1930. Kenya. 1A

No. 16333

SUBJECT CO533/403

Native Rights on Land & Outside Reserves.

Previous

see 16114/30.
16096/30.
16078/30.

Subsequent

see 17083/31.
17312/31

FILE C.

(1610) Wt.22180/234 8,000—8/41 N.P.Co. G.682/10

18

These extracts taken from 16166/30. E.A.Power &Lighting Co. (Maragua-Tana)

1. Extract from Comments by the Attorney General of Kenya on the Report of the Tribunal appointed to enquire into the Maragua-Tana Electric PowerScheme and extract from minutes on the above.

For Petition

2. EXTRACT FROM PETITION FROM JOHNSTONE KENYATTA DATED 14th FEB. 1929

3. Extract from Kenya. Confd. Despatch No. 145 dated 14th. November, 29. (No.29.on 15540/A/29)

4. Extract from C.O.letter to Kenyatta, dated 2nd. January, 30. (No. 30.on 15540/A/29)

5. Extract from Confd. Despatch to the Gov. of Kenya dated 2nd. January, 30. (No.32. on 15540/A/29).

6. Extract from letter from Kenyatta to the S.of.S. dated 15th. April, 30. (No.7. on 16010/A/30.)

7. Despatch to Gov. No. 347. dated 6th. May, 30. (nO.9. on 16010/A/30.

8. Extract from Kenya. Confd. Despatch No. 106, dated 4th. July, 30. (nO. 16. on 16010/A/30.

9. Memorandum by. Mr. Eastwood.

This has been re-circulated for consen. of No.16. The latter has been here for some months, but the file has previously been circ. in other matters.

It contains, in effect, the Governor's comments on the further representations made by Kenyatta in No. 7. In the despatch forwarding this to the Governor, the Secretary of States siad that he would welcome, for his own information any comments which he might have to make on this letter.

It is not, I think, necessary to pursue any of these matters further, except possibly the question of alienation of land. In the long letter which was sent to Kenyatta on the 2nd. of January, (No.30.on 15540/A/29) he was told that enquiries would be made as to this matter, and further consideration given to it.(para.3. (ii) (g)). I attach a separate note on the point. If it is to be pursued it could perhaps more conveniently be done on another file.

I

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*

I

@ A further search has failed.
? H.V.P.
Yes.

I note, incidentally, that our only copy of @ Kenyatta's long original petition, which was originally in the jacket below No. 10. on 15540/A/29. had disappeared. If it cannot be found anywhere I think we should ask Kenya (s.e.) to send us a copy. We sent them two spares in No. 19 on 15540/A/29.

(sgd.) C.G.Eastwood.
10-10-30.

X Yes - it might be linked up with the new file as to land suggested on the Maragua pp.

(sgd.) H.T.Allen.
16-10-30.

Sir. C.Bottomley

This all arises out of Kenyatta's reply to the S.of.S's reply to the K.C.A. petitions. It was clearly desirable to send the reply from Kenyatta to the Governor for consideration, and this was done. No. 8. shows what was said to Kenyatta, and I agree that a further reply to the K.C.A. through the O.A.G. on all these points is not now called for.

But the land question presents special features, and Mr. Eastwood's note with revelant extracts from the correspondence might be registered on the file suggested by Mr. Allen: it will be convenient to have complete extracts as well as the summary in the note - except that for the moment we cannot get an extract from the original petition which is missing.

(sgd.) A.C.C.Parkinson.
23-10-30.

Yes. And when the new file is ready it should go forward for decision as to whether any attempt should be made to redress this old wrong. I say " old " because my impression is that it dates from 1904 or so - we do not seem to have been given the date.

I attach more importance to the suggested enquiry whether there are now any Ithaka rights on land deemed to be available for alienation.

(intld) W.C.B.
24.10.30.
at once.

10. Extracts from the Annual Report on the Kikuyu Province for 1929. (No.2 on 16309/H/30.)
11. Extract from memorandum by the Attorney General of Kenya regarding the Maragua-Tana scheme. (No.8 on 16166/30)
12. Extract from record of a discussion with Canon Leakey (No. 1.on 17083/31.)

13. Memorandum

Mr [illegible]

Mr Eastwood has prepared a long memorandum in No 13 - after discussion, he & I have drafted a despatch for consn in order to crystallise & show exactly what we think might now be said. It is a comprehensive desp. & you need not concern yourself with the greater part of it; but before we send it forward, we want you to

consider the part which imports legal considerations - i.e. paragraphs 9 to the end. Apart from the dft desp., all you will want I think is the Maragua-Tana enquiry, the relevant part of which is tabbed as a paper in this file - see No. 11.

A.C. Parkinson
17.4.37

× paras 11 & 16. Subject to one point of drafting × which we discussed - I agree.

H.B.
18/4/37

Dft. amended as suggested by Mr. Bushe in the 2 sentences concerned. A.C.C.P.

This is a very useful memorandum which Mr. Eastwood has succeeded in compiling. But when it came to me, I felt there was a risk if we continued to minute at length, lest we should be overwhelmed with matter, and so it seemed best that the Department should crystallise into the precise terms of ~~and~~ a draft despatch exactly what they thought should be said at this stage on the subject. Mr. Eastwood and I have therefore collaborated to produce the accompanying draft despatch which is, of course, entirely for consideration.

(2) The draft, I hope, will be found a convenient self-contained and self-explanatory document; and I suggest that it is comprehensive - one point only (see paragraph 6 below) being omitted which in view of minutes written at various times recently on our files might have been included. The draft has been submitted to Mr. Bushe to examine from the legal point of view: he has agreed with it subject to two small drafting alterations which have now been incorporated.

(3) We feel that if this important subject is to be adequately dealt with, the only way will be to have a special commission of enquiry (not a Royal Commission, but a Commission appointed by the Governor of Kenya) as suggested in the despatch. We need not now go into the question of personnel, but it seems clear that the Chairman should be brought in from outside Kenya, and that there will have to be one or more unofficial members as well as one or more official members.

Mr. Bushe suggests that when we want a Chairman, there is a C.O. officer known to him (lately retired) who could be considered. A.C.C.P.

(4) It may be said, especially as the proposed High Commissioner for East Africa is to be Chairman of the Kenya Native Lands Trust Board, that an enquiry of this kind should be conducted by the High Commissioner. But (a) there is no High Commissioner and may never be one (b) even if there were, the High Commissioner could not himself do what will be required of the Commission. There seems no point therefore in waiting for a High Commissioner to take this up.

(5) It is not imagined by the Department that the proposed enquiry will commend itself easily to the unofficial element in Kenya, who - so far as concerns

concerns land for the natives - will probably maintain that the reserves now gazetted are quite adequate both for present needs and for such future needs as can be foreseen. I do not argue the point here; it is covered by the draft despatch; although of course there is no reference in the draft to the anticipation of such objection by the unofficials.

(6) The one point which has been deliberately omitted is the question of amending the Crown Lands Ordinance (see minutes of 14.3.30 - 19.3.30 in X.16078/30) so as to substitute a shorter period than 999 years for agricultural leases. There was a long and difficult controversy over this when Lord Harcourt was Secretary of State, and it was only after much pressure that having refused freehold he acquiesced in the 999 years lease with revision of rent at fixed intervals as an alternative to the 99 years lease which he had asked for. We feel that if a proposal to review that is included in this despatch, there would be an immediate storm of indignation among the white settlers and any chance of reasonable reception of the proposed enquiry in Kenya would be wrecked. We would suggest that, for the time being at any rate, this contentious question should be allowed to remain in abeyance, and that when it is taken up, that should be done at a more convenient season by way of a separate despatch or possibly the point might quietly "arise" in connection with the enquiry now proposed or on a consideration of the Commission's findings. It is hoped therefore that the Secretary of State will not wish to press for any reference to this particular question in the present despatch

R.C. Parkinson
21.4.31

Sir S. Wilson.

I agree, - as I pointed out on X 16078/30, it would be regarded as a definite attempt to [illegible] Kenya from a settlers' to a planters' country. Time will show which it really is.

In the last paragraph but one of paragraph 6 of the draft, attention is drawn to the necessity for considering on what tenure individual native holdings outside the reserves should be held. I agree that it is not desirable to go into details now, but the matter will have to come up eventually. It should, I think, be a European tenure of some sort (rather than the certificate of occupation given in Tanganyika), and for my part I should see no objection to the African having the 999 years' tenure with revision of rent, so long as the European has that tenure.

The draft deals well and comprehensively on the whole subject, and I have no alteration to suggest.

S.W. 23.4.31

Sec of State (through Dr Shiels)
I have no observations to offer
24.4.31. [illegible]

This is an excellent draft. I have suggested some small additions which I think help to elucidate the points made, without affecting the drift of the argument.

In page 2 of the draft I have queried the suggestion of freehold alienation. I know this is a difficult point, and I think it is clear that we could not have leasehold for natives and freehold for non-natives. But I hold strongly that Crown ownership should be maintained, even though the leases required to be 99 years. I do not press for the exclusion of the phrase from the draft, as we are not committed, but, if we have made up our minds for leasehold, it would be better out. If not, we should consider the matter carefully before our ultimate decision requires to be made.

I feel that we have suggested to the Kenya Govt a programme of work which is very heavy. So far as I can gather, the ordinary routine work of the Colony is more than sufficient for the present staff. I would like to suggest - in view of the fact that this work is to a large extent rendered necessary by the mistakes of past Govts, and also with a view to preventing its dragging on for years - that we intimate our willingness to agree to an additional officer or officers - preferably with legal equipment, being added to the Kenya staff to give whole-time service in this work. TDS. 25.4.31.

An excellent piece of work! Dr Shiels' suggestion as to staff might be conveyed to the Governor privately: the letter would give opportunity for suitable words to accompany the despatch. P 27/4

[illegible] 27/4

30|10|
8 0 APR 1931

Spare copies at back of file

1 [illegible] To Gov. Conf. — Cons.
(w/ S. Rhod. Land Comm. Report, 1925 and S. Rhod. Land Apportionment Act 1930)

[illegible]

15 Extract from minutes on No. 14.

16 To Sir J. Byrne S/o 30 April

17, 17A, 17B } Reservation of the 'highlands' for Europeans.

Mr C. Boltwood

Private correspondence between the S of S and Sir H. Leggett: attached. You will remember my speaking to you when the letter of 14th June arrived, although we had v. little time & the note numbered 17 had to be put up v. hurriedly. I have now added a note numbered 17A as the result of further search & I also attach the Record of evidence in the

Not registered: it was handed to me by the S of S for consideration
This correspondence 18-20 may be registered
[illegible] 29/6/31

16 June → 17 B – see

Qs 7900 to 8036

I am not sure whether the S of S. wishes to reply to Sir H. Leggett's further letter of 16 June. It does not seem desirable to enter into a detailed discussion with him, more particularly as the question of defining the Highlands is now before the Gov. officially, see para 9 of No. 17. The S of S. feels satisfied, I think, that the Elgin declaration, though only Indians were named, must in the circumstances be held to be of general application: and, as stated in para 8 of No 17, the Native Policy memorandum itself (No. 11) must be read as accepting that interpretation. If there ever had been a more restricted interpretation, it is now too late, & Sir H. Leggett is afraid unnecessarily, seeing that what he fears has been a fact for over 12 months, if not indeed 12 years & a good deal longer than that.

You will see that at the CO in 16 June & the S of S. granted 6 took the line that, granted the highlands were reserved for Europeans, the highlands had not been defined — at any rate not by the Govt, whatever might have been done locally; and presumably the S of S. intends to meet any difficulty arising out of the Elgin declaration, in so far as natives are concerned, by such definition of the highlands as will allow of land — in what possibly is regarded locally as in the highlands — for allocation to natives, whether for addition to reserves or for individual holding.

A. C. C. Parkinson 22/7. 24

I cannot advise that the matter should be pursued with Sir H. Leggett: there is nothing to be gained by discussing with a leading Planter a matter which is of special importance with other Settlers.

So far as non-Europeans other than Asiatics are concerned, the old declaration stops at "a reasonable discretion" —

direction — in view of the great amount of land available for European settlement. I think it possible to get back to that position if European settlement tails off permanently or if there is a proved inadequacy in the area set aside for the natives. Subject to that, the principle has been to adopt that European settlement must be in the Highlands and that if it is to be encouraged it must not be excluded by other (individual) settlement there.

That is a position which I think might well be maintained for a few years at least.

S.W. 23/6/31

Sec of State
(through Dr Shiels)

I agree

S.H.W.
24.6.31.

I am not quite sure about this! I am, at least, anxious that, in any definition or delimiting of the European Highland area, the claims of the Kikuyu should be specially recognised. It is, I think, generally admitted that part of the present European occupied area is, in fact, Kikuyu land taken over in ignorance of the true position. Altho' I am not certain, I think that there is no other tribe so much associated with the present European area. If that is so, then any delimiting process must conserve sufficient land for the future needs of the Kikuyu. And, as Sir C. Bottomley rightly points out, any land set aside as reserve land for European settlement should be clearly understood to revert to the Crown, to use as is thought proper (including allotment to natives), if effective use cannot be shown over a period of time.

T.S.S. 26.6.31.

We have said (in White Paper on Native Policy) that we adhere to the Elgin Declaration, confining sales to Europeans in the Highlands. This area is not yet defined; nor is the pledge necessarily eternal.

I do not propose to answer Sir H. Leggett further. P 29/6

[illegible]

discretion — in view of the small amount of land available for European settlement. I think it possible to get back to that position if European settlement tails off permanently or if there is a proved inadequacy in the area set aside for the natives. Subject to that, the principle has been throughout that European settlement must be in the Highlands and that if it is to be encouraged it must not be excluded by other (individual) settlement there.

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S.C.S. 23/6/31

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[illegible]

18 Sir H. Leggett ——————— 14 June
Comments on claims of settlers that land in Highlands is reserved for Europeans under the Elgen Declaration.

19 To Sir H. Leggett (18 ansd.) 16 June.

20 Sir H. Leggett ——————— 16 June
Comments on Kenya Settler's views of natives holding land in Highlands

Noted C.1
[illegible]

See S of S's minute of 29.6.31
Put by.
[illegible]
14.7.31

June 16/31 20

TEL. 1904 KEN.

Private

11, ELVASTON PLACE, 8
S.W.

Dear Lord Passfield:

No. 19 I thank you for your letter of today, marked "Private" — I was present in the public seats this morning, & heard your questions, & the Kenya witnesses replies thereto, on the subject of the Elgin declaration of 1908 and the interpretation that may be placed on that Declaration, more particularly as affecting African Natives in the Highlands of Kenya.

If I may say so — & I beg to offer my apologies if it is rather presumptuous on my part to offer a comment — I rather gather that the Kenya witnesses may have gone away with the very definite impression

that you have conceded to them the point that they have been very desirous of securing — viz. that in the "Highland Area" (admittedly undefined in any formal manner but, as Lord Francis Scott asserted, an area which has become almost "conventionally" understood & accepted by Kenya Govt. usage) — in that "Highland area", no land shall be alienated to Natives or to Indians.

You, if I understood your questions aright, very certainly pointed out to them that the "Highland Area" certainly has never been defined, & I think that some of your questions appeared to point to a distinction between "alienated" (i.e. already alienated) land in the Highlands, & the total land in the Highlands, whether alienated, non alienated, or already demarcated for Native Reserves.

But I think that Lord Francis obtained from you (or is the impression that he did) a promise that the Elgin declaration stands good, & that it does refer to all land in the Highlands (i.e. about four fifth of them) & bars out such land from use for either extension of Native Reserves (such as the Kikuyu, who are a Highland tribe) or for the "individual" Natives you spoke of —

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But I think that Lord Francis obtained from you (or it is their impression that he did) a promise that the Elgin declaration stands good, & that it does refer to all land in the Highlands (i.e. above 4000 feet contour) & bars out such land from user for either extension of Native Reserves (such as the Kikuyu, who are a Highland tribe) or for the "individual" Natives you spoke of? –

Please forgive me for thus troubling you. Quite frankly, I venture to think that the situation in this matter is either (a) still not very clear, or, (b) that there is the definite undertaking to apply the Elgin limitation to all Highland land, even although no such African Native land question was on the tapis at the time Lord Elgin made his Declaration.

I am, with great respect,

Yr. very truly

Humphrey Leggett

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Humphrey Leggett

Keep to J.C. ... 9

Private

16th June, 1931.

Dear Sir Humphrey Leggett,

Many thanks for your letter of the 14th of June. I am much obliged to you for your suggestions with regard to the evidence given before the Joint Committee on the question of acquisition by African natives of land in the Highlands of Kenya.

You may be interested to know that at the meeting of the Committee this morning I had an opportunity of asking some questions which covered the points raised in your letter.

Yours very truly,

(SD) PASSFIELD

Keep for J.C. in file

9

Private

16th June, 1931.

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(SD) PASSFIELD

18/10

11. Elvaston Place
Queens Gate
S.W.7.

Private

14. June/31

Dear Lord Passfield:

The kind way in which you & Dr. Drummond Shiels received my own memo & evidence before the East African Committee encourages me to hope that you may not regard it as an impertinence if I venture to offer a suggestion on a point which I feel is really important.

~~The~~ During the evidence of the Kenya Settlers witnesses last Wednesday afternoon, when you, I think, were not in the room, ~~the~~ a question came up as to whether African natives have, in any cases, been allowed to ~~[illegible]~~ acquire land in the Highlands of Kenya. (I think this followed on some other questions as to whether some of the Native Reserves are not rather over-crowded.) The reply given by either Lord Francis Scott, or by Capt Schwartze, - I forget which - was to the effect that they knew of no cases of African Natives acquiring land outside the Reserves - and the Settler witnesses went on to say, with much emphasis that it would not be possible, because the

16 June 31

Ansd.

11. Elvaston Place
Queen's Gate
S.W.7.

18
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Private

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16 June 31.

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Ans.

alienation of land in the Kenya Highlands (i.e. all land above the 4000 foot contour) is, by the Elgin declaration of 1908, strictly confined to persons of pure European descent.

This assertion by the Settler witnesses was not questioned nor disputed by any member of the Committee.

What I am anxious to put before you is that this assertion by the Settlers amounts, by implication, to a claim that the whole of the land above the 4000 foot contour is, according to their reading of the Elgin declaration, reserved for alienation to "pure Europeans" (except, of course, the Native Reserve areas, such as the Kikuyu, etc, that have been demarcated & scheduled in the Native Lands Trust Ordinance of 1929/30)

Now I happen to know that this is a claim that the Settlers have been very anxious to make for a long time past, but they have been nervous how to assert it. They supported the Native Lands Trust Ordinance with alacrity, feeling that the demarcation

of the Native Reserves would supply the grounds for arguing that all Highland land not included in those demarcated Reserves would fall into the category of land which, under the Elgin declaration, should never be alienated to other than Europeans — in short, by a negative process of argument, that an implied pledge comes into existence that the Europeans have a sole right to the alienations of all remaining land above the 4000 foot contour.

I believe that, after last Wednesday, the Settlers feel that they have "got away with it" — as their assertions were not disputed by any member of the Committee. I think that (unless it is put right) we shall find, as time goes on, that they will claim this as a tacitly given pledge. That is how several of the previous alleged pledges came into existence, or grew in being —

As regards the Elgin declaration, I well remember all the circumstances. It was

of course dealing solely with the subject of land alienation to Indians & Europeans; & not in any sense at all as affecting the allotment, or alienation, or non-alienation either, of land to Natives.

There were no Native Reserves at the time (1908) except as to vague and undefined tribal areas, not demarcated nor limited in any way whatever. It was not until perhaps 5 or 6 years ago that the idea took shape among the Settlers of trying to set the Native Reserve areas so defined & so demarcated that it could provide a case on which to assert that all other Highland land is pledged to Europeans. – i.e. a very much belated extension of the doctrine of the Elgin declaration.

May I very respectfully suggest to you therefore that an opportunity might be taken, when you continue with the Settlers witnesses on Tuesday, to set this matter right by some very clear declaration of your own?

I am, yours sincerely
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Uncorrected copy

17 B 12

MEMBERS' CORRECTIONS.

Any Member of the Committee who desires to make any alterations in the Questions addressed by him to a Witness is requested to communicate the same to the Committee Clerk at the next Meeting of the Committee.

32.

Joint Select Committee on *East Africa.*

MINUTES OF EVIDENCE

TAKEN before the JOINT SELECT COMMITTEE ON EAST AFRICA.

Die Martis, 16° Junii, 1931.

[Great Inconvenience having arisen from the Publication of Minutes of Evidence taken before Committees, and of Papers, &c., laid before them, it is particularly requested that Members receiving such Minutes and Papers will be careful that they are confined to the object for which they are printed—the special use of the Members of such Committee.]

73118 71 and 3 o.s. 8 L.

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73518 71 and 3 o.s. 8 L

DIE MARTIS, 16° JUNII, 1931.

Present:

Lord Stanley of Alderley (Lord Sheffield).	Lord Phillimore.
Lord Cranworth.	Lord Ponsonby of Shulbrede.
Lord Dickinson.	Sir John Sandeman Allen.
Lord Lamington.	Mr. Buxton.
Viscount Mersey.	Sir Robert Hamilton.
Earl of Onslow.	Mr. Ormsby-Gore.
Lord Passfield.	Mr. Wellock.

Lord STANLEY OF ALDERLEY (*Lord Sheffield*) in the Chair.

Lord FRANCIS SCOTT, Captain H. E. SCHWARTZE and Mr. J. F. H. HARPER are again called in and examined as follows:—

Chairman.

Before we proceed with the business of the day, there is a short letter that I have received from the witness Mr. Mehd who appeared for the Indian Community in Uganda, in which he states that he desires to correct a statement that he made in his evidence, and I think it will be desirable that I should read the letter. He says this: "I am informed that the statement made by me in evidence to-day on the Customs Duty on Butter in Kenya and Uganda is incorrect, and that it has been reduced to 30 cents, approximately, from 1s. per lb. recently. I shall be grateful if this correction may be taken into consideration." Mr. Mehd wishes to correct the statement that he made under the misapprehension that the duty on butter was 1s. per lb.; it is in fact 30 cents, roughly speaking.

7949. Now, Lord Francis, I think the Committee had practically finished their first round of questions, and I think there is only Sir John Sandeman Allen and Lord Ponsonby who remain who have not yet asked you any questions; but the Secretary of State has many engagements to-day, and as he is desirous of getting away, perhaps they would allow him to ask some supplementary questions first of all.

Lord Passfield.

7950. With regard to the Highlands, I do not know whether there is any misunderstanding. Of course you realise that the Government have definitely said in the White Paper that they have no desire to go back upon the decision come to by Lord Elgin in 1908 with regard to the Highlands?—(*Lord Francis Scott.*) Yes.

7951. Do you understand that to apply to any grant of land to any person of non-European descent?—Yes.

7952. That was not quite Lord Elgin's statement. I do not want to quibble about that, but you will remember that Lord Elgin's declaration was with regard to the question of granting land to Indians, that it is not consonant with the views of His Majesty's Government to impose legal restrictions on any particular section of the community, but as a matter of administrative convenience grants in the Upland Area should not be made to Indians. That was Lord Elgin's declaration. I am not going to lay any stress upon the word "Indians" there, because I have no doubt that the intention was to give preference to European colonization, to use another phrase. Then Lord Elgin wrote "Reasonable discretion will be exercised in dealing with applications for land on the part of natives of India and other non-Europeans." Still, I am not suggesting that the Government want to go back upon Lord Elgin's declaration, but I am anxious that there should be no misunderstanding with regard to it. Do you understand that as meaning that throughout the whole of the Colony of Kenya except the Native Reserves there should never be any grant of land to anyone but Europeans?—Not the whole of Kenya; only in the Highlands Area, which is, as a rule, not definitely demarcated, but is roughly speaking usually taken from the neighbourhood of Fort Turner to Sultan Hamud.

7953. I think the Highlands Area has not been definitely defined?—Not definitely, no.

DIE MARTIS, 16° JUNII, 1931.

Present:

Lord Stanley of Alderley (Lord Sheffield).	Lord Phillimore.
Lord Cranworth.	Lord Ponsonby of Shulbrede.
Lord Dickinson.	Sir John Sandeman Allen.
Lord Lamington.	Mr. Buxton.
Viscount Mersey.	Sir Robert Hamilton.
Earl of Onslow.	Mr. Ormsby-Gore.
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7053. I think the Highlands Area has not been definitely defined?—Not definitely, no.

7954. Therefore it would not be quite right, would it, to assert that there was any pledge by the Government that no part of the land above a certain altitude should be granted to Indians or natives?—As you rightly say, it has never been definitely stated, but it has been considered, and the general understanding——

7955. No; —Well, you may have understood something, but I only want to ask you whether you think that the Government have ever understood that?—The Government in Kenya has, because it has often been discussed.

7956. I am talking about His Majesty's Government?—I cannot answer for His Majesty's Government, I am afraid.

7957. Very well. Then you will not in future assert, will you, that that has been agreed to?—(Captain *Schwartze.*) What has been agreed to is this, that as regards what can fairly be called the Highlands, there should be reservation so far as Europeans are concerned, but it is a question for His Majesty's Government to decide as to what can fairly be called the Highlands, and presumably they would be influenced in connection with that matter by the Government of Kenya out there.

7958. As long as we understand that that area has not been defined at any time, that is sufficient?—Yes, that is so.

7959. Lord Elgin's declaration was made definitely with regard to Indians. I am not raising any question here about how far that applied to natives of Africa. I am not raising that question?—(Lord *Francis Scott.*) No.

7960. With regard to natives of Africa, the Tribal Reserves have been or are in course of being demarcated. That is right, is it not?—Yes, they have been.

7961. But do you make any suggestion that no land with the exception of what may be considered to be covered by Lord Elgin's pledge, no other part of the Colony can ever be granted to natives of Africa?—No, not outside that Highland Area, we do not make any claim.

