupation licence under Crown Land Ordinance and offer yearly lease under Native Land Trust Ordinance. Indian traders have carried on trade for nearly 30 years in the place feeling more security of tenure under the Crown Land Ordinance administered by British Officers but yearly leases under Native Council and Board where one single native has vast powers of veto is considered to be of no security at all and constitutes betrayal by the British Administration of the Indian traders who had settled down to trade in good faith relying upon British Administration all appeals to the Government to grant 33 years lease under the Native Land Trust Ordinance have failed. Request instructions to local administration for issuing 33 years lease in accordance with the Native Land Trust Ordinance and recommendations of the Carter Land Commission Report. Ends. Despatch follows. Recoverable.