7962. That is what I understand. As a matter of fact there are two questions that arise, and I should like to know what you think about them. One question is this: Supposing the Reserves are found to be, presently, insufficient for the tribe or for one of the tribes, it would be necessary, would it not, to find land somewhere in order to supply that deficiency? Yes, that is quite a possibility of course.

7963. Quite a possibility. Therefore there has been no division of the Colony between European settlers and natives of Africa, subject to whatever was meant by Lord Elgin's pledge?—Nothing outside Lord Elgin's pledge.

7964. No; and that would leave a very large part of the Colony, would it not, available for any race?—Outside that Highland Area yes, certainly.

7965. Yes, outside the Highland Area, I mean. That is so far as regards the Tribal Native. In course of time, experience shows that some natives will be better educated or more confident, and will want to take the land for themselves individually for individual cultivation. Do you contemplate that land would be made available for them within the Colony of Kenya?—Outside the Highland Area?

7966. Yes, outside whatever may be defined as the Highland Area, certainly?—Yes.

7967. Because I understand that in the case of one of the Agricultural Inquiries, I think it was Sir Daniel Hall's Committee, one or some of the natives did appear before him to give evidence, and they made the Committee realise that there were individual natives who were prepared for individual cultivation. Was not that so?—I am afraid I could not answer that question. I was not on that Committee.

7968. From your knowledge, do you happen to know whether any individual Africans have yet taken up land anywhere and cultivated it as individual occupiers?—I do not know of any cases.

7969. You do not know of any. At any rate, you are not aware of any land, even outside the so-called Highlands, having been granted to any individual Africans?—I do not know whether there may have been any on the coast. I am afraid I do not know about that.

7970. In the White Paper on "Native Policy in East Africa" I should rather like to ask you about this: After reciting Lord Elgin's pledge it says: "Whilst His Majesty's Government must continue to affirm the right throughout East Africa of individual natives, equally with other persons, including Indians, subject to the proviso just mentioned"—that is Lord Elgin's pledge—"to purchase or take on lease land outside the Native Reserves, the obligation of trusteeship requires that effective opportunity should be afforded

to the natives—perhaps in the areas outside the Native Reserves specially allocated for this purpose—to take up individual holdings of appropriate extent on lease or by purchase with payment by easy instalments, for cultivation by themselves and their families, on terms that will render this policy genuinely practicable."—Do you object in any way to that?—Do we object to it?

7971. Yes—(Mr. *Harper.*) I think somewhere in our Statement of Evidence we specifically say that we do not object to that provided that it does not conflict with the Highlands pledge. (Lord *Francis Scott.*) If I remember rightly—I have not got it before me at the moment—the only thing that we objected to was that there was some idea that they should be given definitely preferential financial help to acquire land. I cannot quite remember whether that comes in there or not.

7972. It does, but it is not necessarily intended to be preferential?—That was the only point. We objected if it was to be treated in such a way as to be preferential to them; that they should be financed by Government to give them an advantage over somebody else who might be bidding against them.

7973. But the system, I mean?—To the general principle we did not raise any objection.

7974. You would not raise any objection to land being let to them for payment on lease, or for purchase for payment on easy instalments, provided that similar terms were offered to other people?—No, outside the Highlands Area we do not object.

7975. And we agree, do we not, that the Highlands Area has never yet been defined by the Government?—No, that is right.

7976. I do not want to go back upon the pledge at all?—You say in your White Paper that you stand by that, and subject to that proviso, you say it is outside that.

7977. But the Government have never yet defined at all what the Highlands Area is, either by reference to contour or elevation, or geographical boundaries?—No, but I think you would find that there has been a good deal of correspondence on the subject at different times.

7978. I have it before me, I may say?—Yes.

7979. You may take it from me that there has never been any definition?—That is so.

7980. Then with regard to the Indians, which is quite a different question at the moment, up to the present the Indians have not actually, as far as I know, shown any great desire to take up agricultural land, have they?—Only in a very small way. There is an Indian settlement around Kibos and towards Lake Victoria. They grow a certain amount of sugar there.

7981. Subject always to Lord Elgin's pledge, you would not dissent, would you, from a policy of making land available for Indians for agricultural purposes if the Indians wished it?—I think that was agreed some years ago.

7982. Yes?—And definite areas were suggested for them to take up, but the Indians themselves did not pursue it.

7983. You would be prepared to agree when opportunity arose?—Yes, we still stand by that.

7984. I am anxious that there should be no misunderstanding in regard to this, that in setting up the native reserves it did not mean a division of the Colony and Protectorate of Kenya between the Natives and the Settlers or the Indians?—What we understood was this. When the settlement of the Reserves was agreed to it was agreed on both sides that we should take that as a definite demarcation between the Reserves and the Settled Areas where they were contiguous to the Reserves, and that part we considered was a definite division, but not with regard to the rest of the country, which was outside what I call the Highlands Area.

7985. Waiving the question of what is the definition of the Highlands Area, which has never been defined?—I use that as a general term; it is what covers where the European settlement is. The bits of low ground are separated.

7986. There are two parts of European settlement, to my mind. One is the land which is actually being effectively occupied and cultivated, or effectively occupied, by European owners; the other is the land which has been alienated to European owners, and which is not yet effectively occupied or cultivated?—I do not know that part.

7987. I think we have had it in evidence, have we not, that a very large portion of the land allocated to Europeans is not yet at all effectively

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occupied?—I think the figures that were worked out showed that about 50 per cent. of the alienated land is effectively occupied, of which I think 12 per cent. was under cultivation, which is not really a very bad proportion. I understand that in Great Britain it is 16 or 17 per cent which is under cultivation.

7988. I am not attempting to draw any inference from that, but the point is that when you say "The land in European Settlement" you are rather meaning land which is alienated to Europeans?—Yes, but my point is really this, that I do not know these big areas which you speak of which have not been occupied. In every farm a proportion is not being developed; that has to go on by degrees. There may be one or two cases where there has been land held up, perhaps, in one or two blocks, but not to any extent.

7989. I am assuming that what you mean by "European settlement" includes the larger area, that is to say the whole of the land which has been alienated to Europeans, whether yet effectively cultivated or not?—Yes.

7990. That is what you mean, I take it?—Yes.

7991. That also does not cover the whole of the Colony, does it?—No.

7992. There is a considerable area which is as yet unalienated?—(Mr Harper.) There is an area which is described on the map as available and suitable for alienation which has not yet been alienated.

7993. It is not yet alienated?—No, that is so.

7994. There is no legal restriction upon its alienation to a person of any race?—(Lord Francis Scott.) We come back to the same thing, namely, if it is outside the Highlands Area, which is not yet definitely defined.

7995. Just now we were agreeing, I think, that the European Settlement Area was the alienated land?—(Mr. Harper.) Plus the area which was available and suitable for settlement in the Highlands.

7996. Do I understand that within the Highlands Area as you wish to define it there is still some land not yet alienated?—(Lord Francis Scott.) Yes, undoubtedly.

7997. And you are claiming, as I understand it, that none of that land should ever be alienated to anybody but persons of European descent. Is that so?—Yes, that is so.

7998. You do not suggest, do you, that His Majesty's Government have ever agreed to that?—I think they have agreed at any rate, as you have read from Lord Elgin's statement, that it should not be alienated certainly to Indians.

7999. "In view of the limited area suitable for European colonization, a reasonable discretion will be exercised in dealing with applications for land on the part of Natives of India and other non-Europeans"—"a reasonable discretion will be exercised"—Does that in your submission mean that the reasonable discretion should be a refusal to alienate to any non-Europeans?—We have always understood that the whole idea was that there should be a colony of white people who would be living amongst their own people, and you should not have Indian farms interspersed.

8000. Lord Elgin did not say that, did he?—That is what was understood by his declaration.

8001. No, not by His Majesty's Government.

Chairman.] On what page of the White Paper "Native Policy in East Africa" is Lord Elgin's pledge?

Lord *Passfield.*

8002. It is cited on page 11, but it is not given there. I have it before me in Lord Elgin's Despatch of the 19th March, 1908, Command Paper No. 4117?—(Captain *Schwartze.*) In the 1923 White Paper the differentiation is drawn in so many words between the Highlands and Lowlands. I submit with great respect that it is quite impossible, if you are going to keep to that definition, which I understand His Majesty's Government is following in the 1930 White Paper, to make any definition which follows a line drawn geographically with regard to alienated land and leaves out unalienated land at the same altitude. The Highlands and Lowlands must refer to altitudes, and I suggest that, when His Majesty's Government makes its definition with regard to what are the Highlands, the definition must be based upon a fair consideration of the Highlands as opposed to Lowlands, and not upon drawing lines in all directions following the alienated land.

8003. I quite agree. I am not asserting that the proper definition of Lord Elgin's pledge would be to define it by

the land actually alienated to European settlers. I am not suggesting that at all; but that does not cover the whole Colony, and it does not cover even the whole of the land which is above the 4,000 feet contour line, which definition has never been accepted. But assuming that that were the definition, there is still a lot of land not included in that. I am only anxious that there should be no misunderstanding that the policy of the Government, laid down in 1923 and confirmed in the 1923 White Paper that is before us, did not define the area?—(Lord *Francis Scott.*) If I may say so, in 1923 there were two main points which we understood were definitely granted to us by His Majesty's Government. Those two points were, firstly, no Common Roll; and secondly, the reservation of the Highlands for European settlement. Those were the two points. Those were the two points, and as we were given those two points, that is why we agreed to that White Paper, which on the other hand took away one or two things from us such as segregation in the townships, which has been abolished, and the question which I do not want to raise again, of the paramountcy of native interests and the question of immigration. They were the points in regard to which we did not get what we wanted, but upon the other two points we understood that we were definitely granted those two things, and the interpretation of this as we understood it was that it included all of what I call the Highlands Area, including what was actually alienated and what was available for alienation outside the Native Reserves in the Highland Area.

Chairman.] It may be very convenient for the Committee to be referred to page 15 of the White Paper entitled "Indians in Kenya," where I think the words of Lord Elgin's Declaration are given, and are confirmed by the Government of that day.

Lord *Passfield.*

8004. That is so, and it extends over two or three pages. I do not want to go back upon Lord Elgin's Declaration or the White Paper of 1923, but I want to make it clear that no Government has ever agreed to any definition of what the Highlands Area is, and that it would be improper to suggest that the Government have agreed to reserve for ever all land above the 4,000 feet altitude. That is the contour, of course. It has never been agreed to, and it is only a question of what definition should be given to Lord Elgin's pledge. I may observe that it referred not merely to the Highlands, but also it covered some part of the lower lands. I do not want to keep to that too much. To go back to the natives of Africa, two things must be borne in mind, I suggest, and I should like to ask you what you think about them. One is that we must be able to provide land for any tribes for whom the reserves already demarcated have been found to be insufficient; assuming an increase of population; they would have to be found room for somewhere in the Colony of Kenya, but not necessarily in the European settlement, of course. You would agree with that, I think?—We did not dispute that.

8005. Supposing some of the Reserves are found to be insufficient for the increasing population of the tribes, room would have to be found for those people outside the Native Reserves as now demarcated, but not necessarily in the European Settlement Area?—The only point which we stress about that is this, that as we were parties to the agreement with the Government of Kenya on the demarcation of the Reserves, if the Government propose to take any land in what I call the Highlands Area which might be available for alienation, they should not do so without consultation with us as a party to the original agreement, to discuss the whole thing upon its merits. That is our point of view.

8006. I quite agree with you, subject to terms, that is to say, that the Government do not enter into agreements, but governments ought to consult, and undoubtedly the Government ought to consult the people concerned, and would do so, I can assure you. Then there is the case not only of the tribes for whom the land allotted is found to be insufficient, but there is the point that I made before about the individual native who is detribalised and wants to cultivate land in the European fashion. Again, I am not saying anything about anything that is covered by Lord Elgin's pledge. The unalienated land would be available for such a man as that, would it not?—The only point is this, that we understand the general principle of the pledge was to give a big area where Europeans would be all together; they would not be interspersed with other people.

occupied?—I think the figures that were worked out showed that about 50 per cent. of the alienated land is effectively occupied, of which I think 12 per cent. was under cultivation, which is not really a very bad proportion. I understand that in Great Britain it is 16 or 17 per cent. which is under cultivation.

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7989. I am assuming that what you mean by "European settlement" includes the larger area, that is to say the whole of the land which has been alienated to Europeans, whether yet effectively cultivated or not?—Yes.

7990. That is what you mean, I take it?—Yes.

7991. That also does not cover the whole of the Colony, does it?—No.

7992. There is a considerable area which is as yet unalienated?—(Mr. *Harper.*) There is an area which is described on the map as available and suitable for alienation which has not yet been alienated.

7993. It is not yet alienated?—No, that is so.

7994. There is no legal restriction upon its alienation to a person of any race?—(Lord *Francis Scott.*) We come back to the same thing, namely, if it is outside the Highlands Area, which is not yet definitely defined.

7995. Just now we were agreeing, I think, that the European Settlement Area was the alienated land?—(Mr. *Harper.*) Plus the area which was available and suitable for settlement in the Highlands.

7996. Do I understand that within the Highlands Area as you wish to define it there is still some land not yet alienated?—(Lord *Francis Scott.*) Yes, undoubtedly.

7997. And you are claiming, as I understand it, that none of that land should ever be alienated to anybody but persons of European descent. Is that so?—Yes, that is so.

7998. You do not suggest, do you, that His Majesty's Government have ever agreed to that?—I think they have agreed at any rate, as you have read from Lord Elgin's statement, that it should not be alienated certainly to Indians.

7999. "In view of the limited area suitable for European colonization, a reasonable discretion will be exercised in dealing with applications for land on the part of Natives of India and other non-Europeans"—"a reasonable discretion will be exercised"—Does that in your submission mean that the reasonable discretion should be a refusal to alienate to any non-Europeans?—We have always understood that the whole idea was that there should be a colony of white people who would be living amongst their own people, and you should not have Indian farms interspersed.

8000. Lord Elgin did not say that, did he?—That is what was understood by his declaration.

8001. No, not by His Majesty's Government.

Chairman.] On what page of the White Paper "Native Policy in East Africa" is Lord Elgin's pledge?

Lord *Passfield.*

8002. It is cited on page 11, but it is not given there. I have it before me in Lord Elgin's Despatch of the 19th March, 1908, Command Paper No. 4117?—(Captain *Schwartze.*) In the 1923 White Paper the differentiation is drawn in so many words between the Highlands and Lowlands. I submit with great respect that it is quite impossible, if you are going to keep to that definition, which I understand His Majesty's Government is following in the 1930 White Paper, to make any definition which follows a line drawn geographically with regard to alienated land and leaves out unalienated land at the same altitude. The Highlands and Lowlands must refer to altitudes, and I suggest that, when His Majesty's Government makes its definition with regard to what are the Highlands, the definition must be based upon a fair consideration of the Highlands as opposed to Lowlands, and not upon drawing lines in all directions following the alienated land.

8003. I quite agree. I am not asserting that the proper definition of Lord Elgin's pledge would be to define it by

the land actually alienated to European settlers. I am not suggesting that at all; but that does not cover the whole Colony, and it does not cover even the whole of the land which is above the 4,000 feet contour line, which definition has never been accepted. But assuming that that were the definition, there is still a lot of land not included in that. I am only anxious that there should be no misunderstanding that the policy of the Government, laid down in 1923 and confirmed in the 1923 White Paper that is before us, did not define the area?—(Lord *Francis Scott.*) If I may say so, in 1923 there were two main points which we understood were definitely granted to us by His Majesty's Government. Those two points were, firstly, no Common Roll; and secondly, the reservation of the Highlands for European settlement. Those were the two points. Those were the two points, and as we were given those two points, that is why we agreed to that White Paper, which on the other hand took away one or two things from us such as segregation in the townships, which has been abolished, and the question which I do not want to raise again, of the paramountcy of native interests and the question of immigration. They were the points in regard to which we did not get what we wanted, but upon the other two points we understood that we were definitely granted those two things, and the interpretation of this as we understood it was that it included all of what I call the Highlands Area, including what was actually alienated and what was available for alienation outside the Native Reserves in the Highland Area.

Chairman.] It may be very convenient for the Committee to be referred to page 15 of the White Paper entitled "Indians in Kenya," where I think the words of Lord Elgin's Declaration are given, and are confirmed by the Government of that day.

Lord *Passfield.*

8004. That is so, and it extends over two or three pages. I do not want to go back upon Lord Elgin's Declaration or the White Paper of 1923, but I want to make it clear that no Government has ever agreed to any definition of what the Highlands Area is, and that it would be improper to suggest that the Government have agreed to reserve for ever all land above the 4,000 feet altitude. That is the contour, of course. It has never been agreed to, and it is only a question of what definition should be given to Lord Elgin's pledge. I may observe that it referred not merely to the Highlands, but also it covered some part of the lower lands. I do not want to keep to that too much. To go back to the natives of Africa, two things must be borne in mind, I suggest, and I should like to ask you what you think about them. One is that we must be able to provide land for any tribes for whom the reserves already demarcated have been found to be insufficient, assuming an increase of population; they would have to be found room for somewhere in the Colony of Kenya, but not necessarily in the European settlement, of course. You would agree with that, I think?—We did not dispute that.

8005. Supposing some of the Reserves are found to be insufficient for the increasing population of the tribes, room would have to be found for those people outside the Native Reserves as now demarcated, but not necessarily in the European Settlement Area?—The only point which we stress about that is this, that as we were parties to the agreement with the Government of Kenya on the demarcation of the Reserves, if the Government propose to take any land in what I call the Highlands Area which might be available for alienation, they should not do so without consultation with us as a party to the original agreement, to discuss the whole thing upon its merits. That is our point of view.

8006. I quite agree with you, to get to terms, that is to say, that the Government do not enter into agreements, but governments ought to consult, and undoubtedly the Government ought to consult the people concerned, and would do so, I can assure you. Then there is the case not only of the tribes for whom the land allotted is found to be insufficient, but there is the point that I made before about the individual native who is detribalised and wants to cultivate land in the European fashion. Again, I am not saying anything about anything that is covered by Lord Elgin's pledge. The unalienated land would be available for such a man as that, would it not?—The only point is this, that we understand the general principle of the pledge was to give a big area where Europeans would be all together; they would not be interspersed with other people.

8007. You have 1,000 or 2,000 natives on the land?—Yes, but we should object if farms were given all over the place in the middle of a group of settled areas where there are settlers, to Indians or natives.

8008. I am not going back upon that, and I am not suggesting it. I am only asking you to take into account what you would say if some of the unalienated land which was not in the midst of the European settlement had to be made available by lease or by sale for African natives, either in the Reserves (because we may have to act in the Reserves) or for individual Africans who are detribalised?—I think that every case should be judged upon its merits.

8009. You mean that the case is open?—Open?

8010. Yes; you are not concluding against it?—As long as it does not conflict with what is understood by the Lord Elgin Pledge; that is the whole point, I think. (Mr. *Harper*.) May I say one word with regard to the previous question which was being discussed, that is to say the sufficiency of the land already demarcated for natives? May I suggest that if that is promulgated as the doctrine of His Majesty's Government, it should be qualified, and that the natives should not be encouraged to expect that they may use illimitable areas of land in a wasteful manner. That problem has already occurred. There are certain tribes who have over-stocked very large areas with entirely uneconomic products.

8011. The Government is quite aware of that. You would suggest, as I understand it, that the natives should be taught to use their existing lands in a better way?—Rather than to expect limitless extensions.

8012. You would be in favour of developing and increasing the agricultural instruction to these people?—Yes, we always have been.

8013. To teach them to use their land?—Yes.

8014. That would mean spending rather more money on it; but even if one uses all the influence that the Government has, and supplies the best possible instructors, I think it is common knowledge that it takes a considerable time before you can get any aboriginal race to adopt European methods of cultivation. We ought to do all that we can, and go on doing it, but you may be face to face with a difficulty because the people are slow in taking it up. Is not that so?—(Lord *Francis Scott*.) I think really the point is that if the natives realise that it does not matter how wasteful they are in their methods they will be given more land, they go on destroying the value of large areas of land. That is the real point.

8015. Of course that does not apply to the other case of the detribalised natives who want to take up land for European methods of cultivation?—No; that is a different case.

8016. Thank you; I will not take up any more time.—(Captain *Schwartze*.) Before we pass entirely from the question of segregation, would you allow me to refer to a matter with regard to the evidence which was given to this Committee on Friday afternoon, I think by Mr. Patel, in which he stated broadly, I think, that while the Government had carried out that part of the 1923 White Paper with regard to the segregation of the Highlands, they had not carried out, or had neglected to carry out, that part of the 1923 White Paper which dealt with non-segregation in the townships. I think that evidence was given to you on Friday afternoon, that the policy of non-segregation in the townships had not been carried out by the Government of Kenya. I merely wanted to say with regard to that that with all respect to Mr. Patel I do not think that evidence is correct. I do not know of a single case where application was made for transfer from one race to another in townships in the Highlands where a transfer has been vetoed by the Governor in Council, unless it was part of a holding which was sold or auctioned prior to 1923 with definite undertakings that it should be solely for European occupiers or owners. I can quote an actual case where an Indian was a mortgagee for a very large sum of money on land held by a European. The European defaulted, and the Indian was unable to obtain leave to bid, or at all events, if he had been able to get leave to bid, he would not have been allowed to have had a transfer passed into his name, because that area was just outside the Nkuru township. About three or four years later the areas of the Nkuru township were altered and enlarged, and the farm in question then came within the township area. Application was immediately made to the Government, to whom it was pointed out that this area was now within the township, and the Government did not veto the transfer. I think in every case, unless there have been specific agreements prior to 1923, the Kenya Government would always allow transfer from one race to another in townships in the Highlands, and thereby carry out the spirit of the 1923 White Paper in every respect.

Sir *Robert Hamilton*.

8017. With regard to that point, if my recollection is right, I think that the evidence that you are speaking of was given with particular reference to what is known as the Kadderbhai case, recently decided in the Privy Council?—With regard to that, first of all that is not in the Highlands, and secondly I think he said that it was not a point of law but a point of policy. I need not say more about that, because the Privy Council do not do that sort of thing. Also I think I am right in saying that the other part of the land adjoining was sold prior to 1923, or some time back, with the definite agreement that it was for European occupation, but in saying that I am speaking subject to correction.

8018. That may be so, but it was only with particular reference to that case that Mr. Patel was dealing with. That is all I wanted to say?—Yes.

Mr. *Ormsby-Gore*.

8019. Where does the Government come into this Mombasa case? Is it a matter in which the Government is concerned at all?—Yes.

8020. The ultimate owner is the Government, and it is only leasehold property?—Yes. The Government were putting it up on the ordinary terms.

8021. With restrictive covenants?—Yes, first of all.

8022. When did the Government acquire the land, because it is land in the Protectorate, is it not? Did the Government purchase it?—I think Sir Robert Hamilton can answer that question better than I could.

Sir *Robert Hamilton*.] I think it was land to which there was no private title, which fell to the Government when we took over the Colony.

Viscount *Mersey*.

8023. What you say with regard to the grant of land in the Highland Area to Asiatics is in effect that as a matter of fact no land has been granted to Asiatics by the Government for the last 30 years?—(Lord *Francis Scott*.) Not in the Highlands outside the townships.

8024. And that you would very much deprecate an alteration in that policy now?—Yes, we should consider that a direct going-back upon the undertaking which was given before.

8025. You also say that by implication at any rate successive Governments have approved that policy?—I think it is as Lord Passfield stated. It was originated by Lord Elgin, confirmed in 1923, and confirmed again by the present Government in their White Paper of 1930.

8026. At the top of page 16 in Command Paper No. 1922 it says this: "Lord Elgin confirmed his decision in 1908, stating that, while it was not consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the upland area should not, as a matter of administrative convenience, be made to Asiatics"?—Yes.

Chairman.

8027. You say that that is a generally accepted principle, subject to the definition of the Highland Area, which has not yet been geographically outlined?—Yes, that is so.

8028. There may be portions on the borders which are doubtfully highlands, or doubtfully non-highlands, but broadly speaking you say that there is an area which is undoubtedly highlands. Every area which has not been defined shades off into doubtful and uncertain parts, and so on into the certainty of the other thing; but there is certainly a very considerable area which is undoubtedly highlands?—Yes.

8029. You say that it applies to all which is undoubtedly highlands, or may hereafter be defined as being in the highlands?—Yes, that is so.

8030. You think that it is a matter of importance that the Highlands Area should be geographically defined, and limits should be drawn? Or, are you satisfied to leave it in that rather fluid condition?—(Mr. *Harper*.) It is not quite so fluid as it has been made to appear by Lord Passfield. Although it is quite correct to say that no geographical definition has been laid down by law, yet there are maps which have been generally accepted, and which have been drawn up,

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naturally, by the Government Survey Department, which indicate not only the alienated areas, but the lands which are suitable and available for alienation.

Lord *Passfield.*

8031 To whom?—Always to Europeans, I think.

Chairman.

8032. In the Highlands, do you mean? —Yes, in the Highlands.

8033. In fact you say that the Highlands have been defined in Government maps published since the Declaration of Lord Elgin?—They have been described; they have not been defined.

Lord *Passfield.*

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8035. Suitable and available for alienation?—Yes, for alienation to Europeans.

8036. In itself, the fact that land has been surveyed and declared to be suitable does not bear upon the question of what should be the limit of the lands reserved for European colonization. I am not begging the question at all; I am only asking that the question should not be begged?—(Lord *Francis Scott.*) I think as a matter of fact we agree approximately, do we not, upon what is understood.

Sir John Sandeman Allen.

8037. I should like to ask you a few general questions. Most of the points that I had in my mind have been fairly well brought out in discussion, and I do not want to go into too many details, but might I just put two or three general questions which I think have already come before the Committee. First of all I take it that it is quite clear that your position is that at the present moment you are opposed both to political and economic Closer Union?—We are, yes.

8038. Questions have been raised as to how, in the meantime at all events, certain matters can be co-ordinated—Yes.

8039. May I take the economic services first of all?—Yes.

8040. The difficulty has been that everybody has expressed the great desirability for co-ordination of economic services, but when you come down to the question you do not seem to get any further as to the methods of co-ordination which are desirable. I quite see that Government proposals, or any similar kind of proposals are one thing, but when you come to the simple question of co-ordination it is a little more difficult, and so I want to ask you once again in order to get it quite clear. With regard to customs, you are satisfied that the present system can be worked without friction between the three Territories. Is that right?—Yes.

8041. I gather that you do not favour a representative of the Secretary of State at the Joint Conferences upon these matters or supervising them?—I do not think it is necessary, and I do not think it really would be of great help.

8042. As a matter of fact you think that those Committees that you suggest, working in connection with the Governors' Conference, will do all that is necessary at the present moment?—Yes, might I elaborate that, Sir John?

8043. Yes, please do?—Our idea of these Committees is very much on the lines of the way in which it is worked on the Committee of Imperial Defence over here, where I believe they get reports of the different departments or interests concerned; they sit round a table, I believe, and they discuss all the matters, and then they come to some general agreement. As the people who are present, although they are only consultative, really carry the most weight in their various departments, or wherever it may be, when they go back again it is pretty certain that what they have agreed to round the table will be actually put into force. Of course I am not trying to say that we compare to the Committee of Imperial Defence, but I think the principle is the same, and it is a very good method, I think, of getting over difficulties. When you get people to meet together, they do usually find that there is a way out which suits all interests, without having a very definite constitutional cut-and-dried system.

8044. According to your idea, these people would be nominated from the different Legislatures?—Yes.

8045. Official and unofficial?—Yes, both.

8046. And when they had come to their decisions what will they do with those decisions?—The idea is that when they come to those decisions they should be put by the various Governments to the Legislative Council; that is if they were things requiring legislative action. On the other hand, supposing that it was a question of interpretation of custom, or matters of that sort, those things would not entail legislation, but it would be a matter of agreed administration between the countries concerned.

8047. You would have to have the approval of the Governor in each case?—Yes. We hope that he would be sitting next door, you see.

8048. Your idea is that the Governors' Conference would take place at the same time?—Yes, that would be a most convenient way. I do not think it is absolutely essential, but I do think that it would be advisable.

8049. And you do not think that it would help to have any outside person as chairman of the Governors' Conference?—As I tried to point out the other day, I think the difficulty is with regard to the sort of person that you would get to do that. I cannot see how a really first class man could be expected to take on work of that sort, and if he was not a first class man then I do not think he would be much use.

8050. I do not want to pursue that question of custom. Let me now take the railways. What is the idea with regard to the working of the railways once Tanganyika is physically joined with Kenya and Uganda?—Well, I think it is an aim that one should always keep in mind, getting the railways working together, but there are a great many difficulties, I think, and I believe again that such a Committee as this would be a very suitable personnel to thresh out such difficulties between the countries, and they could have all the technical advice before them in the form of the general managers, and so on, and they could probably come to some agreement over what is bound to be rather a thorny question, I think, between the various countries.

8051. Of course these questions do touch the whole question of the fiscal policy of the country?—Yes.

8052. Therefore you are not considering in your mind any question of amalgamating the railways, because that would involve loan questions, and difficulties of that kind. You are only talking about co-ordination of control, are you not, and unification of management?—Yes. As far as I can see, I think the question of amalgamation may come up some day.

8053. That would be another matter, would it not?—Yes, quite so.

8054. Then it is a question as to whether it should not be taken outside of the Government altogether?—Yes, a sort of private public company.

8055. Yes. That is not really ripe for consideration at the moment?—That is too far ahead, I think.

8056. Now I want to know how far you feel that there is any need at the moment for any co-ordination with regard to the railways?—I understand that at the moment there are no outstanding points where the railways are in conflict. I believe that there were points, but those have all been met, I think.

8057. You mean questions of rates, and things of that sort?—Yes.

8058. Those, of course you contend, would be settled amicably by those committees?—Yes.

8059. At present, of course they have not been quite satisfactorily settled; there has been a lot of give and take; but, as you know, it has not been entirely welcome all round?—I understood that on the whole it has been accepted pretty generally. I am not on the Railway Council, so I am not very definite about that.

8060. I do not propose to pursue this matter, because I do not feel that we shall get very much further except upon the idea of the joint council. Now what do you say about trunk roads? Are there any difficulties in connection with trunk roads? Is there co-ordination between the three territories as to which trunk roads should be developed and as to their upkeep?—No, I do not think there is very definite co-ordination with regard to the trunk roads. It is pretty obvious which are the trunk roads joining the countries. The road going up to Uganda I think is more or less agreed, the one which goes to Arusha and that way; it is quite obvious which is the road, but it is the system of control and co-ordination as to the actual upkeep of them.

8061. It is a very important matter to-day?—Yes.

8062. We ought to have an agreed road between the different territories which could be used as a highway, and if possible made into an all-weather road? —Yes.

8063. Then the question of upkeep comes in. If one of the territories ignores the upkeep, that road is useless as a through road. I do not know how far it is necessary to go further in this matter and whether you would suggest having

naturally, by the Government Survey Department, which indicate not only the alienated areas, but the lands which are suitable and available for alienation.

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8038. Questions have been raised as to how, in the meantime at all events, certain matters can be co-ordinated—Yes.

8039. May I take the economic services first of all?—Yes.

8040. The difficulty has been that everybody has expressed the great desirability for co-ordination of economic services, but when you come down to the question you do not seem to get any further as to the methods of co-ordination which are desirable. I quite see that Government proposals, or any similar kind of proposals are one thing, but when you come to the simple question of co-ordination it is a little more difficult, and so I want to ask you once again in order to get it quite clear. With regard to customs, you are satisfied that the present system can be worked without friction between the three Territories. Is that right?—Yes.

8041. I gather that you do not favour a representative of the Secretary of State at the Joint Conferences upon these matters or supervising them?—I do not think it is necessary, and I do not think it really would be of great help.

8042. As a matter of fact you think that these Committees that you suggest, working in connection with the Governors' Conference, will do all that is necessary at the present moment?—Yes, might I elaborate that, Sir John?

8043. Yes, please do?—Our idea of these Committees is very much on the lines of the way in which it is worked on the Committee of Imperial Defence over here, where I believe they get reports of the different departments or interests concerned; they sit round a table, I believe, and they discuss all the matters, and then they come to some general agreement. As the people who are present, although they are only consultative, really carry the most weight in their various departments, or wherever it may be, when they go back again it is pretty certain that what they have agreed to round the table will be actually put into force. Of course I am not trying to say that we compare to the Committee of Imperial Defence, but I think the principle is the same, and it is a very good method, I think, of getting over difficulties. When you get people to meet together, they do usually find that there is a way out which suits all interests, without having a very definite constitutional cut-and-dried system.

8044. According to your idea, these people would be nominated from the different Legislatures?—Yes.

8045. Official and unofficial?—Yes, both.

8046. And when they had come to their decisions what will they do with those decisions?—The idea is that when they come to those decisions they should be put by the various Governments to the Legislative Council; that is if they were things requiring legislative action. On the other hand, supposing that it was a question of interpretation of custom, or matters of that sort, those things would not entail legislation, but it would be a matter of agreed administration between the countries concerned.

8047. You would have to have the approval of the Governor in each case?—Yes. We hope that he would be sitting next door, you see.

8048. Your idea is that the Governors' Conference would take place at the same time?—Yes, that would be a most convenient way. I do not think it is absolutely essential, but I do think that it would be advisable.

8049. And you do not think that it would help to have any outside person as chairman of the Governors' Conference?—As I tried to point out the other day, I think the difficulty is with regard to the sort of person that you would get to do that. I cannot see how a really first class man could be expected to take on work of that sort, and if he was not a first class man then I do not think he would be much use.

8050. I do not want to pursue that question of custom. Let me now take the railways. What is the idea with regard to the working of the railways once Tanganyika is physically joined with Kenya and Uganda?—Well, I think it is an aim that one should always keep in mind, getting the railways working together, but there are a great many difficulties, I think, and I believe again that such a Committee as this would be a very suitable personnel to thresh out such difficulties between the countries, and they could have all the technical advice before them in the form of the general managers, and so on, and they could probably come to some agreement over what is bound to be rather a thorny question, I think, between the various countries.

8051. Of course these questions do touch the whole question of the fiscal policy of the country?—Yes.

8052. Therefore you are not considering in your mind any question of amalgamating the railways, because that would involve loan questions, and difficulties of that kind. You are only talking about co-ordination of control, are you not, and unification of management?—Yes. As far as I can see, I think the question of amalgamation may come up some day.

8053. That would be another matter, would it not?—Yes, quite so.

8054. Then it is a question as to whether it should not be taken outside of the Government altogether?—Yes, a sort of private public company.

8055. Yes. That is not really ripe for consideration at the moment?—That is too far ahead, I think.

8056. Now I want to know how far you feel that there is any need at the moment for any co-ordination with regard to the railways?—I understand that at the moment there are no outstanding points where the railways are in conflict. I believe that there were points, but those have all been met, I think.

8057. You mean questions of rates, and things of that sort?—Yes.

8058. Those, of course you contend, would be settled amicably by these committees?—Yes.

8059. At present, of course they have not been quite satisfactorily settled; there has been a lot of give and take; but, as you know, it had not been entirely welcome all round?—I understood that on the whole it has been accepted pretty generally. I am not on the Railway Council, so I am not very definite about that.

8060. I do not propose to pursue this matter, because I do not feel that we shall get very much further except upon the idea of the joint council. Now what do you say about trunk roads? Are there any difficulties in connection with trunk roads? Is there co-ordination between the three territories as to where trunk roads should be developed and as to their upkeep?—No, I do not think there is very definite co-ordination with regard to the trunk roads. It is pretty obvious which are the trunk roads joining the countries. The road going up to Uganda I think is more or less agreed, the one which goes to Arusha and that way; it is quite obvious which is the road, but it is the system of control and co-ordination as to the actual upkeep of them.

8061. It is a very important matter to-day?—Yes.

8062. We ought to have an agreed road between the different territories which could be used as a highway, and if possible made into an all-weather road?—Yes.

8063. Then the question of upkeep comes in. If one of the territories ignores the upkeep, that road is useless as a through road. I do not know how far it is necessary to go further in this matter and whether you would suggest having

Councils for that also?—I think our proposed Committees would deal with it. That is particularly a case which could be very easily dealt with by those Committees.

8064. It would? You would get the facts well before them?—(Captain *Schwartze.*) These matters were dealt with by the unofficial conference especially at Livingstone in 1926, and especially through roads.

8065. Yes, I know?—I think if these conferences had a more or less official status instead of a completely unofficial status, the recommendations would be more likely to be brought into effect.

8066. Now with regard to the question of posts and telegraphs, what difficulties are there there?—(*Lord Francis Scott.*) At present, as you know, the posts and telegraphs of Uganda and Kenya are run on one system, and as far as I know I do not think there is any reason why the same thing should not apply to Tanganyika. They are getting their share now, the same as Uganda does from Kenya; but there may be technical difficulties, that I do not know of.

8067. You mean having it run as one service?—Yes, one service, and being allocated in the same way as customs and posts are allocated to Uganda now. But, as I say, there may be difficulties that I do not know of.

8068. The postal rates are the same, are they not?—The rates are now the same, but of course the stamps are different, and that sort of thing. The rates were different up to quite recently, but I think they are the same now. (Captain *Schwartze.*) Yes, that is right.

8069. Are the telegraph rates the same?—(Lord *Francis Scott.*) The telegraph rates, I believe, are not. If you send a telegram to Tanganyika it is more expensive than if you send one to Uganda.

8070. That is not necessarily a question of distance, I suppose? It is a different system?—Yes, it is a different system. It may be because of the distance, I dare say.

8071. How does that materially affect things? We in this country have to pay extra for sending a telegram to the Irish Free State?—Yes.

8072. We never used to have to do that. We have had a few complaints from commercial people. Do you find that it causes any real inconvenience over there?—No.

8073. So that you do not seriously look upon the postal and telegraph question as a very disturbing one?—That is not a disturbing factor; no.

8074. My reason for asking you these questions with regard to these complaints is that I do not feel that we have had very much evidence before this Committee as to the imperative necessity for the union of these services, but I do think it is clear from what you and others have said that a little more co-ordination and more exchange of views between the parties would relieve the situation considerably?—Yes.

8075. Now there is one question that I want to ask you, and it very much affects the question of maize. I take it that when we were talking originally about maize we did not sufficiently realise or study the big loss that the branch lines of the railways have made in the last few years, and that really the maize at the moment is a pretty heavy burden on the railways and on the Exchequer?—That is the argument that is put up by the present General Manager of the Railway. The late General Manager, Sir Christian Felling, denied it. He did not accept that point.

8076. But there were not those branch lines in those days, and they were not running at a loss as they are now?—Personally, I have always rather doubted as to how the accountancy of the loss on the branch lines was arrived at.

8077. If you look at the accountancy you will see that the branch lines are not even weighted in the same way as the rest of the line?—They pay more?

8078. No; they pay less?—The branch lines pay more.

8079. No; they are charged with less?—To get maize carried over branch lines you pay more than over the main line; there are special rates.

8080. You are referring to rates?—Yes. I thought you said rates.

8081. No; I mean that the charges, the proportion of the general railway charges allocated to the branch lines, is considerably less than that allocated to the other parts of the railway. If you are talking of accountancy, I think you have to remember the two sides?—Yes.

8082. I do not want to take up time about it, but I only felt that that point should be added to our record when we are considering the question. I do not think it is a matter which we need pursue very far. Then there are two or three other questions I want to ask you. It has been suggested, I think, and several questions have been asked during the course of this Inquiry as to Uganda and Kenya coming together. What is your feeling about that, and what are the difficulties in connection with it?—As I said the other day, really this is not a question that we have ever discussed, and I do not feel that I am in a position really to give any evidence upon it. It has not been brought before us and, as I said the other day, there have been occasions in the past when it has been considered, and I have thought myself that possibly it might have been done in the past. I think there are great difficulties now, but I would not like to give them myself.

8083. The only other line of questioning about which I want to raise one or two points is this: Assuming that we have dropped for the moment in these questions any idea of closer union, and therefore any idea of a High Commissioner controlling Native policy, and so on, I want to come for a minute to what we have been talking about and hearing from different witnesses in this Inquiry, and I should like to have your views as to the development of the Natives in Kenya. You [discussed] the matter, I think, on Mon[day] afternoon or Tuesday morning last. [I] gather that you are definitely in your own mind in favour of the development of the Natives' sense of responsibility and local government through the Native Councils?—Yes.

8084. And leading them on perhaps to join Native Councils?—Yes.

8085. But entirely upon Native lines and quite away from the Western ballot box idea of governing?—Yes, that is the idea so far as we can see it.

8086. Personally, I think that one is in sympathy with it; but if that is so, do you see any difficulty in having a Native budget for reserves?—I thought we went into that question very fully the other day.

Chairman.] We did; we had a lot of evidence on that subject.

Sir John Sandeman Allen.

8087. Then I will not take up any time about it. I do not think I will trouble the Committee any further?—My Lord Chairman, before we adjourned the other day, Sir John Sandeman Allen did ask some questions about the Native production, but he rather broke off in the middle of it, I think. I have now worked out a few figures.

Chairman.

8088. Perhaps you might give them to us, if you will?—I think one question was asked as to why there had been so much more increase in the export of Native produce from Tanganyika than from Kenya in recent years.

Sir John Sandeman Allen.

8089. Yes, that is right?—1926 is the earliest figure that I have for Tanganyika. If I take the years 1926 and 1930, in actual fact there has been a big decrease in the export of Native produce from Tanganyika. If we do not include sisal at all, which may be accepted as a non-Native crop, in values there has been a decrease in the last year of about three-quarters of a million pounds in the exports of produce from Tanganyika. I do not say that they are all of Native origin, but a lot of them are. Perhaps that is not quite a fair figure, because of the values, but I have the quant[ities] here. The Tanganyika exports are these. With regard to ground nuts, as between 1926 and 1930, there has been an increase of about 2,000 tons; cotton has decreased by about 20,000 centals; copra has remained about constant; hides and skins have been practically constant; grain has decreased by about 11,000 cwts.

Chairman.

8090. Does that include all grain?—Yes; it is under the heading of grain, and so I presume it does.

8091. Does it include sim-sim?—No, that is separate.

8092. Does it include maize?—Yes, maize and millet, and those things. In regard to sim-sim there is a slight increase of 200 tons; with regard to beeswax there is a decrease of about 3,000 cwts.; with regard to ghee there is a decrease of about 2,000 cwts. These figures refer to Tanganyika, and therefore it shows that there has been actually not an increase but a decrease.

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Sir *John Sandeman Allen.*

8093. To what years do those figures relate?—They relate to the period from 1926 to 1930, which is four years. Now, if I may, I will give you the figures for Kenya for the same period. With regard to cotton, from 1926 to 1930 in Kenya there has been an increase of 3,000 centals.

Chairman.

8094. Is that Kenya-produced cotton?—Yes. In the case of beans and pulse there has been an increase of 6,000 cwts.; in regard to hides an increase of 4,000 cwts.; in regard to sim-sim it is a little difficult to say actually what has happened, because in the two years 1926 and 1930 it is put in a different way. In 1926 it was put down as 11,528 gallons of sim-sim oil and 66,245 cwts. of sim-sim. In 1930 it is put down as 42,623 gallons of sim-sim oil, which is a very big increase, over 30,000 gallons. I do not know how much sim-sim goes to produce a gallon of sim-sim oil. The sim-sim itself shows a reduction of 40,000 cwts., but in the case of oil seed cake there was an export of 17,360 cwts. in 1930, which was a new thing. I should like to say, while I am dealing with sim-sim, that there is a very largely increased use of sim-sim in the country, owing to the increase of the dairy industry amongst the European communities. There is a much greater demand for sim-sim cake, which is used very much in that industry, and that would affect the amount exported. Actually there has been more exported, but they have turned sim-sim into sim-sim oil.

Mr. *Ormsby-Gore.*

8095. Before you leave that figure can you tell me this: Do I gather that the great change in the last year or two has been that the sim-sim has been converted into oil locally in the Native reserves, or is it done in a factory by Europeans?—This is of Native origin, and I think it is done in a factory by Indians.

8096. Mainly in the Kavirondo reserves?—Yes. In the case of wattle bark there has been an increase from 71,641 cwts. in 1926 to 82,158 cwts. in 1930. That is rather a new Native interest; it used to be almost entirely European, but now there is quite a lot of wattle being grown in the Native reserves, and there is a considerable increase in the export of wattle bark of Indian origin. In the case of ground nuts there has been an increase from 20,164 cwts. to 33,260 cwts. In the case of ghee, which is a comparatively new industry in Kenya, because we used to get it all from Uganda before, it has gone up from 52 cwts. in 1926 to 786 cwts. in 1930.

Mr. *Wellock.*

8097. Do you mind giving me the total figures, if you have them; the total exports in 1926 and 1930 from Uganda and also from Kenya?—I have the figures in tons and centals and cwts.; they are not in values.

8098. You could not get the total values?—No; they cannot be obtained from the statistics. I am not saying that there is not a greater amount exported, because there is a greater amount; I am only saying with regard to the increase that it was rather suggested that although there was supposed to be a great deal more work done in the Native reserves, in actual results it did not come to much.

Sir *John Sandeman Allen.*

8099. The figures that I quoted were figures for the period of years shown in the agricultural reports?—Yes. (Mr. *Harper.*) But they included sisal, did they not?

8100. They included coffee?—(Lord *Francis Scott.*) I think the point is this, if I may come to it. We have gone into this individual case. The question is, if there has been an increase in these things, why is there a decrease in the totals, as you pointed out?

8101. Yes, that is right?—I think it is explained by a big decrease in the export of Native maize, because all the Native maize—and there was 1,300,000 bags of Native maize last year—except for 100,000 bags, was consumed in the country while the European maize is exported being much easier to grade, and so on.

8102. I thought that was the case?—The other product which has gone down to practically nothing is copra, and I presume that that is because the market has gone.

Viscount *Mersey.*

8103. Are you speaking of values, or volumes, at present?—Both. There seems to have been hardly any export of copra last year, according to the statistics. Now may I follow this up a little bit: There are two other industries which are not restricted at all in respect of Native produce. One is sugar; that is a comparatively new industry in Kenya. In 1920, for instance, there was no export at all, but in 1930 there was £26,000 worth of sugar exported, and quite a lot of that is grown by the Natives and sold to the factories, so that there is a certain amount of produce in that. The other thing is the butter industry which we have developed. By exporting the European butter it does give a much bigger market for the Native milk, and that has been increased very much. Those are not reflected in the export figures. I do not think the export of Native produce reflects the actual increase of Native produce which is going on.

Chairman.

8104. There are butter factories which buy milk from the Natives, and perhaps also from Europeans, but certainly from the Natives, and convert it into butter, and it goes out of the country in the form of butter?—They take the big majority of the European milk by agreement, and the Natives are selling a considerably greater quantity of milk than they used to do.

Lord *Lamington.*

8105. Is not butter exported?—(Mr. *Harper.*) The Co-operative creameries are European undertakings, and primarily designed to deal with the products of European farmers.

Chairman.

8106. But they are buying milk wherever they find it, buying from the Natives as well as from Europeans?—Yes.

Sir *John Sandeman Allen.*

8107. Where do the Natives sell the milk?—They sell it to the Co-operative creameries. They do not sell milk in very large quantities, as I understand it.

Chairman.

8108. They separate it and sell it in the form of cream, do they?—There is very little of that done. I believe one co-operative factory does take a certain amount of Native milk, but where the Native produce goes towards the production of butter is more in sim-sim oil cake, which of course is used as cattle food and ultimately turned into butter.

8109. The Natives grow sim-sim which is turned into cake and sold to the European milk producer, and so the sim-sim is turned into milk, and of course ultimately into butter?—Yes. It is also used for cattle food.

8110. There is no sale of milk from the Native herders to the butter factories, or at any rate no substantial amount, I understand?—It is not a very big quantity at the moment, but it is hoped to develop that side of the thing from now onwards; a particular effort is being made to bring the masai into butter production, or rather cream production.

Sir *John Sandeman Allen.*

8111. To go back to the question of sugar for a moment, is that a thing in regard to which you are training the Natives; are they being trained in the growing of sugar now? Is export advice given to them, and is it graded, or is there supervision in any way?—(Lord *Francis Scott.*) I am afraid I could not answer that question definitely. The chief sugar factory is known as Miwani, and there is quite a big amount that they take to the factory there. How much they supervise the growing of it I do not know. There is another big factory down on the coast, and I think the same thing happens there. (Captain *Schwartze.*) With regard to this milk question I think the real point is that the amount of milk sold by the Natives direct to the creameries is very small, but owing to the considerable increase of milk production by the Natives there has been an equal increase in the exportable surplus of butter. I think that is really the point. (Lord *Francis Scott.*) There is one other point upon that which I do not think has been brought before the Committee. There are agricultural shows being held in different parts of Kenya now for purely Native produce. There has been one in Kavirondo, and one in the Kikuyu country, and one on the coast. I am only saying that to show that the Government of Kenya is taking more interest in the greater production than it has been credited with.

8112. Have these shows been organised by Government?—Yes.

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8093. To what years do those figures relate?—They relate to the period from 1926 to 1930, which is four years. Now, if I may, I will give you the figures for Kenya for the same period. With regard to cotton, from 1926 to 1930 in Kenya there has been an increase of 3,000 centals.

Chairman.

8094. Is that Kenya-produced cotton?—Yes. In the case of beans and pulse there has been an increase of 6,000 cwts.; in regard to hides an increase of 4,000 cwts.; in regard to sim-sim it is a little difficult to say actually what has happened, because in the two years 1926 and 1930 it is put in a different way. In 1926 it was put down as 11,528 gallons of sim-sim oil and 66,245 cwts. of sim-sim. In 1930 it is put down as 42,623 gallons of sim-sim oil, which is a very big increase over 30,000 gallons. I do not know how much sim-sim goes to produce a gallon of sim-sim oil. The sim-sim itself shows a reduction of 40,000 cwts., but in the case of oil seed cake there was an export of 17,360 cwts. in 1930, which was a new thing. I should like to say, while I am dealing with sim-sim, that there is a very largely increased use of sim-sim in the country, owing to the increase of the dairy industry amongst the European communities. There is a much greater demand for sim-sim cake, which is used very much in that industry, and that would affect the amount exported. Actually there has been more exported, but they have turned sim-sim into sim-sim oil.

Mr. *Ormsby-Gore.*

8095. Before you leave that figure can you tell me this. Do I gather that the great change in the last year or two has been that the sim-sim has been converted into oil locally in the Native reserves, or is it done in a factory by Europeans?—This is of Native origin, and I think it is done in a factory by Indians.

8096. Mainly in the Kavirondo reserves?—Yes. In the case of wattle bark there has been an increase from 71,644 cwts. in 1926 to 82,158 cwts. in 1930. That is rather a new Native interest; it used to be almost entirely European, but now there is quite a lot of wattle being grown in the Native reserves, and there is a considerable increase in the export of wattle bark of Indian origin. In the case of ground nuts there has been an increase from 20,164 cwts. to 33,260 cwts. In the case of ghee, which is a comparatively new industry in Kenya, because we used to get it all from Uganda before, it has gone up from 52 cwts. in 1926 to 786 cwts. in 1930.

Mr. *Wellock.*

8097. Do you mind giving me the total figures, if you have them; the total exports in 1926 and 1930 from Uganda and also from Kenya?—I have the figures in tons and centals and cwts.; they are not in values.

8098. You could not get the total values?—No; they cannot be obtained from the statistics. I am not saying that there is not a greater amount exported, because there is a greater amount; I am only saying with regard to the increase that it was rather suggested that although there was supposed to be a great deal more work done in the Native reserves, in actual results it did not come to much.

Sir *John Sandeman Allen.*

8099. The figures that I quoted were figures for the period of years shown in the agricultural reports?—Yes. (Mr. *Harper.*) But they included sisal, did they not?

8100. They included coffee?—(Lord *Francis Scott.*) I think the point is this, if I may come to it. We have gone into this individual case. The question is, if there has been an increase in these things, why is there a decrease in the totals, as you pointed out?

8101. Yes, that is right?—I think it is explained by a big decrease in the export of Native maize, because all the Native maize—and there was 1,300,000 bags of Native maize last year—except for 100,000 bags, was consumed in the country, while the European maize is exported, being much easier to grade, and so on.

8102. I thought that was the case?—The other product which has gone down to practically nothing is copra, and I presume that that is because the market has gone.

Viscount *Mersey.*

8103. Are you speaking of values, or volumes, at present?—Both. There seems to have been hardly any export of copra last year, according to the statistics. Now may I follow this up a little bit: There are two other industries which are not restricted at all in respect of Native produce. One is sugar; that is a comparatively new industry in Kenya. In 1920, for instance, there was no export at all, but in 1930 there was £26,000 worth of sugar exported, and quite a lot of that is grown by the Natives and sold to the factories, so that there is a certain amount of produce in that. The other thing is the butter industry which we have developed. By exporting the European butter it does give a much bigger market for the Native milk, and that has been increased very much. Those are not reflected in the export figures. I do not think the export of Native produce reflects the actual increase of Native produce which is going on.

Chairman.

8104. There are butter factories which buy milk from the Natives, and perhaps also from Europeans, but certainly from the Natives, and convert it into butter, and it goes out of the country in the form of butter?—They take the big majority of the European milk by agreement, and the Natives are selling a considerably greater quantity of milk than they used to do.

Lord *Lamington.*

8105. Is not butter exported?—(Mr. *Harper.*) The Co-operative creameries are European undertakings, and primarily designed to deal with the products of European farmers.

Chairman.

8106. But they are buying milk wherever they find it, buying from the Natives as well as from Europeans?—Yes.

Sir *John Sandeman Allen.*

8107. Where do the Natives sell the milk?—They sell it to the Co-operative creameries. They do not sell milk in very large quantities, as I understand it.

Chairman.

8108. They separate it and sell it in the form of cream, do they?—There is very little of that done. I believe one co-operative factory does take a certain amount of Native milk, but where the Native produce goes towards the production of butter is more in sim-sim oil cake, which of course is used as cattle food and ultimately turned into butter.

8109. The Natives grow sim-sim which is turned into cake and sold to the European milk producer, and so the sim-sim is turned into milk, and of course ultimately into butter?—Yes. It is also used for cattle food.

8110. There is no sale of milk from the Native herders to the butter factories, or at any rate no substantial amount, I understand?—It is not a very big quantity at the moment, but it is hoped to develop that side of the thing from now onwards; a particular effort is being made to bring the masai into butter production, or rather cream production.

Sir *John Sandeman Allen.*

8111. To go back to the question of sugar for a moment, is that a thing in regard to which you are training the Natives; are they being trained in the growing of sugar now? Is expert advice given to them, and is it graded, or is there supervision in any way?—(Lord *Francis Scott.*) I am afraid I could not answer that question definitely. The chief sugar factory is known as Mwani, and there is quite a big amount that they take to the factory [illegible]. How much they supervise the growing of it I do not know. There is another big factory down on the coast, and I think the same thing happens there. (Captain *Schwartze.*) With regard to this milk question I think the real point is that the amount of milk sold by the Natives direct to the creameries is very small, but owing to the considerable increase of milk production by the Natives there has been an equal increase in the exportable surplus of butter. I think that is really the point. (Lord *Francis Scott.*) There is one other point upon that which I do not think has been brought before the Committee. There are agricultural shows being held in different parts of Kenya now for purely Native produce. There has been one in Kavirondo, and one in the Kikuyu country, and one on the coast. I am only saying that to show that the Government of Kenya is taking more interest in the greater production than it has been credited with.

8112. Have these shows been organised by Government?—Yes.

8113. And what sort of response do you get from the natives?—Very good, I believe.

8114. It is the kind of thing which would appeal to them, I suppose?—Yes, there is always native produce shown in the big Show at Nairobi, as well.

8115. Is that all that you want to say about native production?—Yes, that is all about native production. If you went back to the figures of 1920 you would see that there has been a very big improvement since 1920. I do not know whether you want any more figures.

Chairman.

8116. I think 1926 and 1930 is a fair comparison?—Yes.

Lord *Ponsonby.*

8117. I wanted to ask you some questions about the character of the prospects of the European settler community. You notice that I do not call them "immigrant races"?—Yes.

8118. By the way, that expression, which occurs on page 2 of your statement certainly would make somebody who was not versed in these matters think that the expression was being used for the first time by His Majesty's Government. I think you will admit that?—I think that was explained the other day with Lord Passfield.

8119. I think you said that there were instances of the third generation having become established amongst the settlers; three generations having remained out in Kenya?—The third generation are only babies, of course.

8120. But still, it is in an experimental stage?—Yes.

8121. I mean, the whole idea of the colonization of Kenya?—It is only 25 years old, is it not?

8122. I have heard the opinion expressed that although it may become firmly established, it is quite possible that from economic or physiological causes it may peter out altogether?—Personally I do not think there is any chance of that.

8123. The settler community of course is dominated largely by people of British nationality?—In Kenya very largely.

8124. Amongst them, only a very small minority I suppose can pay attention to public affairs and to give public service, like yourself and your fellow witnesses?—Yes, there is only a small number who give a great deal of time to it, but of course when any big question arises the whole of the community get very politically minded for the time being.

8125. On the average, the settler really has to devote himself to his farm and to his work, and he has not got time to take much interest in political affairs?—A large number of the people have not, no.

8126. Nor has he really any very great interest in native development; he regards the natives merely as a pool from which he can draw labour?—Oh no, I think that is not quite a fair statement. The settler in Kenya does take a very great personal interest in the natives whom he employs himself. He could not do so in regard to what is happening in the Reserves, but he does not look upon the native merely as a beast of burden only.

8127. No, I am not suggesting that he does not treat the native perfectly well, or that he is not friendly towards him, but what I mean is that this vast native population is not a matter of very close interest to him?—To the ordinary man who is busy on his farm, you mean?

8128. Yes?—No, but he takes a general interest in everything that is going on at the time. (Mr. *Harper.*) I think the general feeling is that it is not our business at the moment. The Government have kept that matter in their own hands, and as we claim that we are not admitted to any effective share in the trusteeship, you can hardly expect the public to take a very lively interest in the matter.

8129. Quite so, and therefore the general attitude is one of indifference?—(Lord *Francis Scott.*) No, I do not think you can say it is altogether a matter of indifference. They think a good deal about it.

8130. We have had such a great deal of evidence to show that the relationship between the white population and the natives in Kenya is not as satisfactory as it is in the other two Territories?—That I should be prepared to dispute. (Captain *Schwartze.*) I think if you were to look at Appendix C (I think it is) of our Memorandum, it would show that the Convention of Associations, which is often very much abused, has taken a very great interest in native welfare, and there are representatives sent down to the Convention from the whole of the country, and they represent the whole farming community. It is a little difficult to expect the average individual sitting on a farm to take really a keen and live interest in exactly what is happening in the Reserves, except at meetings of his Association where those things are discussed, and from where delegates are sent down to the Convention, who do pass resolutions and so on, and help on the native interests. It is essential that they should do so, not necessarily from any philanthropic motives, but because of the enormous importance to the European settler of native welfare being looked after, and the whole native population being properly treated and being healthy and so on. (Mr. *Harper.*) Might I refer your Lordship to some of the resolutions as indicating that there is a certain amount of interest in a fairly wide range of native questions taken by the Convention of Associations. There is a resolution relating to medical services for natives; several resolutions in connection with the Hut and Poll Tax, one resolution being a strong recommendation that it should be reduced because it was too heavy at that time; another relating to the technical education of the natives; another relating to the Kipandi System and recommending the Government to take strong measures against any employer who abused the Kipandi System in any way; another relating to native trading.

Chairman.

8131. I think those are all before the Committee?—I was just referring Lord Ponsonby to them in reply to his question.

Lord *Ponsonby.*

8132. I am not suggesting that a considerable portion of the settler community are not closely interested in these matters, because it is quite obvious that they are. I think one of the witnesses answered my question by saying that in the nature of the case the average settler or the majority of the settlers must necessarily be rather indifferent to these complicated and difficult racial questions?—These resolution are sent up by the District Associations, and they are discussed in the Little District Associations and eventually passed in the Convention.

8133. Now, Lord Francis, I suppose that considering the comparative smallness of the community and the small proportion that are able to take an interest in public affairs and in public service, the idea of the Colony achieving dominion status does seem rather extravagant, does it not?—(Lord *Francis Scott.*) I think I should like to explain that. That is only the far ultimate future; we are not putting that forward as anything in the immediate future at all.

8134. That is the ultimate aim?—All that we want is that the road should be kept clear for something to happen in the far future. That is the point. We are not asking for that now. We could not possibly do such a thing with the small community that we have now, as you say.

8135. I have only just had time to read quickly through the Paper that you have handed in upon the African Native by a Mr. Bernhard?—Yes, Father Bernhard.

8136. Will you tell us who he is?—He is a Roman Catholic missionary who has been out there for 33 years and he is a man who is very highly respected, I think, wherever he is known. He is now acting in the place of the Bishop of the Roman Catholic Missions.

Mr. *Ormsby-Gore.*

8137. Is he at the Fathers of the Holy Ghost just outside Nairobi?—Yes, Nairobi, and around the Kikuyu area and that [illegible].

Lord *Ponsonby.*

8138. Are you in agreement with this, or do you not think that it is rather a sweeping disparagement of the native capacity for possible development?—I do not feel that I am in a position to give an opinion in comparison with Father Bernhard, who has been working intimately with the natives, and who has done some very fine work for the natives.

8139. One question more with regard to the position of the native. I want to ask you this: In case of breach of contract a native is now proceeded against under the criminal law. That is so, I think?—(Captain *Schwartze.*) Under the Masters and Servants Ordinance, yes; but not for ordinary breach of contract, only contract of service.

8140. Only contract of service; very well. Now do you consider that that is the only safe way of dealing with it, or would it be an improvement to deal with such matters under the civil law?—I

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16° *Junii*, 1931.] Lord FRANCIS SCOTT, Captain H. E. SCHWARTZE and Mr. J. F. H. HARPER. [*Continued.*

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Chairman.

8141. Can you tell me this: Is that system essentially the same in the three countries, in Tanganyika for instance? Is breach of contract proceeded against in the Police Courts in Tanganyika and Uganda?—I am afraid I cannot speak with definite authority with regard to those things.

Sir *Robert Hamilton.*

8142. May I interpose for one moment. I think originally breaches of contract under the Masters and Servants Ordinance were only cognizable following the complaint of the master?—Yes.

8143. Are they cognizable upon a complaint by the Police?—I think it was changed back to their being cognizable to the Police, and it has been changed back again now.

8144. It was made so, and now you say that it has been changed back again?—Yes.

Chairman.

8145. We undertook that if there were any general questions, especially in regard to what may be called the criticisms of the settler or unofficial attitude in Kenya, you would have a full opportunity to-day to deal with those questions. It may be that you desire to make a general statement upon that point, or perhaps you would desire to reply to specific questions. Specific questions have been asked, but perhaps not the exact questions that you would wish to reply to, and if you wish to make a general statement on the point, we shall be very glad to hear you?—(Lord *Francis Scott.*) I think that most of the things seem to have been pretty well dealt with, but there is one point that I should like to bring before the Committee, and that is the question of the export rate on maize.

8146. That is to say, the railway rate?—Yes. I should like to point out that it has been suggested that that merely helps the European and not the native, and I want to make it clear that in fact it does help the native to an equal extent.

8147. He gets a better price for his locally consumed goods?—The local price is based entirely on the export price, or the value of the export price to the grower. If I may give a concrete instance with regard to that, last year when the price was 6s. a bag for export, the internal price of maize immediately jumped up by between 2s. and 3s. per bag, and the native grower got that, because his stuff was all sold locally.

8148. I think that that point has been made?—Yes, very well.

8149. While we are upon that, there is a point that I should like to ask you about. It is with regard to the question of wheat, and it really applies in other directions as well, but it arose in my mind in regard to the Customs Agreement between Uganda and Kenya. You will correct me if I am wrong, but I understand that wheat is at present largely produced, and the consumption of wheat in Kenya and Uganda at any rate is locally produced in the Highlands of Kenya?—Yes, broadly speaking, that is so, yes.

8150. The duty on wheat at the port is 20 per cent. so-called Revenue Duty, but of course that has a protective effect whether it is for revenue or not, and a super duty of a further 10 per cent., making a total duty of 30 per cent. upon wheat, *ad valorem*. Is that so?—Yes, I think that is correct.

8151. In addition to that, the Railway rates are so based that the cost of bringing grain up country is very considerably higher than the cost of bringing grain down country, that is to say, dealing with maize coming down country, the rate per ton is so much lighter than the rate per ton on wheat going up country, if wheat did go up country. That is also correct, I think, is it not so?—Yes, I think so.

8152. Those two combined, railway rates of considerable extent, and a tariff of 30 per cent., obviously raise the price of wheat very considerably to the consumer of wheat, which is the consumer of bread, and the grower of wheat in the

Kenya Highlands gets the advantage of those two (if I may so call them) fiscal enactments. That may be accepted by the Kenya community generally but when you come to deal with the Ugandan community, their interest is in obtaining cheap wheat and therefore cheap bread. It occurs to me that it will be extremely difficult with a case of that sort—and other cases may arise also of course—to come to an agreement upon the question of tariffs between Kenya and Uganda, because at any moment the Uganda Government may say: "We see no reason why our community should pay a high price for their wheat in order that the wheat growers of Kenya should get a very considerable advantage." It seems to me that that is a case where a mere informal agreement arising out of the Governors' Conference might very easily break down?—If I may say so, this question was very thoroughly threshed out, and we did come to an agreement. As far as Uganda is concerned we are now supplying them with wheat flour almost entirely grown in Kenya, and it would not matter whether they took off the suspended duty on imported flour, we could still do it much more cheaply, and the fact that we get country produce rates would help us, which means low rates; that would help us to sell it to them cheaper than we would otherwise be able to do. With regard to Mombasa and the rates, it may interest you to know that it is much cheaper to bring a bag of flour from Bombay to Mombasa that it is to bring it from Nairobi to Mombasa.

8153. Flour, yes, possibly?—It is all flour that you are speaking of, really, when you say "wheat."

8154. What occurs to me is that supposing Uganda had determined to levy no duties upon flour, and the railway rates were not rates which have a protective influence upon the growing of wheat and therefore upon the production of flour, if the rates were so adjusted as not to put an excessive burden upon the importation of flour and the flour came in free, surely then the inhabitants of Kampala would be able to get their flour a great deal more cheaply than at the present price that they pay?—No, I do not think they would; we could still compete. But I should like to point out that the wheat grower of Kenya is in a very bad way at the moment, owing to the price of wheat; even with the Pool price keeping the price up, he will not get more than 10s. a bag for his wheat this year.

8155. What does that mean?—There is 200 lbs. in a bag.

8156. That is about £1 per quarter. Is that the price paid for wheat in Kenya at the present moment at the flour mill?—The price paid for wheat at the moment varies. That is the Pool price pooled over the whole thing. The top price of the very best is 17s. per 200 lbs., and it goes down according to grade of wheat.

8157. Is that on the farm or delivered at the flour mill?—That is delivered at the flour mill, and of course the export price is very low. But the great thing, of course, with our wheat industry is to try and get the whole of the internal market in Africa; therefore we have to sell cheaply in order to compete with the imported Bombay flour, which is very low indeed in price now.

8158. So that in effect the bread eater at Nairobi is helping to pay for the bread eater at Dar-es-Salaam?—The price there is lower now than it was some years ago.

8159. What is the price of bread in Nairobi?—33 cents a loaf.

8160. That is roughly about 4d. a loaf, is it?—Yes.

8161. What is the weight of a loaf?—1 lb.

8162. 1 lb.?

Sir *Robert Hamilton.*] Yes, 1 lb.; that is right.

Chairman.

8163. That seems to me to be a very surprising thing, that with wheat at 20s. and 30s. a quarter the price of bread should be 4d. a loaf?—Well, there it is.

8164. That is 4d. a lb.?—Well, it is one of those things where they have a very small turnover of course; they do not have a big turnover, and they have to pay very high wages.

8165. Wheat at 25s. a quarter in this country produces bread at the price of 7d. per quartern loaf. In Nairobi, with wheat at approximately the same price, the price of a quartern loaf would be 1s. 4d.?—That is not the fault of the growers, but, if I may say so, upon this subject I think the people of Uganda and Tanganyika and ourselves do try to look at these questions from the broad point of view of the country at large, with a

think that the present system is the better one, because if you are going to deal with a man under the civil law, it would probably let him in for very heavy expense. He could not be imprisoned, it is true, but it seems to me that if a man runs away and deserts who is under a contract of service, and he disappears, it is going to be terribly difficult to get at him under the civil law, and for a European to sue a native for damages for breach of contract I do not think is a very sound scheme.

Chairman.

8141. Can you tell me this: Is that system essentially the same in the three countries, in Tanganyika for instance? Is breach of contract proceeded against in the Police Courts in Tanganyika and Uganda?—I am afraid I cannot speak with definite authority with regard to those things.

Sir *Robert Hamilton.*

8142. May I interpose for one moment. I think originally breaches of contract under the Masters and Servants Ordinance were only cognizable following the complaint of the master?—Yes.

8143. Are they cognizable upon a complaint by the Police?—I think it was changed back to their being cognizable to the Police, and it has been changed back again now.

8144. It was made so, and now you say that it has been changed back again?—Yes.

Chairman.

8145. We undertook that if there were any general questions, especially in regard to what may be called the criticisms of the settler or unofficial attitude in Kenya, you would have a full opportunity to-day to deal with those questions. It may be that you desire to make a general statement upon that point, or perhaps you would desire to reply to specific questions. Specific questions have been asked, but perhaps not the exact questions that you would wish to reply to, and if you wish to make a general statement on the point, we shall be very glad to hear you?—(Lord *Francis Scott.*) I think that most of the things seem to have been pretty well dealt with, but there is one point that I should like to bring before the Committee, and that is the question of the export rate on maize.

8146. That is to say, the railway rate?—Yes. I should like to point out that it has been suggested that that merely helps the European and not the native, and I want to make it clear that in fact it does help the native to an equal extent.

8147. He gets a better price for his locally consumed goods?—The local price is based entirely on the export price, or the value of the export price to the grower. If I may give a concrete instance with regard to that, last year when the price was 6s. a bag for export, the internal price of maize immediately jumped up by between 2s. and 3s. per bag, and the native grower got that, because his stuff was all sold locally.

8148. I think that that point has been made?—Yes, very well.

8149. While we are upon that, there is a point that I should like to ask you about. It is with regard to the question of wheat, and it really applies in other directions as well, but it arose in my mind in regard to the Customs Agreement between Uganda and Kenya. You will correct me if I am wrong, but I understand that wheat is at present largely produced, and the consumption of wheat in Kenya and Uganda at any rate is locally produced in the Highlands of Kenya?—Yes, broadly speaking, that is so, yes.

8150. The duty on wheat at the port is 20 per cent. so-called Revenue Duty, but of course that has a protective effect whether it is for revenue or not, and a super duty of a further 10 per cent., making a total duty of 30 per cent. upon wheat, *ad valorem*. Is that so?—Yes, I think that is correct.

8151. In addition to that, the Railway rates are so based that the cost of bringing grain up country is very considerably higher than the cost of bringing grain down country, that is to say, dealing with maize coming down country, the rate per ton is so much lighter than the rate per ton on wheat going up country, if wheat did go up country. That is also correct, I think, is it not so?—Yes, I think so.

8152. Those two combined, railway rates of considerable extent, and a tariff of 30 per cent., obviously raise the price of wheat very considerably to the consumer of wheat, which is the consumer of bread, and the grower of wheat in the Kenya Highlands gets the advantage of those two (if I may so call them) fiscal enactments. That may be accepted by the Kenya community generally but when you come to deal with the Ugandan community, their interest is in obtaining cheap wheat and therefore cheap bread. It occurs to me that it will be extremely difficult with a case of that sort—and other cases may arise also of course—to come to an agreement upon the question of tariffs between Kenya and Uganda, because at any moment the Uganda Government may say: "We see no reason why our community should pay a high price for their wheat in order that the wheat growers of Kenya should get a very considerable advantage." It seems to me that that is a case where a mere informal agreement arising out of the Governors' Conference might very easily break down?—If I may say so, this question was very thoroughly threshed out, and we did come to an agreement. As far as Uganda is concerned we are now supplying them with wheat flour almost entirely grown in Kenya, and it would not matter whether they took off the suspended duty on imported flour, we could still do it much more cheaply, and the fact that we get country produce rates would help us, which means lower rates; that would help us to sell it to them cheaper than we would otherwise be able to do. With regard to Mombasa and the rates, it may interest you to know that it is much cheaper to bring a bag of flour from Bombay to Mombasa that it is to bring it from Nairobi to Mombasa.

8153. Flour, yes, possibly?—It is all flour that you are speaking of, really, when you say "wheat."

8154. What occurs to me is that supposing Uganda had determined to levy no duties upon flour, and the railway rates were not rates which have a protective influence upon the growing of wheat and therefore upon the production of flour, if the rates were so adjusted as not to put an excessive burden upon the importation of flour and the flour came in free, surely then the inhabitants of Kampala would be able to get their flour a great deal more cheaply than at the present price that they pay?—No, I do not think they would; we could still compete. But I should like to point out that the wheat grower of Kenya is in a very bad way at the moment, owing to the price of wheat; even with the Pool price keeping the price up, he will not get more than 10s. a bag for his wheat this year.

8155. What does that mean?—There is 200 lbs. in a bag.

8156. That is about £1 per quarter. Is that the price paid for wheat in Kenya at the present moment at the flour mill?—The price paid for wheat at the moment varies. That is the Pool price pooled over the whole thing. The top price of the very best is 17s. per 200 lbs., and it goes down according to grade of wheat.

8157. Is that on the farm or delivered at the flour mill?—That is delivered at the flour mill, and of course the export price is very low. But the great thing, of course, with our wheat industry is to try and get the whole of the internal market in Africa; therefore we have to sell cheaply in order to compete with the imported Bombay flour, which is very low indeed in price now.

8158. So that in effect the bread eater at Nairobi is helping to pay for the bread eater at Dar-es-Salaam?—The price there is lower now than it was some years ago.

8159. What is the price of bread in Nairobi?—33 cents a loaf.

8160. That is roughly about 4d. a loaf, is it?—Yes.

8161. What is the weight of a loaf?—1 lb.

8162. 1 lb.?

Sir *Robert Hamilton.*] Yes, 1 lb., that is right.

Chairman.

8163. That seems to me to be a very surprising thing, that with wheat at 20s. and 30s. a quarter the price of bread should be 4d. a loaf?—Well, there it is.

8164. That is 4d. a lb.?—Well, it is one of those things where they have a very small turnover of course; they do not have a big turnover, and they have to pay very high wages.

8165. Wheat at 25s. a quarter in this country produces bread at the price of 7d. per quartern loaf. In Nairobi, with wheat at approximately the same price, the price of a quartern loaf would be 1s. 4d.?—That is not the fault of the growers, but, if I may say so, upon this subject I think the people of Uganda and Tanganyika and ourselves do try to look at these questions from the broad point of view of the country at large, with a

certain amount of give and take here and there, and we do try not to talk too parochially. Uganda try to meet us in certain ways, and Tanganyika can do that, and actually we are protected by the long haul on the railway.

8166. And also by the heavy rates on incoming material. It is not merely the long haul, but it is the railway policy which imposes heavy rates upon imported articles? Yes, that has a certain effect, no doubt.

Sir John Sandeman Allen.

8167. May I just interrupt for one moment in order to ask a question. With regard to this heavy rate on imported articles, does it not rather tend to invite the competition of motors?—A certain amount of it, yes, and of course the motors like to get the best paying goods from the railways, and they do not take the bulk stuff which goes more cheaply on the railway.

Mr. Ormsby-Gore.

8168. There is no road through from Mombasa?—Yes, there is, but it is a bad one. (Captain *Schwartze.*) There is a committee which has been appointed, which is going into the whole question of road *versus* rail.

Chairman.

8169. Now there is another point. It appears to me that an alliance between a community which holds the theory that taxation should be for revenue, and a community that holds the theory that taxation should have a protective effect, is an uneasy and difficult alliance to maintain. Do you anticipate that for all time the harmony which I understand at present exists between the revenue taxation country of Uganda and the protective taxation country of Kenya, can be maintained without having, at any rate occasionally, violent differences of opinion on the Customs policy?—(Lord *Francis Scott.*) I think the answer to that is that in the past years there was far greater feeling between Kenya and Uganda, and this year it is getting better and better, and, as we are coming more to discuss things, as the feeling gets better, and I anticipate that in the future, by a policy of give and take, we will carry on in the same way. That is one of the things that I hope very much that you will consider, this proposal of ours for the conferences of the joint committees. (Captain *Schwartze.*) Before you leave the question of the Customs as affecting Uganda, may I refer again to the butter question? I know that it is an awkward subject, but the Indian gentleman from Uganda said on Friday afternoon (I think it was) that if you were to bring the duty of 1s. per lb. down to 20 cents, the ordinary *ad valorem* figure, the price of butter to the consumer in Uganda would drop 80 cents. I understand also that he has since written a letter to say that the Customs duty on butter is not 1s., but 30 cents. As a matter of fact, the first statement was correct, and the correction is incorrect. The duty is 1s. a lb. on butter. Of course, it would be perfectly true to say that if you knocked down the Customs duty on butter by 80 cents, anyone consuming imported butter in Uganda would pay 80 cents less, but the result would not be that, because the Uganda consumer would not consume imported butter even if the Customs duty were reduced to 20 cents, because it would still cost considerably more than getting the best Kenya butter. The average wholesale price of Kenya butter is 1 shilling 40 cents.

Mr. Ormsby-Gore.

8170. Where?—At Nairobi. I am taking it at Nairobi.

Chairman.

8171. That is delivered to the retailer, is it?—Yes.

8172. The price to the retailer is one shilling and 40 cents?—Yes. As a matter of fact butter is one shilling and 50 cents on the average of all butter, and the wholesale price in Nairobi is one shilling and 40 cents. The cheapest imported butter that could be got, taking into consideration the freight rate, I understand, is New Zealand butter, imported from London.

Lord Cranworth.

8173. What about Russian butter?—We have plenty of ticks in Kenya. New Zealand butter from London works out at about one shilling and 10 cents, and there are the shipping costs and railway freights which work out at about 20 cents. That is one shilling and 30 cents, and if you add 20 per cent duty upon say one shilling and 30 cents, that comes to one shilling and 66 cents as the wholesale price, which is 26 cents more than the present wholesale price of butter. The result therefore would be that Kenya butter, which I think is no worse than New Zealand butter, would still be sold in Uganda, and the result would be that the Uganda consumer is therefore not affected by the protective duty on butter.

Sir Robert Hamilton.

8174. What is the price of tinned butter as compared with fresh butter?—I do not know. It is very little used.

8175. There is a heavy duty on tinned butter?—(Lord *Francis Scott.*) Tinned butter is expensive. (Captain *Schwartze.*) I understand that tinned butter is now being produced locally at 2s. per lb.

Chairman.

8176. I do not want us to pursue this question too far, because it is a controversial one, and one upon which we may have endless discussion; but I wanted to know whether, broadly speaking, you do not see a danger in a Customs Union between a free trade country and a protective country?—Theoretically there must be, but I think as Lord Francis said, everyone is trying to work with good will, and I think it is getting better and better; there is no cloud on the horizon at present.

8177. Now may I deal quite briefly with another point. On page 2 of your statement you say: "His Majesty's Government base their decisions on a doctrine fundamentally opposed to those interests, namely, that the interests of the African Native must be paramount and that if, and when, they conflict with those of the so-styled immigrant races, the former shall prevail." That is obviously a quotation from the Paramountcy Declaration of 1923. It is not exactly a quotation, but it is obviously derived from that. I suggest to you that it is fairer to His Majesty's Government and to the policy of this country if that declaration were read, not as though the first sentence were the only operative part of it; but I suggest to you that the second and subsequent sentences do very substantially modify that rather blunt declaration. Obviously if you stop at the end of the first sentence and only quote that, it would be a very one-sided declaration; but that declaration is qualified and made into a fair declaration by the subsequent paragraphs, and I think it would probably have been fairer and clearer if you had not quoted the first sentence as though it was the whole of the declaration, but had considered and taken into account the subsequent sentences in the 1923 Declaration. I think you will agree with me that the 1923 Declaration must be read as a whole, and it would be unfair and misleading merely to quote the first sentence of it?—(Lord *Francis Scott.*) Our idea was to try and bring before the Committee, as Lord Passfield was asking us the other day, what the actual points were that we disliked in the White Papers, and the point was that we felt that this question of paramountcy was accentuated very much, and the other part that you refer to which comes subsequently had been rather left in the cold.

8178. Although, of course, the whole declaration is requoted verbatim in the White Papers?—Yes, it is. (Captain *Schwartze.*) May I ask for this indulgence, just to say this, because Lord Francis Scott, Mr. Harper and myself have tried very hard to be quite certain that the figures that we have given and quoted should be accurate, and we have been particularly anxious to state facts, as opposed to theories, as far as possible. What I wanted to say was this: I understand that a remark that I made—although it was not made to this Committee—with regard to the density of population in the Native Reserves has been misunderstood, and in some quarters has been thought to be perhaps a deliberate mis-statement. I did state that the density of the native population of the areas in Kenya was approximately 13 per square mile, and it has been pointed out to me since that that is not a correct figure. The difference has arisen because I was talking of not only the demarcated Native Reserves, but the province of Tukumu and the Northern Frontier. It does work out at 15.8. The actual figure of the average density in the demarcated Native Reserves is between 51 and 55. I do not want it to be thought that I was deliberately stating something in order to try and mislead; and

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Lord *Cranworth.*

8180. I have two or three questions which have not yet been asked, and which I left over, and the first one I think is rather important, with regard to the crowding of the Native Reserves. Am I not right in thinking that in most of those Reserves the natives look upon their cattle, and more especially their goats, more as currency than as merchandise, that is to say, they pay for their wives with them, do they not?—That is quite true, and I do think that one of the most important things and one of the most valuable things that could be done for the natives of Africa is for them to be taught, if they can be taught, that the goat is a very uneconomical form of currency.

8181. Further than that, if in the Reserves the natives can be got to look upon money as currency rather than looking upon cattle as currency, would not that have a very considerable economic effect? For instance, it would have some very considerable effect upon the over-population of cattle—not of people but of cattle—in the Reserves?—I am sure it would, and it would have the effect of teaching them the value of a good beast as opposed to a bad beast. At present they are apt to count up heads.

8182. You would look upon that as an important point, would you?—I think it is a very important point.

8183. Now here is another point that I wish you would clear my mind about if you can. We have spent a good many hours here listening to the complaints against His Majesty's Government with regard to the land that has been taken away from various tribes, and more especially from the Kikuyu tribe. The Kikuyus themselves said that that was the case, and they were supported by evidence from Mr. Leakey and a Memorandum from Mr. McGregor Ross, which I have here. On the other hand I have before me a book called Africa View, written by an even greater authority, Professor Julian Huxley.

Chairman.] An authority upon what?

Lord *Cranworth.*] Ethnology.

Chairman.] Not necessarily an authority upon the details of African administration?

Lord *Cranworth.*

8184. He says this, and I wanted to know if there was any evidence about it. He says in the first place that the Kikuyu are not a native tribe at all; he says that they are quite recent emigrants, their first eruption dating back only two centuries, and others arriving later, and that they are in fact not a native tribe but an immigrant race. Further than that, he says that with regard to their property they claim their property from the fact that they leased sporting rights from the owners, who were partially the Wanderobo and partially the Wagumba, and having got those sporting rights, the Wagumba no longer exist. They were got rid of; and I further gather that those sporting rights, although they were adjacent, were not necessarily contiguous, and their claims therefore as a native race would appear to be less than some of the others, in fact less than the Wanderobo. Then with regard to what was considered to be another of the persecutions, or whatever you like to call it, which have been adopted, the very definite statement that they were not allowed to have any firewood, I see that it is stated here that the whole of this territory was covered with dense forests, which they have since entirely destroyed. Can you tell me which of those two statements, which are of course entirely conflicting, is correct? Have you any evidence upon that point or not?—I think there is no question that the Kikuyu did come into the country about 200 years ago; I think that was the start of it, and they gradually extended. I am not quite sure about it, because I do not know the evidence exactly, but I think the areas that they claim to have had taken away are about the Kambui part of the country.

8185. Yes?—There is no question that it was a heavily forested country, and there is no question about it that it is a peculiarity of the Kikuyu tribe that they like to go into a bit of ground where there is a forest, and then they set fire

to the trees, by lighting a fire at the bottom, and they burn them, and destroy the trees, and use the ash to help fertilise the ground. Then when they have taken the best out of that, they like to move to another piece of ground. It is a very destructive method, and probably that is the way in which a good deal of the forest was destroyed. With regard to the older part of that country, I believe it was more or less owned by the Wanderobo tribe, who were hunters and honey seekers. The Kikuyu paid them so much money for the right of occupancy, I think. It is always in dispute as to exactly what their payment did entitle them to, but I have the evidence of two very old settlers, Mr. Paterson and Mr. Tate, who were there in 1895 and 1898, and they said—it is only their word against the word of other people, of course—that at that time all that country was over-run by the Masai, and actually it was not in the possession of the Kikuyu. I cannot vouch for it, any more than anybody else, and I do not claim to be an authority upon it.

8186. Then your evidence as a whole would be, I gather, that the Kikuyu have not been treated badly in the matter of land, but have been given more land than they had 100 years ago?—I should say that they have more land now, actually, than they had before the British came, because they used to be chivvied from pillar to post by the Masai, and they were not in safe [illegible]pancy of the land at all. That is the [illegible]t, I think. I think there may have been little bits taken away here and there; that I cannot answer for; possibly that is so, but taking it by and large they have more land secured to them now than they ever had before. I should say that, as an opinion.

8187. What about the Maragua-Tana Electric Power Company?—Was land taken away from them there? That is the only specific case that I can refer to in the evidence?—That scheme was turned down; but Mr. Harper can tell you about it, because he was on the Committee.

Chairman.

8188. Turned down by whom?—(Mr. *Harper.*) By the British Government.

8189. There was a proposal to take land to some extent from the Reserves, and the British Government vetoed it. Is that right?—It was questionable whether it was part of the Reserves or not. The evidence was conflicting.

8190. And the Government said, "We will not sanction it"?—Yes.

Sir *John Sandeman Allen.*

8191. It was a public utility company?—(Captain *Schwartze.*) It is a very long story, but briefly it was a public utility company for the purpose of utilising it for a big power scheme, and the British Government eventually said, "We cannot agree to this unless the whole thing is enquired into by a committee to be appointed out there," and the Committee was appointed, with the Chief Justice as Chairman, the Chief Native Commissioner, and various other people of whom Mr. Harper was one; I think there were five people on the Committee, and three of them, I think, reported in favour of it. (Mr. *Harper.*) There were two unofficials, Canon Leakey and myself. (Captain *Schwartze.*) Three reported in favour of the scheme, and the Chief Native Commissioner and Canon Leakey, I think, sent in a report against the scheme, but the reports were not actually published. I believe Sir Edward Grigg advised the home Government against it, but it was never discussed in an executive council. I was at home in England on leave at the time, but I took steps to find out about [illegible] I found that it never went before the Executive Council. I think I am right in saying that Sir Edward Grigg advised against it, and at all events it was eventually turned down. They have now put up a smaller scheme, and it has been before the Native Land Trust Board, and I think I am right in saying that it has been approved. The suggestion was, I think, that about 20 families should be moved from one piece of land to another equally good piece of land. We had a good deal of evidence, and I think it was admitted that the land to which they were going to be moved was just as good in every way, and greater in area, than that from which they were going to be moved; but they had this love for this particular land upon which they had been living, and they strongly objected to leaving there. The whole thing was turned down, although it was of enormous importance, because of moving 20 families.

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Lord *Cranworth.*

8180. I have two or three questions which have not yet been asked, and which I left over, and the first one I think is rather important, with regard to the crowding of the Native Reserves. Am I not right in thinking that in most of those Reserves the natives look upon their cattle, and more especially their goats, more as currency than as merchandise, that is to say, they pay for their wives with them, do they not?—That is quite true, and I do think that one of the most important things and one of the most valuable things that could be done for the natives of Africa is for them to be taught, if they can be taught, that the goat is a very uneconomical form of currency.

8181. Further than that, if in the Reserves the natives can be got to look upon money as currency rather than looking upon cattle as currency, would not that have a very considerable economic effect? For instance, it would have some very considerable effect upon the over-population of cattle—not of people but of cattle—in the Reserves?—I am sure it would, and it would have the effect of teaching them the value of a good beast as opposed to a bad beast. At present they are apt to count up heads.

8182. You would look upon that as an important point, would you?—I think it is a very important point.

8183. Now here is another point that I wish you would clear my mind about if you can. We have spent a good many hours here listening to the complaints against His Majesty's Government with regard to the land that has been taken away from various tribes, and more especially from the Kikuyu tribe. The Kikuyus themselves said that that was the case, and they were supported by evidence from Mr. Leakey and a Memorandum from Mr. McGregor Ross, which I have here. On the other hand I have before me a book called Africa View, written by an even greater authority, Professor Julian Huxley.

Chairman.] An authority upon what?

Lord *Cranworth.*] Ethnology.

Chairman.] Not necessarily an authority upon the details of African administration?

Lord *Cranworth.*

8184. He says this, and I wanted to know if there was any evidence about it. He says in the first place that the Kikuyu are not a native tribe at all; he says that they are quite recent emigrants, their first eruption dating back only two centuries, and others arriving later, and that they are in fact not a native tribe but an immigrant race. Further than that, he says that with regard to their property they claim their property from the fact that they leased sporting rights from the owners, who were partially the Wanderobo and partially the Wagumba, and having got those sporting rights, the Wagumba no longer exist. They were got rid of; and I further gather that those sporting rights, although they were adjacent, were not necessarily contiguous, and their claims therefore as a native race would appear to be less than some of the others, in fact less than the Wanderobo. Then with regard to what was considered to be another of the persecutions, or whatever you like to call it, which have been adopted, the very definite statement that they were not allowed to have any firewood, I see that it is stated here that the whole of this territory was covered with dense forests, which they have since entirely destroyed. Can you tell me which of those two statements, which are of course entirely conflicting, is correct? Have you any evidence upon that point or no?—I think there is no question that the Kikuyu did come into the country about 200 years ago; I think that was the start of it, and they gradually extended. I am not quite sure about it, because I do not know the evidence exactly, but I think the areas that they claim to have had taken away are about the Kambul part of the country.

8185. Yes?—There is no question that it was a heavily forested country, and there is no question about it that it is a peculiarity of the Kikuyu tribe that they like to go into a bit of ground where there is a forest, and then they set fire

to the trees, by lighting a fire at the bottom, and they burn them, and destroy the trees, and use the ash to help fertilise the ground. Then when they have taken the best out of that, they like to move to another piece of ground. It is a very destructive method, and probably that is the way in which a good deal of the forest was destroyed. With regard to the older part of that country, I believe it was more or less owned by the Wanderobo tribe, who were hunters and honey seekers. The Kikuyu paid them so much money for the right of occupancy, I think. It is always in dispute as to exactly what their payment did entitle them to, but I have the evidence of two very old settlers, Mr. Paterson and Mr. Tate, who were there in 1895 and 1898, and they said—it is only their word against the word of other people, of course—that at that time all that country was over-run by the Masai, and actually it was not in the possession of the Kikuyu. I cannot vouch for it, any more than anybody else, and I do not claim to be an authority upon it.

8186. Then your evidence as a whole would be, I gather, that the Kikuyu have not been treated badly in the matter of land, but have been given more land than they had 100 years ago?—I should say that they have more land now, actually, than they had before the British came, because they used to be chivvied from pillar to post by the Masai, and they were not in safe occupancy of the land at all. That is the fact, I think. I think there may have been little bits taken away here and there; that I cannot answer for; possibly that is so, but taking it by and large they have more land secured to them now than they ever had before. I should say that, as an opinion.

8187. What about the Maragua-Tana Electric Power Company? Was land taken away from them there? That is the only specific case that I can refer to in the evidence?—That scheme was turned down; but Mr. Harper can tell you about it, because he was on the Committee.

Chairman.

8188. Turned down by whom?—(*Mr. Harper.*) By the British Government.

8189. There was a proposal to take land to some extent from the Reserves, and the British Government vetoed it. Is that right?—It was questionable whether it was part of the Reserves or not. The evidence was conflicting.

8190. And the Government said, "We will not sanction it"?—Yes.

Sir *John Sandeman Allen.*

8191. It was a public utility company?—(*Captain Schwartze.*) It is a very long story, but briefly it was a public utility company for the purpose of utilising it for a big power scheme, and the British Government eventually said, "We cannot agree to this unless the whole thing is enquired into by a committee to be appointed out there," and the Committee was appointed, with the Chief Justice as Chairman, the Chief Native Commissioner, and various other people of whom Mr. Harper was one; I think there were five people on the Committee, and three of them, I think, reported in favour of it. (*Mr. Harper.*) There were two unofficials, Canon Leakey and myself. (*Captain Schwartze.*) Three reported in favour of the scheme, and the Chief Native Commissioner and Canon Leakey, I think, sent in a report against the scheme, but the reports were not actually published. I believe Sir Edward Grigg advised the home Government against it, but it was never discussed in an executive council. I was at home in England on leave at the time, but I took steps to find out about it, and I found that it never went before the Executive Council. I think I am right in saying that Sir Edward Grigg advised against it, and at all events it was eventually turned down. They have now put up a smaller scheme, and it has been before the Native Land Trust Board, and I think I am right in saying that it has been approved. The suggestion was, I think, that about 20 families should be moved from one piece of land to another equally good piece of land. We had a good deal of evidence, and I think it was admitted that the land to which they were going to be moved was just as good in every way, and greater in area, than that from which they were going to be moved; but they had this love for this particular land upon which they had been living, and they strongly objected to leaving there. The whole thing was turned down, although it was of enormous importance, because of moving 20 families.

Chairman.

8192. Is it not something more than that? When you have a native with a simple and uneducated mind, who attaches enormous importance to promises made to him, if the carrying out of the scheme had involved, to the mind of the native, a breach of the undertaking of the Government, was there not very strong reason against carrying it through, if by so carrying it through there would be suspicion aroused in the mind of the native that the undertakings of the Government were not sacrosanct?—I agree that you cannot do anything which would cause suspicion of that kind unless the public demand for public utility is very great, but I think it would be a very bad thing if you were to say that because of possibly arousing suspicion in the mind of 20 families, the whole scheme of public utility work could not be gone on with.

8193. It is not really 20 families, but it might be in the minds of all the Natives concerned. That is the point. If they see their reserves which have been sacredly laid down for them broken into, it might then very easily cause such unrest, not only in the minds of the particular people who were disturbed, but in all of them who fear that their turn might come, that it would not be worth doing?—With great respect, if that is carried to its logical conclusion, the moment you have demarcated Native reserves it ceases to matter what kind of mineral wealth, for example, may subsequently be found there. I agree that it should not be done without careful consideration, but I do think that a position may arise in which it is absolutely essential for the economic advantage of the Colony that public utility works should be undertaken.

Mr. Ormsby-Gore.

8194. Is your evidence to this Committee that that scheme was turned down by the Government either on the recommendation of the local Governor or by the Secretary of State, simply on the ground that 20 Kikuyu families would have to move, and not on the ground that the scheme was too grandiose altogether in regard to capital expenditure, and that there was not any early likelihood of the necessary demand for current being obtained?—The whole of the expense was private enterprise; the Government was not asked to put in a penny; it was all being done by the Electric Light and Power Company, and they wanted to raise the money. (Lord *Francis Scott.*) And they have had the best expert opinion upon the feasibility and adaptability of the scheme.

8195. You have not heard the same criticisms that I have upon the technical side?—No.

Lord Lamington.

8196. The disinclination of the Natives to be moved is not upon economic grounds at all, I think, but because of their belief that when they are dead their ghosts will return there. That is referred to in "Africa View," I think?—(Captain *Schwartze.*) I do not know whether it is a supernatural thing or not. (Lord *Francis Scott.*) In fact, no land was taken from them for this purpose. They were given 20 acres added to the reserves in exchange for about one-third of an acre which was taken out for the needs of this other private scheme which will not be sufficient for the far future.

Chairman.

8197. Nothing was actually done, but there was a suggestion that things should be done which might create political ferment in the minds of these tribes?—(Mr. *Harper.*) The proposal was that these dispossessed Natives should be given a larger piece of land of more value, adjacent to the piece from which they were being removed, and that ought not to engender suspicion. I do not think it did in practice, as a matter of fact. I do not think that was the objection of the Natives, but the objection was that they did not want to be moved from that particular piece of land because they had a sentimental affection for it.

Lord Phillimore.

8198. Did I not hear Lord Passfield lay it down very clearly that the understanding with regard to the reserves was that no land should be taken from the reserves unless an equivalent area was added somewhere else?—(Lord *Francis Scott.*) That is so.

(*Chairman.*] That is the policy; yes.

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8199. In this case an equivalent area was proposed to be added to the reserves?—That is so. (Mr. *Harper.*) Actually adjoining, or I think almost adjoining, or within a mile of the strip from which they were to be removed.

8200. Then it is not so much that every acre demarcated now in a Native reserve is for ever to be regarded as so demarcated, but it is that an equivalent amount of land is to be so regarded.

Chairman.] I do not think it is quite that. Generally speaking, what has been alienated to Native reserves shall continue to be Native reserves, but if for any special reason it is desirable to take one piece of that reserve, then in those exceptional cases other land should be added. There is no general power to exchange 50 acres of land for 50 acres outside the reserves.

Lord *Phillimore.*] I did not mean, of course, that the whole of the reserve could be moved to the coast, or anything like that.

Chairman.

8201. I think the policy of the Kenya Government is that it is only in exceptional cases that land once put into the reserves can be taken out of the reserves?—(Lord *Francis Scott.*) That is correct.

Lord *Cranworth.*

8202. There is another question that I do not think anybody has asked you yet, upon which I think that we ought to have your view, and that is the grievance that was brought forward from several places, to the effect that the Natives in the various reserves were not allowed to grow certain crops there, the principal crop being Arabica coffee. What is the exact position with regard to that?—I think Mr. Harper can answer that question best. (Mr. *Harper.*) The exact position with regard to the Natives not being allowed to grow coffee, do you mean?

Mr. *Welock.*

8203. I think I raised that question?—(Lord *Francis Scott.*) Not with us, I think.

Lord *Cranworth.*] It was said that they were not allowed to grow coffee in Kenya.

Chairman.

8204. I think the evidence is that they were strongly discouraged. There is no legal prohibition?—(Mr. *Harper.*) There is no legal prohibition, but they are strongly discouraged for a number of reasons which I can attempt to give you. It is a longish question.

Lord *Cranworth.*

8205. We have spent a good long time in hearing the other side of this matter, and I think we should hear what you have to say about it?—What we have done in Kenya about that is this. The growing of coffee by Natives does entail a very serious risk to the established coffee industry of the Colony. The coffee industry of the Colony is a most important industry; it employs about 60,000 odd Natives a year, and pays them in wages £750,000 a year, in wages and wage equivalents such as free food, medical attendance, blankets, and one thing and another. It does represent 42 per cent. of the total exportable value of the Colony; I think that is the figure for this year. Arabica coffee is a very delicate plant, particularly under the climatic and soil conditions of Kenya, more so, I believe, in Kenya than in Tanganyika. It is susceptible in Kenya to a vast number of diseases which are very difficult to control, a very much larger number than have yet appeared in Tanganyika. If I may give you a particular instance, there is one pest which we are all still very frightened of, which we call mealy bug. The treatment of that particular pest is a very difficult matter; it requires constant vigilance and very scientific application of remedies. In one week it is possible to lose an entire crop from that pest; at the beginning of the week there may be no mealy bug visible, and at the end of the week you may have lost your crop altogether. The only way in which to prevent that happening is to take it in advance and to apply remedies, and, as I say, that entails constant vigilance and constant attention. The pest spreads not only on the plantation, but it is very apt to spread in a very short time over very large areas; it is wind-blown, and it is conveyed by ants from plantation to plantation. We are afraid that in the present state of the development of the Natives that disease, and many others

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perhaps not so bad, would be very difficult to control except at an expenditure upon technical advisers and inspectors which the Colony cannot afford at the moment. We also feel that although this is a debatable matter, the danger to the reputation of Kenya coffee which might result from the production of an inferior article is a very considerable one. I believe Sir Humphrey Leggett argued that it was not a material point because coffee is always sold upon individual marks. That is so, but the general price level of the best mark of Kenya coffee is maintained by the reputation that Kenya coffee has obtained, and a few years ago the relative value of individual marks was lower because the reputation of Kenya coffee as such was lower. It is very easy to depreciate the value of coffee in all stages of its growth and manufacture, from the planting of the tree up to the final preparation of the bean. Unless scientific supervision is devoted to it throughout the whole period, deterioration of quality can occur at any stage. We feel that if any substantial Native exports were to take place at the present stage of the development of the Natives, that deterioration would set in, and it would be impossible in practice to separate Native-grown Kenya coffee from European-grown Kenya coffee; they would both be Kenya coffee, and it would affect the market value of the bean. Now as regards the advantage to the Natives, that is a matter as to which it is very difficult to say. I have never heard any good argument advanced that the Natives would gain by being allowed to grow coffee. Of course, they see what they believe to be the rich European thriving upon coffee culture, and their belief is largely founded upon that, and they think that if they were allowed to grow coffee they would become as rich as the European is. As a matter of fact there is a comparatively narrow margin in the growing of coffee always under scientific European supervision. Sir Humphrey Leggett himself has said—and up to a point I agree with him—that it can only be grown at a profit on a large scale. I do not follow him all that way, but certainly there is a definite limit to the economic unit. Except under some Government scheme of co-operative growing, which I do not believe is practicable, it will be impossible for the Natives to grow more than small patches of one to three acres, because there are very few Natives indeed in any of the Native reserves who have the right of user of much more land than that, which could be devoted to coffee. They have more land than that, but they would have to continue to grow their own foodstuffs and provide food for their goats and stock, and they would not have available more than from one to three acres for coffee growing, and there would not be very many Natives who would even be able to do that. Now, a Native family could not, in my opinion, cultivate more than an acre, and I think that that would put a big strain upon them, particularly in the harvest time; to pick an acre of coffee would require, in my opinion, more than a family. To keep it in cultivation, prune it, apply all the treatments that coffee requires, particularly in the event of a pest infestation, would strain the resources of a family to cultivate an acre. The produce of an acre of coffee on a very liberal estimate cannot be taken to be more than 4 cwts. That is above the average of the Colony, but let us give them 4 cwts. I do not believe, in fact, that a Native would get half that amount, but let me give them that. Four cwts. of coffee is worth, free on rail, about £15. The charges from rail, including cleaning, bagging, railage to the coast, handling and shipping charges, would be about £20; but say £18. That gives you £78 a ton in London. It would be about £15. A native family can earn £15 a year very, very easily.

8206. Do you say four cwts.?—Yes, the produce of one acre.

8207. And £15 a ton?—No; £78 a ton.

Chairman.

8208. £15 for 4 cwts.?—Yes.

Sir John Sandeman Allen.

8209. Is this Arabica coffee you are speaking of now?—Yes.

Mr. Wellock.

8210. You would be prepared to leave that matter in the hands of the Agricultural Commissioners, would you not, to judge of their fitness for growing coffee?—Which Agricultural Commissioners?

8211. The Government people?—Yes, absolutely.

Lord Cranworth.

8212. Sir Daniel Hall?—Yes, absolutely. I should like to make this suggestion, that if the matter is to be explored by this Committee, there is a very competent witness in the country at this moment who could speak from practical knowledge, namely, the Director of Agriculture of Kenya, and I should suggest that his opinion be taken.

Mr. Ormsby-Gore.

8213. Were you a member of Sir Daniel Hall's Committee?—Yes.

8214. You went closely into the matter on that Committee, did you not?—Yes.

8215. The recommendations of Sir Daniel Hall have been published in Kenya, and they are now being discussed, are they?—They are not being discussed at the moment. They have been published over a year ago.

Sir *John Sandeman Allen.*] Is this a matter that really comes under our terms of reference?

Chairman.] It really comes under the objections to the Natives having a limitation put upon their rights, and I think it is only fair to those who have supported those limitations that they should have a right to deal with the matter.

Sir *John Sandeman Allen.*] I should like to add this, that this question has been very carefully studied for years past by the business men in this country as well as in East Africa, and the evidence which has been given is to a very large extent practically what all of us have felt in this country as well as in East Africa, after having studied this question for years. Unless there is some new development which makes it very different, the points which have been made have been well before the business world for a long time, and I cannot help thinking that there is a great deal to be said for it.

Chairman.] For limitation, you mean?

Sir *John Sandeman Allen.*] Yes, undoubtedly.

Mr. Wellock.] May I raise one point?

Chairman.] Yes, certainly.

Mr. Wellock.

8216. You have on two occasions deprecated the idea of having an independent chairman from this country to preside over the Governors' Conferences. It has been suggested that there should be appointed a Permanent Under-Secretary for East Africa. Seeing that such a person would have intimate knowledge of East African affairs, do you think that he might be a suitable person to be the chairman of the Governors' Conference?—(*Lord Francis Scott.*) You mean that he would be in a position similar to that in which Sir Samuel Wilson is now?

8217. Yes, to have definite charge of African affairs?—Of that sort of standing, you mean?

8218. Quite so?—It is a new idea, and he would be a more suitable person than anybody that one has thought of; but could he give the time to do it?

8219. I thought you might be inclined to take a different view in a case of this sort, and would not one feel justified in saying that that experience should also be valuable to him as Permanent Under-Secretary for East Africa?—Yes, undoubtedly.

8220. There is one more point which will not take a minute to deal with, and that is in regard to the recent local elections. Since we discussed the point the figures have come to hand. I think Captain Schwartze said that there were about 9,000 voters who were capable of being put on the roll?—Those were the figures which were given before we left.

8221. And that actually 4,515 had registered?—(*Captain Schwartze.*) 4,575, I think it was.

8222. I accept that figure. There are eleven seats; five were not contested and six were contested?—Yes.

8223. In the six constituencies where the elections were contested, the total number of registered voters was 2,300, and the actual number of voters was 1,312, so that upon the general election only six seats out of eleven were contested, and in the case of those six seats only 1,312 people voted. I wondered if you could account for that, or give us any reason for it?—(*Lord Francis Scott.*) I think the real thing is that we have only got one party. There are not two parties in the country, and it is only a question of voting for individuals.

8224. Is it your argument that if you had an unofficial majority there would be two parties perhaps, or you would develop more definite policies?—I do not say so. There is no sign of that at the moment.

perhaps not so bad, would be very difficult to control except at an expenditure upon technical advisers and inspectors which the Colony cannot afford at the moment. We also feel that although this is a debatable matter, the danger to the reputation of Kenya coffee which might result from the production of an inferior article is a very considerable one. I believe Sir Humphrey Leggett argued that it was not a material point because coffee is always sold upon individual marks. That is so, but the general price level of the best mark of Kenya coffee is maintained by the reputation that Kenya coffee has obtained, and a few years ago the relative value of individual marks was lower because the reputation of Kenya coffee as such was lower. It is very easy to depreciate the value of coffee in all stages of its growth and manufacture, from the planting of the tree up to the final preparation of the bean. Unless scientific supervision is devoted to it throughout the whole period, deterioration of quality can occur at any stage. We feel that if any substantial Native exports were to take place at the present stage of the development of the Natives, that deterioration would set in, and it would be impossible in practice to separate Native-grown Kenya coffee from European-grown Kenya coffee; they would both be Kenya coffee, and it would affect the market value of the bean. Now as regards the advantage to the Natives, that is a matter as to which it is very difficult to say. I have never heard any good argument advanced that the Natives would gain by being allowed to grow coffee. Of course, they see what they believe to be the rich European thriving upon coffee culture, and their belief is largely founded upon that, and they think that if they were allowed to grow coffee they would become as rich as the European is. As a matter of fact there is a comparatively narrow margin in the growing of coffee always under scientific European supervision. Sir Humphrey Leggett himself has said—and up to a point I agree with him—that it can only be grown at a profit on a large scale. I do not follow him all that way, but certainly there is a definite limit to the economic unit. Except under some Government scheme of co-operative growing, which I do not believe is practicable, it will be impossible for the Natives to grow more than small patches of one to three acres, because there are very few Natives indeed in any of the Native reserves who have the right of user of much more land than that, which could be devoted to coffee. They have more land than that, but they would have to continue to grow their own foodstuffs and provide food for their goats and stock, and they would not have available more than from one to three acres for coffee growing, and there would not be very many Natives who would even be able to do that. Now, a Native family could not, in my opinion, cultivate more than an acre, and I think that that would put a big strain upon them, particularly in the harvest time; to pick an acre of coffee would require, in my opinion, more than a family. To keep it in cultivation, prune it, apply all the treatments that coffee requires, particularly in the event of a pest infestation, would strain the resources of a family to cultivate an acre. The produce of an acre of coffee on a very liberal estimate cannot be taken to be more than 4 cwts. That is above the average of the Colony, but let us give them 4 cwts. I do not believe, in fact, that a Native would get half that amount, but let me give them that. Four cwts. of coffee is worth, free on rail, about £15. The charges from rail, including cleaning, bagging, railage to the coast, handling and shipping charges, would be about £20; but say £18. That gives you £78 a ton in London. It would be about £15. A native family can earn £15 a year very, very easily.

8206. Do you say four cwts.?—Yes, the produce of one acre.

8207. And £15 a ton?—No; £78 a ton.

Chairman.

8208. £15 for 4 cwts.?—Yes.

Sir *John Sandeman Allen.*

8209. Is this Arabica coffee you are speaking of now?—Yes.

Mr. *Wellock.*

8210. You would be prepared to leave that matter in the hands of the Agricultural Commissioners, would you not, to judge of their fitness for growing coffee?—Which Agricultural Commissioners?

8211. The Government people?—Yes, absolutely.

Lord *Cranworth.*

8212. Sir Daniel Hall?—Yes, absolutely. I should like to make this suggestion, that if the matter is to be explored by this Committee, there is a very competent witness in the country at this moment who could speak from practical knowledge, namely, the Director of Agriculture of Kenya, and I should suggest that his opinion be taken.

Mr. *Ormsby-Gore.*

8213. Were you a member of Sir Daniel Hall's Committee?—Yes.

8214. You went closely into the matter on that Committee, did you not?—Yes.

8215. The recommendations of Sir Daniel Hall have been published in Kenya, and they are now being discussed, are they?—They are not being discussed at the moment. They have been published over a year ago.

Sir *John Sandeman Allen.*] Is this a matter that really comes under our terms of reference?

Chairman.] It really comes under the objections to the Natives having a limitation put upon their rights, and I think it is only fair to those who have supported those limitations that they should have a right to deal with the matter.

Sir *John Sandeman Allen.*] I should like to add this, that this question has been very carefully studied for years past by the business men in this country as well as in East Africa, and the evidence which has been given is to a very large extent practically what all of us have felt in this country as well as in East Africa, after having studied this question for years. Unless there is some new development which makes it very different, the points which have been made have been well before the business world for a long time, and I cannot help thinking that there is a great deal to be said for it.

Chairman.] For limitation, you mean?

Sir *John Sandeman Allen.*] Yes, undoubtedly.

Mr. *Wellock.*] May I raise one point?

Chairman.] Yes, certainly.

Mr. *Wellock.*

8216. You have on two occasions deprecated the idea of having an independent chairman from this country to preside over the Governors' Conferences. It has been suggested that there should be appointed a Permanent Under-Secretary for East Africa. Seeing that such a person would have intimate knowledge of East African affairs, do you think that he might be a suitable person to be the chairman of the Governors' Conference?—(Lord *Francis Scott.*) You mean that he would be in a position similar to that in which Sir Samuel Wilson is now?

8217. Yes, to have definite charge of African affairs?—Of that sort of standing, you mean?

8218. Quite so?—It is a new idea, and he would be a more suitable person than anybody that one has thought of; but could he give the time to do it?

8219. I thought you might be inclined to take a different view in a case of this sort, and would not one feel justified in saying that that experience should also be valuable to him as Permanent Under-Secretary for East Africa?—Yes, undoubtedly.

8220. There is one more point which will not take a minute to deal with, and that is in regard to the recent local elections. Since we discussed the point the figures have come to hand. I think Captain Schwartze said that there were about 9,000 voters who were capable of being put on the roll?—Those were the figures which were given before we left.

8221. And that actually 4,515 had registered?—(Captain *Schwartze.*) 4,575, I think it was.

8222. I accept that figure. There are eleven seats; five were not contested and six were contested?—Yes.

8223. In the six constituencies where the elections were contested, the total number of registered voters was 2,306, and the actual number of voters was 1,312, so that upon the general election only six seats out of eleven were contested, and in the case of those six seats only 1,312 people voted. I wondered if you could account for that, or give us any reason for it?—(Lord *Francis Scott.*) I think the real thing is that we have only got one party. There are not two parties in the country, and it is only a question of voting for individuals.

8224. Is it your argument that if you had an unofficial majority there would be two parties perhaps, or you would develop more definite policies?—I do not say so. There is no sign of that at the moment.

8225. So that there is no likelihood that the number of people interested in your local politics would be affected if you had an unofficial majority?—(Mr. *Harper.*) I think they are interested. (Captain *Schwartze.*) I think, if I might suggest it, that your conclusions are not quite logically deduced from your premises. If, as Lord *Francis* has explained, there is no party cry and there are no parties, five constituencies in any case are satisfied with the work done for them during the past three or four years—four years in the last case—by the persons who were representing them, and, that being realised, nobody else stood against them. But I would say that in two out of the five constituencies in this last election, namely, in the case of the seats of Lord Francis Scott and myself, opponents had pronounced their intention of standing, but they eventually did not stand because they realised the very hard work that we had before us in connection with this Committee. With regard to the actual figure of 1,312 out of 2,300, I cannot tell you definitely, but I would be prepared to wager that that actual figure represents probably 80 per cent. of the voters who were in the Colony at the time. There is a very big efflux out of Kenya on leave, especially in February, March and April. We usually hold our elections in February, both because it is before the rainy season starts and in order to have as many voters as possible in the Colony, but we could not hold it this time until the end of April for reasons I need not go into, and you can reckon that at least 25 per cent. of the registered voters were probably not available to vote on the day of the election, because although you can have postal votes if you are elsewhere in the Colony, once you have left the Colony you cannot exercise a postal vote. I think I said in evidence what the Nairobi figures were, but I have forgotten the figure for the moment.

8226. Nairobi North, 733 and 401?—401 voted out of 733.

8227. Yes?—That was actually over 85 per cent., nearly 90 per cent. the successful candidate told me, of the people who were actually in the Colony and could possibly have voted. (Lord *Francis Scott.*) Our Register is not kept very well up to date, and there are people in my constituency, I know, who are dead and have left the Colony, who are still on the Register. We are trying to get it into better order. I do not think that shows anything except that the White population there pretty well think all alike, but there may be differences on certain points.

Sir *John Sandeman Allen.*

8228. I suppose it is like this country. A lot of people who take a very keen interest in politics do not vote, because they think it is no use or because they do not feel dissatisfied?—That is so. (Captain *Schwartze.*) Most of them do vote when they are there, at any rate those who are registered.

Chairman.

8229. I rather think that no other member of the Committee has any further question to ask?—(Mr. *Harper.*) Might I just add something to an answer that I gave last week? I have since found out that it was not strictly accurate. I was asked the comparative figures expended by Tanganyika and Kenya upon native education, amongst other things, and I gave the two figures respectively as £180,726 for Kenya in 1929 and £80,929 for Tanganyika. In order to verify that, as I thought the disparity was too big, I went to the Colonial Office and attempted to see if there was anything that I had omitted. I was informed that although that is the figure actually shown in the Budget and there is no other figure shown in the Budget of Tanganyika, a sum of about £13,317 in addition to that is spent by Native Administrations upon education out of a vote which is allowed to them for the purpose.

8230. In Tanganyika?—Yes, that is not shown in their Budget, and so I did not give it. That brings the total, if you include that sum of £13,000 odd, up to £103,000 spent in Tanganyika in 1929 as against £180,726 spent by Kenya.

Mr. *Ormsby-Gore.*

8231. Is the Kenya figure of £180,726 for native education?—No, that is the total figure.

8232. European, Indian, Native and Arab?—Yes. (Lord *Francis Scott.*) The figure for native education was about £90,000, I think.

Lord *Phillimore.*

8233. This is in answer to a question of mine, I believe. So that the final conclusion is that Tanganyika spends £103,000 on native education?—(Mr. *Harper.*) That is the total vote. (Lord *Francis Scott.*) It includes other races as well.

8234. Can you make deductions for the others which are not native?—(Captain *Schwartze.*) In 1923 the approximate figure for education other than native was £20,000 out of £124,000 total vote.

8235. That is about one-fifth?—About a sixth.

8236. Therefore, if we take one-sixth of £103,000 it would be about £16,000?—£16,000 or £17,000.

8237. Then we should come down to about £85,000?—£86,000.

8238. That means an expenditure upon native education in Kenya of about £90,000. The native population of Tanganyika is greater than that of Kenya, is it not?—Yes. (Lord *Francis Scott.*) Yes, that is right. (Captain *Schwartze.*) It is very much greater.

8239. So that after looking into the facts the truth of the matter is that the amount spent on education per head of the natives is greater in Kenya than in Tanganyika?—Yes.

Chairman.] Somewhat greater, but not as much greater as appears.

Lord *Phillimore.*

8240. Considerably greater. There are five million natives there, are there not, as against three million, that is to say it is two-fifths greater. Now there are two other questions that I should like to ask, and one is of some importance, at any rate in minds of certain members, and that is the question of the effective occupation of the alienated lands. There is certainly an impression that much of the European alienated land is not effectively occupied, and the degree of that occupation is I think important, because it is quite clear that if much land is not effectively occupied, it may be better used by other people. The figure which you gave was the cultivated land, and I think it was 16 per cent. of the total area, was it not?—(Lord *Francis Scott.*) I think 12.8 was the figure. (Mr. *Harper.*) 12.50.

8241. Can you give me the equivalent figure of the cultivated area of Great Britain, just to get a comparison?

Chairman.

8242. Someone mentioned 16 or 17 per cent.?—(Lord *Francis Scott.*) I think it is about 17 per cent. or so I have been told.

Lord *Phillimore.*] The actual figure is 16 per cent. as against 12 per cent.

Chairman.

8243. Is it a very valuable comparison really, because you are comparing all the Highlands and mountains of Scotland, if I may bring that in, and all the high ground in Yorkshire, and I do not know that you can really compare it to any great advantage?—We have some of that, too. (Mr. *Harper.*) The same argument applies to Kenya, only more so. It is purely mountainous country.

8244. I am only doubtful if these comparisons are worth making. That is all it is.

Lord *Phillimore.*] Perhaps that is a matter of opinion.

Chairman.] Very well.

Lord *Phillimore*

8245. Have you any idea of the non-cultivable area alienated to Europeans, to meet the Chairman's question? What is the amount which, roughly speaking, would be included in our census under mountains, rough grazing, etc.?—(Lord *Francis Scott.*) I do not think we could give you that, but on every farm there is quite a considerable area which one cannot do anything with.

8246. Physically, you mean?—Physically, yes. (Mr. *Harper.*) There was an estimate made by the authors of the Agricultural Census for 1930, and their figure is that the total arable land occupied by settlers does not equal more than 20 per cent. of the whole alienated area. That is an estimate.

8247. Do you mean the area that could be arable, or the area that is arable?—The area that could be but is not.

8248. Does that mean cultivable land?—Yes.

8249. Then in this Colony 80 per cent. of the land held by Europeans could not be cultivated?—The total arable land is 20 per cent., and the remainder would be 80 per cent. (Lord *Francis Scott.*) The part which is not arable would be 80 per cent.

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8250. For example, if it was handed over to the Kikuyu, they would not find it at all cultivable either?—All the pastoral part, of course, would——

8251. I want to get it clear. 80 per cent. of the land alienated to the Europeans would not be cultivable by the natives?—(Mr. *Harper.*) Certainly not, if it is not arable by Europeans, except to this extent, that the native can cut little pockets out of a hillside which would be of no value to a European cultivator.

8252. But this point is quite a different one. Is the number of natives not permanently living in the Reserves going up or going down?—(Lord *Francis Scott.*) Living in the Reserves?

8253. No, living outside the Reserves, I mean?—It is going up slightly, I think.

8254. Not startlingly?—No, not startlingly.

8255. Including those living in the towns?—Yes.

8256. This is a matter of opinion, but I want to get your opinion. Is that likely to go up relatively to the native population, or is it likely to go down?—(Mr. *Harper.*) One would think that it is likely to go up relatively to the increase in settlement. The natives are only brought out of the Reserves by the attraction of settlement.

Mr. Wellock.

8257. You mean to work?—Yes, to work.

Lord Phillimore.

8258. If the settlement went down, natives outside the Reserves would go down in numbers?—I should think so undoubtedly. (Lord *Francis Scott.*) Yes.

8259. Including plantations, settlements, and everything else, of course?—Yes.

Lord Lamington.

8260. What happens to the squatters who go out to the settled areas with their families? Do they remain there, or do they go back to the Reserves? I mean the children, what happens to them?—(Mr. *Harper.*) The natives bring their families as a rule.

8261. What happens when they increase and another generation grows up? Do they still live in the same spot?—Yes, most of us have at least two generations of squatter families.

Lord Phillimore.

8262. Just one more question on that point. Is any form of lease granted to these squatter families on farms?—(Lord *Francis Scott.*) Any form of lease?

8263. Any legal form of lease, I mean?—There is a legal form of contract between the squatter and the owner of the farm.

8264. Providing for tenure of the land?—Not actually providing for tenure of the land, but it provides that he shall have given to him a sufficient amount of land to grow his crops and graze his goats or whatever it may be that he has with him.

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8265. What happens about his family?—His family are with him.

8266. And when his family grows up what happens?—As a rule the families stay on one's farm and work for one.

8267. Do they get more land then, or what?—When the son grows up into a full grown man he can be a squatter and have an agreement himself. All my boys who work for me in my house, with the exception of two, are the sons of squatters who have grown up on the farm.

Lord Phillimore.

8268. It is what we should call a service agreement here, really?—Yes.

Chairman.

8269. Well, we are extremely obliged to you for having taken so much obvious care and attention in preparing and giving your evidence. You came here, perhaps, fearing that you were going to meet a certain amount of criticism, or even worse than criticism, hostility; but I hope that your experience here has shown you that this Committee desire to give fair attention and full consideration to the point of view of all that are concerned in these questions. On our side, we thank you for the very frank way in which you have answered all our questions, and for the very great addition that you have made to our knowledge of East African conditions?—(Lord *Francis Scott.*) Thank you very much, my Lord. May I, on behalf of my colleagues and myself, say how very much we have appreciated the extremely fair way in which you my Lord as Chairman and the members of the Committee have cross-examined us.

(The witnesses are directed to withdraw.)

(Ordered: That the Committee be adjourned to Friday next, the 19th instant, at 10.30 a.m.)

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8268. It is what we should call a service agreement here, really?—Yes.

Chairman.

8269. Well, we are extremely obliged to you for having taken so much obvious care and attention in preparing and giving your evidence. You came here, perhaps, fearing that you were going to meet a certain amount of criticism, or even worse than criticism, hostility; but I hope that your experience here has shown you that this Committee desire to give fair attention and full consideration to the point of view of all that are concerned in these questions. On our side, we thank you for the very frank way in which you have answered all our questions, and for the very great addition that you have made to our knowledge of East African conditions?—(Lord *Francis Scott.*) Thank you very much, my Lord. May I, on behalf of my colleagues and myself, say how very much we have appreciated the extremely fair way in which you my Lord as Chairman and the members of the Committee have cross-examined us.

(The witnesses are directed to withdraw.)

(Ordered; That the Committee be adjourned to Friday next, the 19th instant, at 10.30 a.m.)

Joint Select Committee on
East Africa.

MINUTES OF EVIDENCE.

Die Martis, 16° *Junii*, 1931.

	PAGE
Lord Francis Scott, Captain H. E. Schwartze and Mr. J. F. H. Harper	779

[*Great inconvenience having arisen from the Publication of Minutes of Evidence taken before Committees, and of Papers, &c., laid before them, it is particularly requested that Members receiving such Minutes and Papers will be careful that they are confined to the object for which they are printed—the special use of the Members of such Committee.*]

17A 28

(H.L.158, page 15).

(H.L.158 p.41)

(H.L.158 p.40)

NOTE ON DEFINITION OF THE KENYA HIGHLANDS.

1. In the Report of the Land Committee appointed by Sir Donald Stewart on the 31st October, 1904, it is stated:-

"The area lying between Kiu and Fort Ternan has already been proclaimed as one suitable for European settlement, and, without wishing to bind themselves too closely to that area or to restrict its limits, the Committee think that a European Reserve should be maintained more or less on the lines laid down......".

2. On the 9th May, 1906, a public meeting was held at the Town Hall at Nairobi, when the following Resolution was passed:-

"That this meeting of white settlers in the East Africa Protectorate expresses in the most emphatic way its opposition to any alteration being made in the policy of the former Commissioners of the Protectorate, Sir Charles Eliot and the late Sir Donald Stewart, of retaining the highlands of East Africa, defined in the Proclamation of Sir Charles Eliot as lying between Kiu Station and Fort Ternan Station on the Uganda Railway, for European settlement only."

In forwarding this the Commissioner said that he was unable to find any Proclamation by Sir C. Eliot on the subject, but in his minute to the Land Officer No 247 he held that it was better not to grant any large holdings to Indians between Machakos road

I have not traced this - presumably a circular to admin officers. ac?

road and Fort Ternan, and in Mr. Jackson's circular of the 28th August, 1902, the country lying between ~~Mau~~ Kiu and Fort Ternan was expressly excepted to Indians desirous of settling as cultivators.

(Cd.4117 page 33)

3. In paragraph 21 of his despatch of the 19th March, 1908, Lord Elgin said that it would appear advisable to arrive at some definition of the "uplands" and he wished to know whether they could be defined by altitude.

(African No.914 page 164)

The reply to Lord Elgin's despatch is despatch No.213 of the 8th May, 1908. Sir J. Hayes Sadler forwarded a report by Colonel Montgomery, the Commissioner of Lands. On this point Colonel Montgomery said:

"Altitude is practically the only method of defining the highlands. In this term I would include those tracts in which a white man can live without discomfort, and can even do some outdoor work without injury to his health.

The division of the country has been carried out on this principle, and has the general approval of the Land Board. The highlands include, roughly, ~~between~~ the tract lying north of the second degree of south latitude, and that lying between the 35th and 38th degree of longitude. Outside this region the climate is hot, and in many parts unhealthy, and the tract is certainly nothing more than a planter's country."

Sir J. Hayes Sadler made no specific reference in the covering despatch, to this point.

Nor

(Afr. No.914 Conf. page 258)

Nor was anything said on the point in Lord Crewe's reply in despatch No.383 of the 11th August, 1908.

4. The next stage appears to have been the inclusion in the Crown Lands Ordinance, 1909, of provision to separate the Protectorate, as it then was, into two divisions, viz: the highlands and the lowlands. Section 8 of the Ordinance as forwarded by the Acting Governor in despatch No. 219 of the 29th April, 1909, ran as follows:

(Afr.No.929 Conf. page 103)

"For the purposes of this Ordinance the Protectorate shall consist of two divisions, namely: The Highlands, and the Lowlands.

All the Districts or parts of Districts mentioned in the first Schedule hereto, shall be deemed to be within the Highlands Division; all other areas and places shall be within the Lowlands Division. Provided always that it shall be lawful for the Governor from time to time by Proclamation in the "Gazette" to remove any District or part of a District from one Division to the other Division. Provided, however, that no conveyance, lease or licence relating to land within the District or part of the District removed or granted before the date of such Proclamation shall be thereby deemed to be subject to any covenant or condition to which it was not subject before the date of such Proclamation."

The schedule referred to was worded as follows:-

"Districts and parts of districts within the

Highland

17 /30

Highland Division of the Protectorate:-

District:-

Nandi.

Lumbwa.

Sotik.

Uasin Gishu.

Ravine.

Lakipia.

Naivasha.

Nyeri.

Fort Hall.

Embu.

Kikuyu.

Ulu.

Kitui. { North of 2nd degree of South Latitude.

This Ordinance became never effective and there is no similar provision in the Crown Lands Ordinance of 1915.

[illegible handwritten marginal note]

Secretary of State.

So far as Sir C. Bottomley and I can ascertain from a hasty examination of the old correspondence the position as to the reservation of the Kenya highlands is as follows:-

(1) The basis all along was that there is only a comparatively limited area in Kenya suitable for European cultivation.

H.L.158 p.27.

(2) In his despatch of 14th August, 1905, the then Commissioner of the East Africa Protectorate says "whatever decision is taken with regard to transfers "they ought to be absolutely barred to Indians or "natives in the districts suitable for European "cultivation."

Although it was fear of Indian encroachment which was in evidence at the time, this at any rate shows that Sir Donald Stewart meant to keep an area for Europeans excluding all other races.

H.L.158 p.41.

(3) In a resolution passed at a public meeting at Nairobi on 9th May, 1906, the white settlers offered the most determined opposition to the attempts of the British Indians to be allowed to take up land in the highlands.

H.L.158 p.43

(4) In despatch of 17th July, 1906 Lord Elgin said that it would not be in accordance with the policy of His Majesty's Government to exclude any class of His subjects from holding land in any part of a British Protectorate, but in view of the comparatively limited area suitable for European colonization, a reasonable discretion will be exercised in dealing with applications for land on the part of natives of India and other non-Europeans.

Cd.4117 p.25.

(5) In despatch of 17th December, 1907 Sir J. Hayes Sadler, then Commissioner, wrote:-

"By all means let us keep the land in the "uplands, known as the white settlement area, "for whites only, but outside this I see no "reason why we should not give small allotments "of land to agricultural Indians."

Cd.4117 p.29.

(6) Lord Elgin's despatch of 19th March, 1908 contains the famous decision, and the relevant paragraph begins:-

"with regard to the question of granting land "to Indians, it is not consonant with the "views of His Majesty's Government to impose "legal restrictions on any particular section "of the community, but as a matter of "administrative convenience grants in the upland "area should not be made to Indians."

Cmd.1922 p.15.

(7) In Part II paragraph 8 of the 1923 White Paper the Reservation of the Highlands is dealt with at length. The two Elgin pronouncements are given, although 'Asiatics' is substituted for 'Indians' in the second (i.e. the last word in paragraph 6 above). There is no specific reference at all to natives.

Cmd.3573 p.11.

(8) But there seems no doubt that it has been generally understood that by reserving this area to Europeans, the exclusion of all other races was meant. The question of acquisition of land by individual natives had not actually arisen, and it would be assumed that no reference to natives was necessary. The Native

Policy

Policy Memorandum clearly must be read as accepting the view that the sale of agricultural land in the highlands is restricted to persons of European descent, and that all others including natives are excluded and paragraph 2 and paragraph 5 of the recent Confidential despatch of 30th April, 1931, on land for natives are written on the same assumption.

x This not yet a public document.

[illegible handwritten note]

(9) Note however in paragraph 7 of the Confidential despatch[x] we ask for a close definition of this special European area and say -

"To some extent the area in question must depend "upon the amount of land left available when any "necessary additions to native Reserves whether for "communal use or as native purchase areas for "individual holdings, have been determined."

(Sgd.) A. C. C. PARKINSON.

10.6.31.

C. O.

16333/30.

Mr. Parkinson 28-4-31
Mr.
Mr.
~~Mr. Tomlinson~~
Sir C. Bottomley 29.4.
Sir J. Shuckburgh.
Sir G. Grindle.
~~Permt. U.S. of S.~~
Parly. U.S. of S. 29.4.31.
Secretary of State.

4to. for Sir C. Bottomley's signature.

For mail of 30 April

Downing Street,

30 April, 1931.

DRAFT.

BRIGADIER GENERAL
SIR JOSEPH BYRNE, K.C.M.G.,
K.B.E., C.B.

My dear Byrne,

There comes by this mail a long confidential despatch about land. I have mentioned in a letter which I wrote to you recently, that a despatch on this subject was on the stocks.

The Secretary of State has asked me to send you a personal note at the same time, to say that he attaches very special importance to this land question which is at the bottom of much of Kenya difficulties, and he hopes that you will be able to accept at your end, without hesitation, the proposal for a Commission to tackle the whole subject, and to do it thoroughly.

~~[illegible]~~

We do not imagine that the suggested Enquiry will commend itself very

readily to the Unofficial Members of the Legislative Council; but the Secretary of State hopes that you will be able to overcome any objections which they raise: if there really are people wanting to purchase land in Kenya, the information available goes to show that the demand could easily be met by the sale of land which has already been alienated. Admittedly, you could not, in the face of this despatch, embark upon schemes of new settlement in Kenya such as Sir Edward Grigg has advocated, but for my own part I should regard it as little short of criminal for the Government to attempt anything of the kind in present circumstances, even if it were accepted that Kenya is to be regarded as a settlers' country in the normal course of events.

[He would like to work up to 100,000 – as he has told the Joint Select Cttee]

[The Joint Select Cttee were much impressed by Mr H. Leggett's evidence on this aspect]

But reverting to the proposed Commission. The Secretary of State feels that your staff is already

over-burdened: you will remember that on the Estimates, notwithstanding financial difficulties, he gladly agreed in principle to a new senior officer in the Secretariat to relieve Moore. The proposed enquiry will entail a great deal of work not only when the Commission has been appointed, and is actually engaged on its task, but also in the way of preliminary collection and collation of facts and figures. And so the Secretary of State wishes me to tell you that if you think an additional man (or even two men) will be needed to do all the preliminary work and then to act as Secretary (or Secretaries) of the Commission, he will readily approve the expenditure which ~~the appointment~~ this would involve. He thought that perhaps someone with a legal training might be useful, but it is rather for you to say what you would need, and where exactly the extra officer (or officers) would fit into the Government machine. You might be able to find a

keen Administrative Officer with a legal qualification who could be seconded; that might suffice, and it would be better and more economical, than trying to find someone in this country who would not be familiar with the local conditions?

[illegible] or at least delay reductions of staff which you may have in view. But a seconded man might, when the work is over, fit up to a staff [illegible] by the recurrence of [illegible].

Yours sincerely.

(Signed) W. C. BOTTOMLEY.

Extract for minutes on Dp. despatch about land for natives in Kenya

x x x

I feel that we have suggested to the Kenya Govt. a programme of work which is very heavy. So far as I can gather, the ordinary routine work of the Colony is more than sufficient for the present staff. I would like to suggest - in view of the fact that this work is to a large extent rendered necessary by the mistakes of past Govts. and also with a view to preventing its dragging on for years - that we intimate our willingness to agree to an additional officer or officers - preferably with legal equipment, being added to the Kenya staff to give whole-time service in this work.

T.D.S.

25.4.31.

An excellent piece of work !

Dr. Shiels' suggestion as to staff might be conveyed to the Governor privately: the letter would give opportunity for suitable words to accompany the despatch.

P.

27.4.

Sir C. Bottomley

Dft. letter herewith - for consn.

Sir S. Wilson

A C C Parkinson 28.4.31

You should see. To a Governor who is worried about ways and means I think it is necessary at least to mention the money question,

but as you will see I have
on reflection confined it to three
words.

W.C.A. 29.4.31.

P.H.G. above
29-4-31.

16333/30 Kenya.

14 35

Mr. Eastwood } 21.4.31
Mr. Parkinson.
Mr.
Mr.
~~Mr. Tomlinson.~~
Sir C. Bottomley.
Sir J. Shuckburgh.
Sir G. Grindle.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State. 27/4 (see query on 6th page)

DRAFT for conson.

KENYA

CONFIDENTIAL

Gov. Byrne.

S.Rhod.Land Commission/1925 Report
(C.S.R. 3 - 1926)

S.Rhod. Land Apportionment Act, 1930.

Twenty copies of this despatch should be sent.

DOWNING STREET,

30 April ~~March~~, 1931.

Sir,

Since the issue of the Memorandum on Native Policy in East Africa (Cmd.3573), I have been giving consideration to the application of the principles which are there laid down in regard to land for the natives of Kenya and I have now the honour to address you on the subject.

2. The views of H.M.Govt. generally are set out at length in paragraph 11 of the Memorandum. The most important question which arises is as to the needs of the natives. So far as concerns the Native Reserves themselves, the land so gazetted is set aside for the use and benefit of the natives for ever. This is solemnly

set forth ~~laid down~~ in the Native Lands

Trust Ordinance. But while any

feeling of insecurity in the

native mind in respect of these

tribal lands should thus have been

removed, it is essential, as

stated in the Memorandum, to keep

available for all the tribes land

of such an extent and character

as will fully suffice for their

actual and future needs. Further,

provision must also be made for

individual occupancy or use of

land upon a legal tenure ~~by ownership or under lease~~,

on the part of natives who have

separated themselves from tribal

life and who desire to cultivate

land for themselves and their

families outside the Reserves.

H.M. Government have declared their

adherence to the principle of equality

of opportunity in the disposal of

all Crown lands irrespective of race,

colour

colour or religion; but, in addition, they have recorded the view that, while individual natives, equally with other persons, must (subject to certain provisos including restriction of sale of agricultural land in the "highlands" to persons of European descent) have the right to purchase or take on lease land outside the Reserves, effective opportunity must be afforded to the natives - perhaps in areas outside the Reserves specially allocated for the purpose - to take up individual holdings for cultivation by themselves and their families, on terms which will render this policy genuinely practicable.

3. There are thus two aspects of the question of native needs in regard to land:- (a) The adequacy of the Reserves as now gazetted both for immediate requirements and for such

colour or religion; but, in addition, they have recorded the view that, while individual natives, equally with other persons, must (subject to certain provisos including restriction of sale of agricultural land in the "highlands" to persons of European descent) have the right to purchase or take on lease land outside the Reserves, <u>effective opportunity</u> must be afforded to the natives - perhaps in areas outside the Reserves specially allocated for the purpose - <u>to take up individual holdings</u> for cultivation by themselves and their families, on terms which will render this policy genuinely practicable.

3. There ~~is~~ are thus ~~a~~ two~~fold~~ aspects of the question of native needs in regard to land ~~to which attention must be directed~~:- (a) The adequacy of the Reserves as now gazetted both for immediate requirements and for

which

such future needs of the native population as can be foreseen.

(b) The provision of effective opportunity to natives to acquire individual holdings outside the Reserves.

4. As you will recollect, the Commission on Closer Union of the Dependencies in Eastern and Central Africa dealt with the native land question at considerable length. Their general conclusion was stated on page 40 of their Report (Cmd 3234) as follows:-

"Before any alienation of land to non-natives is permitted, the Government ought to have a clear idea of the minimum needs for native areas, and whether the exact boundaries are fixed at once or not, sufficient areas for native use should be regarded as a first charge on the territory. The remainder of the land ought not then to be thrown open indiscriminately for settlement, but ought to be dealt with step by step according to a methodical plan, the Government maintaining under its control for as long as possible substantial areas as a reserve to meet such further requirements as may develop."

And on page 47 they write as follows:-

"If the reservation of areas for native development is accepted as a first charge, it does not necessarily follow that the whole of the remaining territory ought to be allocated for alienation to non-natives. It would in any case be unwise finally to parcel out the whole of any territory in the early days of British administration. Some margin of elasticity for future development should be preserved. What we advocate as a complementary measure to the delimitation of native reserves is that certain further areas should again be mapped out as definitely and immediately available for alienation to non-natives, leaving a balance to be retained by the Government at its own disposal which can be kept free for any of the following purposes: either for addition to the native reserves if this proves necessary, or for further alienation to non-natives, or for sale to natives. The last alternative requires special emphasis.

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emphasis. It is obviously important to make some provision for dealing with the class of native who is not satisfied to continue his life under native conditions. Such a class may include some of the best individuals, and these should have an opportunity to settle down, perhaps after a period of long service with a white employer, as independent agriculturists in the country and not be forced to remain as labourers or tenants on white estates or to drift into the large towns. The principle has been adopted in the recommendations of the Land Commission of Southern Rhodesia which reported in 1925. We are impressed with the wisdom of its recommendations in this respect, and it should be a matter of policy in all countries to reserve suitable areas of land for ultimate use in this way. The introduction of such a provision will give an elasticity which, at a future date, may prove of the greatest possible value."

6. I assume that you are familiar with the Report of the Southern Rhodesia Land Commission, 1925, to which reference is made in the foregoing quotation; but I enclose a copy for convenience, together with a copy of the Southern Rhodesia Land Apportionment Act 1930, which gives legislative sanction to the decisions which were taken. It will be seen that the recommendations of the Commission were followed generally, except that the proposal for certain "neutral areas" (in which both Europeans and natives would have had the right to acquire land) was not adopted. It should however be noted that while in certain respects the position in Kenya is not unlike that in S.Rhodesia, there is one important difference. Under the S.Rhodesian Constitution natives held the right to acquire land in any part of the Colony on equal terms with non-natives, the S.Rhodesia Land Commission had its origin in the proposal that the natives should give up this long-established right

in

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? Which is correct? P This is a quotation so there need be no "we" alt.

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1925, to which reference is made in the foregoing quotation; but I enclose a copy for convenience, together with a copy of the Southern Rhodesia Land Apportionment Act 1930, which gives legislative sanction to the decisions which were taken. It will be seen that the recommendations of the Commission were followed generally, except that the proposal for certain "neutral areas" (in which both Europeans and natives would have had the right to acquire land) was not adopted. It should however be noted that while in certain respects the position in Kenya is not unlike that in S.Rhodesia, there is one important difference. Under the S.Rhodesian Constitution natives held the right to acquire land in any part of the Colony on equal terms with non-natives, ~~and~~ the S.Rhodesia Land Commission had its origin in the proposal that the natives should give up this long-established right in

(In itself This arrangement – extent of the area now held respectively by the natives and non-natives – shows operates disadvantageously to the natives because of their inferior general and economic capacity to acquire land, and) TBS.

in return for the allocation of specific areas in which natives and natives only could acquire land. In East Africa, on the other hand, no question of giving up such a right will arise: for, subject to the prior satisfaction of legitimate native needs, it is not possible for H.M. Government to contemplate a departure from the principle that the natives must have equal opportunity with others for the acquisition of all Crown lands which then are, or subsequently become, available for alienation: the only exception being the reservation of the "highlands", with which, for special reasons, as stated in the Memorandum on Native Policy, they do not wish to interfere.

6. As stated in the Report of the Commission on Closer Union, the reservation of areas for

native

native development must be accepted as "a first charge" on an East African Dependency. It seems clear that there is room for doubt as to the adequacy of the existing Reserves, as evidenced by the report of the Provincial Commissioner, Kikuyu, for 1929, who refers to the feeling that the land now reserved in the Fort Hall and Kiambu districts is barely sufficient for the natives now on it and that it cannot accommodate those families which have, sometimes for a whole generation, been settled on lands long ago alienated as farms and mission grants. Similarly, other experienced persons, such as Canon Leakey, to whose opinion weight must be attached, express the view that addition will be necessary to the Reserves. I have no wish to prejudice the issue, but, despite assurances ~~to the contrary~~ that the present Reserves are adequate, I

cannot

cannot ignore testimony in the contrary sense, and I am of the opinion that the right course will be for an enquiry to be held, in the light of all obtainable data and statistics, as to the adequacy of the Reserves as now gazetted for the several tribes, in order to determine whether each of those Reserves contains sufficient land to enable the existing native population to maintain a reasonable standard of life according to the methods of agriculture or stock-keeping as at present practised and to provide for such increase of population as may be anticipated, due allowance being made for the general introduction of more efficient and more economical methods of native cultivation and stock-keeping. If the enquiry shows that additional

additional land is required for tribal use, it will then be necessary to determine what land should be allocated for the purpose, either from unalienated Crown land or if necessary by way of expropriation - the object being, whenever possible, to find suitable land contiguous to the Reserve in question, although in some cases it might be necessary to set aside areas not contiguous to the Reserve.

Further, in order to implement the policy of providing effective opportunity for natives to take up individual holdings for cultivation outside the Reserves, [and in view of what has happened in Southern Rhodesia, T.B.T.] enquiry must also be made as to whether or not it is desirable to provide separate areas of land in which, without prejudice to their right of acquiring land on equal terms with non-natives outside the Reserves, natives only may acquire individual holdings. If such areas were considered desirable, it

it would be necessary to go into the question of the terms on which land in those areas should be held.

Further, it will need to be determined whether or not specific areas should be retained for an indefinite period in which no alienation should take place, as in the case of Southern Rhodesia, and if so what should be these unallocated areas in Kenya.

7. I do not wish it to be supposed that pending such an enquiry, which would take a considerable time, no further land should in any circumstances be alienated in Kenya to non-natives, if occasion for such alienation arises in the meantime, provided:

(i) that it is indubitably clear that no possible native land rights or claims are involved, and

(ii) that you are satisfied that the land in question can be alienated without prejudice to possible requirements for native purposes, when the proposed enquiry has been held.

I realise that the second of these conditions may present difficulty as dependent upon hypothetical considerations. But an extensive area of very valuable land, viz: the "highlands", having been set aside in effect for European acquisition, it is incumbent upon H.M. Government to secure at the earliest possible date definite and satisfactory provision for native purposes, and I feel sure that you will appreciate the necessity of erring on the side of caution, even if this causes some temporary inconvenience. So far, however, as I can judge, there is not likely to be any demand by non-natives in the immediate future for land which cannot well be met by the sale of areas already alienated, and I ~~hope~~ believe therefore that no inconvenience would, in point of fact, be occasioned.

It is important to note in that connection that much more land has been alienated to non-natives than is in effective use [illegible]

Incidentally, I would observe that, according to my information,

no

no precise definition of the "highlands" has ever been formulated. This is an unsatisfactory feature of the situation, and it will be very desirable that the area within which persons of European descent are to have a privileged position should be closely defined. To some extent the area in question must depend upon the amount of land left available when any necessary additions to Native Reserves whether for communal use or as native purchase areas for individual holdings, have been determined, and the definition of the "highlands" can thus conveniently be included in the scope of the proposed enquiry.

8. So far I have dealt with the needs of the natives as this appears to me be the most urgent practical question in relation to native land policy in Kenya; but there are certain other matters, highly important in themselves but subsidiary in importance to the main questions, which call for consideration.

9. In 1921 the following judgment was given by the Chief Justice of Kenya:-

"In my view the effect of the Crown Lands Ordinance 1915, and the Kenya (Annexation) Order-in-Council 1920, by which no native rights were reserved, and the Kenya Colony Order-in-Council 1921, as I have already stated, is clearly inter alia to vest land reserved for the use of the native tribes in the Crown. If that is so, then all native rights in such reserve land, whatever they were under the Gethaka system, disappeared, and the natives in occupation of such Crown lands became tenants at will of the Crown of the land actually occupied".

occupied".

The effect of this judgment was to invalidate all native rights to land within the Reserves and to make natives in the Reserves tenants at will of the Crown. In consequence it became necessary to take steps to safeguard their position. As regards Reserve natives collectively, this has been effected by the passage of the Native Lands Trust Ordinance by which the lands within the Reserves have been solemnly set aside for the use and benefit of the natives for ever. As regards the position of individuals within the Reserves, His Majesty's Government declared their policy in the Memorandum on Native Policy as follows :-

> "The legal decision that the land not specifically alienated to individual owners remains vested in the Crown does not mean in the view of His Majesty's

Government

> Government, that the natives who have been actually using that land have no rights which the Courts of Justice must protect, but only that such customary rights have not yet been so definitely ascertained and defined that the protection of the Courts can in fact be exercised. Accordingly, the earliest possible authoritative ascertainment and definition of these customary rights of occupancy or user in land within the Native Reserves becomes of the utmost importance".

The ascertainment and definition of these rights is now the subject of careful consideration by your Government, as shown by the very valuable report on Native Land Tenure in the Kikuyu Province published in 1929, and the similar report on Land Tenure in the North Kavirondo Reserve, of which I received copies a few

weeks

weeks ago. I assume that where there is occasion for enquiry in other Native Reserves, the necessary steps will be taken with a view to ascertaining the rights in question.

10. The outstanding problems concerning native land rights inside the Reserves are thus already engaging attention, and it is not necessary for me to dwell further on them in this despatch. There remain, however, various problems connected with native rights to land <u>outside</u> the Reserves, to which it seems necessary to give consideration.

11. In paragraph 24 of the M[illegible] Report of the Tribunal appointed to enquire into the [illegible] electric power [illegible] the Chairman gave a ruling which seemed to imply that the Crown has an unfettered right of alienation over all Crown land which is not situated within a gazetted Native Reserve. Presumably in giving this ruling Sir Jacob Barth had in mind the judgment quoted above as regards native rights within the Reserves, and was applying the same principles to rights outside the Reserves. The Attorney-General, however, in his minute of the 14th May 1930 takes exception to the ruling and advances certain arguments which appear to have considerable force, in favour of a view entirely contrary to that contained in the 1921 judgment.

[See No. 11 in file]

There would appear, therefore, to be real doubt as to the exact legal position regarding native rights to land outside the Reserves, and it seems possible that if a test case were now to be brought a decision might be given which would open the way to numerous actions by natives, whether individuals

individuals or communities, in respect of claims based on occupation of land prior to the advent of British administration.

Any such result would have far-reaching consequences, and it would seem greatly preferable that the legal position should be ~~any claims of this nature should be~~ stabilised upon terms which ~~dealt with on grounds of equity and~~ are fair & equitable. ~~public policy rather than from a purely legal point of view.~~ I propose therefore to discuss the question ~~first~~ from this ~~aspect~~ point of view.

12. There would appear to be a general consensus of opinion that certain areas of land which at the time of the coming of British administration were occupied by natives have now passed into the ownership of Europeans. The coming of the British administration undoubtedly

undoubtedly gave permanent form to a position which would otherwise have been temporary. The fact that any particular tribe or members of a tribe ~~was~~ were at that time occupying any particular lands was quite possibly due only to transient chance or superiority in war. In general, therefore, (though there may be exceptions) it should suffice in considering equitable claims based on ~~prior~~ prior occupation, to take into account only tribes of settled habits.

13. The most difficult of these claims to investigate would appear to be those made by the Kikuyu in respect of land alienated many years ago in ignorance of the fact that the land in question was in native occupation. Reference to this is made in the petition submitted by the Kikuyu Central Association, which formed the subject of my confidential despatch

despatch of the 2nd January 1930. In that despatch I recognised that it might not now be practicable in every case to adjust satisfactorily mistakes made in years past, but I expressed the opinion that the position should be further investigated, and the precise nature of the grievance, so far as there might be a genuine grievance, ascertained. Further details were given in the letter from the Kikuyu Central Association of the 15th April 1930, in which it is alleged that a large proportion of the land now held by Europeans as coffee and other farms round Kiambu, Limoru, Kabete, Ki[illegible], [illegible]u, Ruiru, Ruirwaka and Kamiti was under Kikuyu ownership when it was taken by the Government of the East Africa Protectorate without compensation to the owners, and given or sold to European farmers. In his confidential despatch No.10[illegible] of the [illegible]th July, 1930, Sir Edward Grigg agreed that there was evidence that in the early days considerable areas of land now claimed by the Kikuyu were alienated to European settlers, but he held that financial reasons made it impossible in the interests of the natives as well as non-natives, to reopen the question of githaka claims outside the Reserve in the Kiambu-Nairobi areas. He pointed out that at this date, so remote from the time of alienation, the task of sifting the evidence would present insuperable difficulty, and even if a clear case were made out for the restoration of certain areas to the Kikuyu, the compensation to dispossessed persons involved in such a decision would inflict a crushing burden on the whole community, native and non-native, from which the Kikuyu would suffer as severely as any others.

(No.32 on 15540/A/29 or No.5 on this file).

(No.7 in X.16010/30/A)

(No.16 in X.16010/30/A)

I am impressed with the force of the arguments in Sir Edward Grigg's despatch; and I am compelled, though with reluctance to the conclusions that it is now impracticable to determine with precision what land was improperly alienated and that if the facts as to the land so alienated

alongside the Railway, which form the subject of Mr. Moore's despatch No.43 of the 17th January and your despatch No.111 of the 24th February. These particular claims have been referred to the Central Board under the Native Lands Trust Ordinance 1930, and it is for consideration whether any other similar claims throughout the Colony could best be investigated by that Board or as part of a more general enquiry embracing the larger questions dealt with in the earlier part of this despatch.

[No 5 & 6 in X.16036/30]

15.

15. There is, however, another "class" of rights to be considered, viz. those which natives may claim within alienated land in connexion with Section 86 of the Crown Lands Ordinance, which, for convenience, is quoted in full:-

"86. (1) The Governor may grant leases or areas of land containing native villages or settlements without specially excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

" (2) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be occupied, pass to the lessee:

Provided

" Provided that the Senior Commissioner for the time being of the Province in which such land is situated shall certify that the natives have ceased to occupy such land of their own will and accord and without any duress on the part of the lessee.

" (3) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Senior Commissioner.

" (4) Either the lessee of the land or the natives, if dissatisfied with the decision of the Senior Commissioner, may appeal to the Governor. "

How far the definition of native rights under this Section has presented difficulty, is a matter upon which I do not appear to have detailed information. But I understand that in certain cases natives who remained on land alienated to non-natives have in process of time become ordinary "squatters", and that complications are, in fact, arising, as evidenced by the Annual Report for the year 1929 by the Provincial Commissioner, Kikuyu, who states that on some of the farms in the Kiambu settled area and also on certain mission plots numbers of these long-established squatters now claim a right to reside and occupy land there under the Crown Lands Ordinance on the ground that they were already settled there at the time of the grant of the lease - a claim which it is almost impossible to disprove. The definition of these rights in such a way as to ensure their recognition in a Court of Law ~~[struck out]~~ would no doubt be difficulty; and it may be that if an attempt is to be made to define the rights of natives, more particularly Kikuyu, who remain on alienated land, it would be desirable to await the outcome of the investigation ~~with~~ [illegible] native

native land tenure within the Reserves. But it is for consideration whether it might not prove more satisfactory, on the whole, if arrangements could be made for natives to give up any claims to such rights on alienated land without first seeking too exact a definition of them, in return for other land to be added to the appropriate Reserve, with ~~due~~ reasonable compensation for disturbance. Should such an arrangement be desired, it would of course be necessary to obtain the general agreement both of the non-native owners of the land and of the natives who would move, and it would be essential to ensure, perhaps through the agency of the Central Board under the Native Lands Trust Ordinance, that the compensation offered is equitably adequate and of a nature to secure the future livelihood and well-being of the natives concerned. A similar point arises in connexion with future alienation of Crown Lands, upon which

there

there may be small settlements of natives. On my present information, I am doubtful whether Section 86 of the Crown Lands Ordinance provides the best means of dealing with such a situation, and while I do not now wish to express any opinion one way or the other, it is possible that it might be more satisfactory to effect the removal of such natives on the lines indicated above.

16. Having now considered from the point of view of equity and public policy, the claims of natives to land outside the Reserves, I revert to the more purely legal aspect of the question referred to in paragraph 11 of this despatch. As I have said in that paragraph, there would appear to be some grounds for thinking that

if

if a test case were now brought, a decision might be given which, ~~if supporting~~ the land in question ~~had~~ to have been alienated, would have embarrassing consequences, and it is for consideration whether, ~~except~~ subject to meeting fully all claims ~~of~~ in equity, ~~have been met~~ it would not be desirable to introduce legislation which would remove the present obscurity as to the legal position, and make any such decision impossible. The form which the alteration of the law would take would require extremely careful consideration.

17. I have outlined in the foregoing paragraphs the main points in connexion with native land policy in Kenya upon which, as it appears to me, enquiry is needed and it is not, I think,

necessary

necessary that I should go further into detail. I would request that you give careful consideration to the whole matter and inform me at your early convenience whether your Government agrees to an investigation by a Commission, whose terms of reference would be sufficiently wide to cover the ground traversed in this despatch. If, as I hope, this suggestion meets with the approval of your Government I shall be glad to receive your views as to the ~~[illegible]~~ terms of reference which you would propose to formulate and as to the personnel of the Commission.

As regards a Chairman, I am strongly of the opinion that, as in the case of the Southern Rhodesia Land Commission, it would be desirable to seek an officer whose service has not been in the Colony

immediately

immediately concerned, and I shall be pleased to consider, with others who appear to have the necessary qualifications, any gentlemen whom you may desire to suggest as suitable for this important and admittedly difficult task.

I have etc.

(Signed) PASSFIELD

MEMORANDUM ON NATIVE RIGHTS TO, AND NEEDS FOR, LAND OUTSIDE RESERVES.

The Native Lands Trust Ordinance has "reserved and set aside" certain lands "for the use and benefit of the native tribes of the colony for ever". It has however left many questions regarding native lands still outstanding. The most important is perhaps that of the system of land tenure within the reserves. This is already being taken up by the Kenya Government. There also remain various questions concerning native rights and needs to lands outside the reserves. These form the subject of the present memorandum.

I. How far are there at present any native "rights" to land outside reserves which it is practicable to recognise?

In 1921 the Chief Justice gave the following judgment:-

Quoted from pp.28 and 29 of the Ormsby-Gore Commission Report, Cmd.2387.

"In my view the effect of the Crown Lands Ordinance 1915, and the Kenya (Annexation) Order-in-Council 1920, by which no native rights were reserved, and the Kenya Colony Order-in-Council 1921, as I have already stated, is clearly inter alia to vest land reserved for the use of the native tribes in the crown. If that is so, then all native rights in such reserve land, whatever they were under the Gethaka system, disappeared, and the natives in occupation of such crown lands became tenants at will of the Crown of the land actually occupied".

Though-

Though this now famous judgment applied specifically only to native rights to land within the reserves, clearly the principle was the same in regard to land outside the reserves.

The judgment has not been disputed in a court of law and it has accordingly been accepted since this date that all natives are tenants at will of the Crown. There are however certain reasons for thinking that the judgment was a wrong one. The Attorney General is strongly of this opinion and sat out his arguments in full in a memorandum commenting on a ruling of the Chief Justice as Chairman of the Committee which enquired last year into the proposed Maragua-Tana hydro-electric scheme. He produces a number of rulings by the Judicial Committee of the Privy Council which appear to have been overlooked at the time of the 1921 decision, and in the light of these it would certainly se[illegible] more than probable that if a similar case were brought again, the decision would be reversed on appeal to the Privy Council if not before.

A copy is registered as No.11 on this file.

Again the judgment (as applied to land outside the reserves) is hard to reconcile with the provisions of Section 86 of the Crown Lands Ordinance which reads as follows -

"86. (1) The Governor may grant leases or areas of land containing native villages or settlements without specially excluding such villages or settlements, but land in the actual occupation of natives

natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

(2) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be occupied, pass to the lessee:

Provided that the Senior Commissioner for the time being of the Province in which such land is situated shall certify that the natives have ceased to occupy such land of their own will and accord and without any duress on thepart of the lessee.

(3) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Senior Commissioner.

(4) Either the lessee of the land or the natives, if dissatisfied with the decision of the Senior Commissioner, may appeal to the Governor".

There would appear therefore to be at least some doubt whether the 1921 judgment was good in law. Anyhow whatever the legal rights and wrongs of the case may be, there can be no doubt that from the point of view of equity it was extremely unfortunate and that His Majesty's Government are now committed to reverse its effects. The memorandum on Native Policy contained the following passage:-

Cmd 3573 pages 8-9

"The legal decision that the land not specifically alienated to individual owners remains vested in the Crown does not mean, in the view of His Majesty's Government that the natives who have

been

> been actually using that land have no rights which the courts of justice must protect, but only that such customary rights have not yet been so definitely ascertained and defined that the protection of the courts can in fact be exercised. Accordingly the earliest possible authoritative ascertainment and definition of these customary rights of occupancy or user of land within the native reserves becomes of the utmost importance".

It is true that this paragraph dealt solely with land inside the reserves, but it may perhaps be assumed that the same principle should apply to native claims to land outside the reserve.

In a matter of this sort the only possible basis of any "rights" that may be claimed by the natives is that they occupied the land before the coming of the European administration. That event undoubtedly gave permanent force to a position which would otherwise have been temporary, and in many instances the fact that any particular tribe or members of a tribe occupied any particular lands at the moment was probably due as much to transient chance or superiority in war as to any inherent right. It would therefore be rather pointless to try and reconstitute with any great exactitude the position as it was thirty years ago - even if it were possible to do this which it is not. It would be greatly preferable to treat the question on broad grounds of equity; that is to say, to make it generally speaking subservient to the question of native needs to land, which will be dealt with in a later part of this memorandum.

If

If this much is admitted, it will also be admitted that there can be no question of re-opening the difficult problem of the claims of nomadic tribes like the Masai which have been the subject of much correspondence in the past. They are now amply provided for in land and so far as the evidence goes, have no grievances in the matter.

+ Though the claims of the Samburu are not yet finally settled.

It is not however possible to dismiss quite so lightly the claims of the Kikuyu. The point has been definitely brought to the notice of the Secretary of State by the Kikuyu Central Association and further enquiry has been promised. The Kikuyu were a tribe of settled habits who were brought far more closely into contact with white settlement in the early days than most others; moreover, they had evolved a system of land tenure much more nearly approaching individual, or at any rate family, "ownership" of land, so that any injustice that m[illegible] have been done will have borne more heavily upon individuals.

It is necessary therefore to go a little further into the Kikuyu problems. It may safely be asserted that if the local government are able to find a solution of the Kikuyu problems, they will have no difficulty in solving similar problems in other parts of the Colony, since they are elsewhere not nearly so complex.

Letter to the S.of S. 15th April 1930. (See No.6.)

The Kikuyu Central Association alleged in a[illegible] letter to the Secretary of State of the 15th April 1930, that it is a fact that a large proportion of the land now held by Europeans as coffee and other farms round Kyambu, Limoru, Kabete, Kijabe, Mangu, Ruiru, Ruirwaka and Kamiti was under Kikuyu ownership, when it was taken by the East Afric[illegible] Protectorate Government without compensation.

P.11.
para.24.

"Some Mbari (i.e. sub-clans) claim that the whole of their Ithaka (i.e. holdings) were lost to them by being alienated by Government to settlers".

And elsewhere it is stated that in the Kiambu district:

P.26.
para.58.

"a very large number of Ithaka were alienated to Europeans in the days before the reserve boundaries were fixed".

See the extract from a record of his discussion at the Colonial Office registered as No.12.

Further confirmation of this point comes from Canon Leakey.

It may then be admitted that Europeans now occupy certain areas which the Kikuyu claim at one time were occupied by them, even if that occupation was not always a very effective one.

What has happened to the natives who at one time occupied these areas now occupied by Europeans? Some of them no doubt left the district and found land within the reserve. They would, however, find difficulty in obtaining a footing there since the land was already "owned" by the Ithaka- owners, and in four-fifths of the reserves the sale of land was unknown. Thus for the most part they would only be able to obtain land as Ahoi, that is, something like tenants at will, and no matter how much the Government might swear to protect the rights of these Ahoi, they would never stay on the land against the will of the Ithaka-owners, for "no Government support can nullify the anger of the spirits and the disasters which they would bring about".

Many of them no doubt instead of retreating to the reserves remained on the land, when it was alienated,

under-

It is now for consideration whether it would be possible to do anything to compensate those who have lost their "rights" or to define the "rights" that remain. As regards compensation the opinion of Sir Edward Grigg as expressed in July last, was as follows:-

Confl. despatch 106 of 4th July 1930.

"Though there is evidence that in the early days of this country considerable areas of land now claimed by the Kikuyu were alienated to European settlers, financial reasons make it impossible in the interests of natives as well as non-natives to re-open the question of Githaka claims outside the Reserves in the Kiambu-Nairobi areas.

At this date so remote from the time of alienation, the task of sifting the evidence, native and European, would present insuperable difficulty; (an example of this difficulty is afforded by the fact that Sir Charles Hardinge in his Memoirs reports a Masai manyatta on the Nairobi Hill in 1895), and even if a clear case were made out for the restoration of certain areas in the Kikuyu, the compensation to dispossessed persons involved in such a decision would inflict a crushing financial burden on the whole community, native and non-native, from which the Kikuyu would suffer as severely as any others".

No doubt this is the inevitable conclusion. Much of the land alleged to have been occupied by the Kikuyu is very valuable and would have to be re-purchased

at

at a high price plus compensation for disturbance. It would be far too expensive to make wholesale restitution, even if it were at all practicable to determine what ought to be restored, and to whom it ought to be given. But if wholesale restitution be impracticable, there are certainly one or two areas formerly or still occupied by natives which are classed as crown lands available for alienation but which have not yet been alienated. For instance, it was proposed to give to the Kikuyu, as part compensation for land to be excised in connection with the Maragua-Tana scheme, two "unoccupied" farms in the Saba-Saba district, but the minority report of the committee of enquiry found that these two farms were in fact already occupied by natives. There should be no insuperable bar to the retention of such areas as native land, and it should also be possible to add any similar alienated land which happened to revert to the Crown. Again it might be possible to give other areas of crownland in compensation for alienated land over which natives had claims. Perhaps it might be suggested to the Governor that an enquiry should be held into these subjects both as regards Kikuyu claims and any similar claims made in other parts of the Colony.*

* But NB. (1) it would probably be a mistake to attempt to compensate individuals after this passage of time — this being admitted, (2) the whole question becomes subordinate to the much more important question of needs, which is dealt with in the latter part of this memo.

As regards existing rights under Section 86 of the Crown lands Ordinance, the position is one of considerable difficulty. Clearly, if the natives are to remain where they are, something must be done in order to define the rights which they claim, and to give them a status which is recognisable in a Court of Law. This, however, is by no means so easy to do, as has already

already been found in attempting to deal with the similar question within the reserves. The whole question is, in fact, bound up with that of land tenure within the reserves, which is now very seriously exercising the minds of the local Government. The difficulty in regard to the grant of anything approaching title deeds is well summarised in the Native Affairs Department Report for 1928, as follows:-

> "They (the Kikuyu) are now turning their earnest attention to the rights of individuals to tenure within the Reserves, and included in almost every petition to Government is a demand for 'title deeds' for every 'land holder', a demand which fails to draw the necessary distinction between the rights of at least three different categories of land holders as known to native law and custom, namely, the githaka holders (Lords of the Manors), the relations of the githaka holders who have certain claims to the githaka (estate or manor), and tenants who have acquired rights of occupation by payment of an annual fee of beer to the Lord of the Manor or by his unconditional permission to reside. It would be an easy matter to grant title deeds to the Lords of the Manors but this would create a class of immensely wealthy feudal barons to the detriment of the remainder of the population. To grant the title deeds to either or both of the two other classes of land holders would be a practical impossibility. What is wanted is a system under which the tenants will receive a greater measure of security than they now possess while the traditional claims of the overlords will be in some way accorded recognition".

If an attempt is to be made to define the rights of those Kikuyu who remain on alienated land, it would appear

essential

essential to await the outcome of the discussions now going on as to land tenure within the reserve. In that case, it would probably be best to take no action in the meanwhile in regard to natives of other tribes who may be in a similar situation.

An alternative solution to the problem, which might in the long run prove more satisfactory, would be that the natives should give up their claims to rights on alienated land in return for adequate land elsewhere (to be added to the reserves) plus compensation for disturbance. *This would require the general agreement of the natives, as well as of the non-native owners of the land (settlers, missionaries etc.). The value of the land to its non-native owners would be increased by the native rights being relinquished,[x] and they might therefore fairly be asked to assist towards the provision of other land and compensation.

There is a further point which arises. If native customary rights are to be respected as far as possible, what is to happen in the future when there is a settlement of 20 or 30 natives in the middle of a plot of, say, 5,000 acres of Crown Land which it is desired to alienate? If alienation is to proceed at all, it must be recognised that there must be some provision for dealing with stray natives on an equitable basis, but it would appear at least doubtful whether the existing provision namely Section 86 of the Crown Lands Ordinance is the best possible. If they are to stay in future their title should be made more definite than it can be at present. If they are to be removed, it would seem desirable that

some

[Handwritten marginal note:] An extremely awkward situation might arise if in the meanwhile some natives chose to go to law about their "rights" - but it may be hoped that this will not happen.

[Handwritten marginal note:] x But I am not so sure of this - as the presence of natives may be of great value as a potential labour supply. [illegible]

some body, perhaps the Central Native Lands Trust Board, should be satisfied that they abandon the land of their own free will, and that the compensation offered is "equitably adequate and of a nature to secure their future livelihood and well being"[x]. There is no reason for delay in this case and perhaps the Governor might be asked to consider an amendment of Section 86 on these lines.

[x] (This provision was laid down by the S. of S. in No.32 on 15547/29 in connection with Mr.Goldman's concession).

It should be added that if the terms of the "Bottomley-Martin" agreement of the 9th May 1927 have been strictly carried out no alienation of land has taken place since that date if any possible native land rights or claim were involved.

See P.4 of Memo on 16114/A/30.

So far the Memorandum has dealt solely with the question of native "rights" to land outside the Reserves. A further important question is that of the sufficiency of the existing Reserves for native needs.

II. NATIVE NEEDS FOR LAND.

This subject is dealt with under six heads as follows:-

(1) the recommendations of the Hilton-Young Commission.

(2) the action taken in somewhat similar circumstances in Southern Rhodesia.

(3) the desirability of making additions to the reserves at once.

(4) the possibility of constituting separate native purchase areas.

(5) the availability of land for (3) and (4)

(6) the present position as to land alienation to non-natives.

(1) The Hilton-Young Commission.

The principles to be followed in this matter were discussed at some length in the Report of the Hilton-Young Commission. Their general conclusion was stated as follows:-

A "Before any alienation of land to non-natives is permitted, the Government ought to have a clear idea of the minimum needs for native areas, and whether the exact boundaries are fixed at once or not, sufficient areas for native use should be regarded as a first charge on the territory. The remainder of the land ought not then to be thrown open indiscriminately for settlement, but ought to be dealt with step by step according to a methodical plan, the Government maintaining under its own control for as long as possible substantial areas as a reserve to meet such further requirements as may develop.

(p.46)

A This conclusion they proceeded to elaborate as follows:-

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If the reservation of areas for native development is accepted as a first charge, it does not necessarily follow that the whole of the remaining territory ought to be allocated for alienation to non-natives. It would in any case be unwise finally to parcel out the whole of any territory in the early days of British administration. Some margin of elasticity for future development should be preserved. What we advocate as a complementary measure to the delimitation of native reserves is that certain further areas should again be mapped out as definitely and immediately available for alienation to non-natives, leaving a balance to be retained by the Government at its own disposal which can be kept free for any of the following purposes: either for addition to the native reserves if this proves necessary, or for farther alienation to non-natives, or for sale to natives. The last alternative requires special emphasis. It is obviously important to make some provision for dealing with the class of native who is not satisfied to continue his life under native conditions. Such a class may include some of the best individuals, and these should have an opportunity to settle down, perhaps after a period of long service with a white employer, as independent agriculturists in the country and not be forced to remain as labourers or tenants on white estates or to drift into the large towns. The principle has been adopted in the recommendations of the Land Commission of Southern Rhodesia which reported in 1925. We are impressed with the wisdom of its recommendations in this respect, and it should be a matter of policy in all countries to

reserve

reserve suitable areas of land for ultimate use in this way. The introduction of such a provision will give an elasticity which, at a future date, may prove of the greatest possible value."

(2) Action in Southern Rhodesia.

It is worth while to examine in some detail the recommendations of the Southern Rhodesia Land Commission of 1925[x], to which the Hilton Young Commission refer.

x A copy of their report is attached. It should be returned to the Library as it is the file copy. (Sessional paper 3/26).

The Commission was appointed with the following terms of reference:-

(1) to inquire into and report upon the expediency and practicability of setting apart defined areas outside the boundaries of the Native Reserves, (a) within which Natives only shall be permitted to acquire ownership of or interest in land, and (b) within which only Europeans shall be permitted to acquire ownership of or interest in land; and

(2) should the Commission consider that the above proposal is expedient and practicable, to report generally as to the manner in which effect should be given to such policy and the steps necessary to carry it out; and, further, to indicate any areas in which it seems desirable in the light of present conditions that early action should be taken with a view to limiting and the method of limiting the rights of acquisition to Natives or Europeans.

The Commission originated in a suggestion that the Southern Rhodesia natives should give up the right

which

which they then possessed of acquiring land in any part of the Colony on equal terms with non-natives and that in return specific districts should be set aside in which only natives might acquire land. Mr. Winston Churchill (who was then Secretary of State) did not like the idea of any alteration of the long- established principle of equal rights. He agreed, however, that, if full and impartial enquiry showed that some amendment of the law was necessary, His Majesty's Government would consider the question. It was this full and impartial enquiry which was undertaken by the Commission. It therefore approached the problem from a rather different angle from that of the present memorandum. Its Chairman was Sir Morris Carter, at one time Chief Justice of Uganda, and the other two members were the Chief Native Commissioner and the Director of the Department of Lands.

para. 49. The Commission "had no hesitation in finding that an overwhelming majority of those who understand the question were in favour of the existing law being amended and of the establishment of separate areas in which each of the two races, black and white, respectively should be permitted to acquire interests in land. Missionaries, farmers and town-dwellers, the officials of the Native Department, the Natives in the out-districts and Reserves, in so far as they could grasp the subject, and the more advanced Natives, were, generally speaking, all of one mind in this respect". There was however no such unanimity in regard to the amount of land which should be set apart for each race. The areas already defined were:-

Land alienated to Europeans 31,000,000 acres.

Native

Native reserves (21,600,000 acres,
and a few small urban areas, forest areas, etc., leaving about 41,000,000 acres undefined. There were some who thought that the natives had already more land than should have been allowed them; there were others who considered that 60% of the available land should be set apart for their acquisition.

The native population at the time was estimated at 813,000, of whom over 500,000 resided inside the reserves, the remainder outside. The Commission assumed (on what grounds is not stated) that land would be required for approximately 200,000 natives from outside the reserves and 50,000 from inside the reserves.

After full consideration the Commission agreed unanimously to recommend (1) that 6,900,000 acres should be set aside as native purchase areas. (Assuming a population of 25[illegible]000 wanting land, this figure allows 27.6 acres per head)
(2) that 17,400,000 acres should be regarded as available for European alienation and
(3) that 17,800,000 acres should be reserved for future determination.
Two of the three Commissioners recommended the establishment of certain "neutral areas" in which both Europeans and natives should have the right to acquire land.

The effect of these recommendations is very clearly shown in the map attached to the Commissioners report. They involved the expropriation of some 500,000 acres already alienated to Europeans, but the Commissioners anticipated that in most cases the owners

would

would be willing to accept an exchange of land and therefore that the cost of this expropriation would not be very great.

Paras.121 and 122

In making their recommendations, the Commissioners wrote as follows:-

"The policy which we recommend is, on the one hand, to leave existing European interests as far as possible undisturbed, and to make available for acquisition by Europeans all possible land in what are predominantly white areas, while, on the other hand, providing suitable land for private acquisition by Natives in or near to the districts in which they are at present residing, in sufficient quantity to satisfy their present and their future needs (except in so far as these needs can properly be met later by the allocation of land in the areas which we have left for future consideration), and affording fair and adequate compensation for the surrender of their right to purchase land anywhere in the Colony.

A further integral part of the policy which we recommend is that these Native areas should, wherever possible, adjoin the existing Native Reserves so as to form with them compact Native areas. In this way the points of contact between the two races would be reduced and the number of areas occupied by Natives, would still remain much as before, although, whereas at present only their needs in regard to

communal

communal ownership have been provided for, their needs for land for private acquisition would also have been satisfied.

It was the idea that the communal tenure which existed in the reserves should not normally be allowed in the native purchase areas, but that land in these areas should provide opportunities for individual natives who wished to acquire their own holdings. The Commissioners suggested that the form of tenure should normally be freehold without quit rent, that the land should not be liable to execution for debt and that a right of a certain amount of commonage should go with each holding.

The more important of the Commissioner's recommendations met with general approval. Mr. Amery having signified his general acceptance of the proposals, the legislation etc. necessary to implement them was drawn up and was finally carried through, after Lord Passfield had also signified his concurrence, in the autumn of 1930[x]. The chief difference between the Act as passed and the recommendations of the Commission was that the proposal for "neutral areas" was dropped and instead an extra 500,000 acres was added to the native purchase areas. The chief point of controversy was in regard to the area reserved for future determination. The Anti-Slavery and Aborigines Protection Society and others pressed that this area should be regarded as earmarked half for Europeans and half for natives. It was eventually provided that assignment of portions of this area should only be made with the approval of the High Commissioner for South Africa and it was understood that when the time came for division between the two races another Commission

of

[x] See the Land Apportionment Ordinance attached. Amendments were also necessary to the Letters Patent. The correspondence has been printed in Doms.117 attached.

D.10329/10.

of Inquiry would probably be necessary.

This somewhat lengthy examination of the situation in Southern Rhodesia seemed worth while as the circumstances were not very different from those which exist in Kenya. In Southern Rhodesia, as in Kenya, native reserves had been established, and certain very similar problems, complementary to the establishment of the reserves, remained over for settlement.

The Hilton Young Commission, then, largely influenced by the Report of the Southern Rhodesia Commission, recommended the mapping out of the land into (a) definite native areas (b) definite European areas (c) " a balance to be retained by Government at its own disposal which can be kept free for any of the following purposes: either <u>for addition to the native reserves if this proves necessary, or for further alienation to non-natives, or for sale to natives</u>". The definite native and European areas already exist in Kenya, but how the remainder may best be disposed of is a question which has not yet been considered as a whole. In view of the recommendations of the Commission, it would seem desirable that it should now be taken up.

(3) <u>Is there any need for any immediate additions to the reserves?</u>

The Commissioners recommended that the provision of adequate native areas should be a first charge on the territory. They were unable to give

any

any hard and fast definition of the word "adequate", which must they thought, be determined in each case on practical considerations. The accepted policy however should be "to reserve sufficient land to enable the existing population to maintain a reasonable standard of life according to the methods of agriculture or stock-keeping at present practised, and to provide for such increase of population as may be expected before the natives have time to learn better or more intensive methods".

P.49.

The Secretary of State has received frequent assurances that the existing reserves are "adequate" in this sense. Sir Edward Grigg for instance gave it as his opinion in August last "that the available land resources of the native are, generally speaking, ample to cope with the increased development which is needed to augment their material prosperity and so provide them with the means to improve their standard of living". Similarly in 1925 his predecessor Sir Robert Coryndon wrote:-

para.7 of Confl. desp.No.121 of 14th Jan. on 70005/30 Genl. copy below No.10 on this file.

para.11 of desp. No.28 of 8th Jan.'25. on 5856/25.

"I desire to express generally my opinion that the areas which are in fact .... reserved for native use, should suffice for all present and future native needs. It is true that there may be signs of apparent congestion in a few parts of a few reserves, but reference to the economic maps ..... and the reports of the Administrative and Agricultural Officers convince me that in many cases the richness of the soil should be sufficient to support an even larger population by the adoption of more efficient methods of cultivation.

Further

Further I believe there are available suitable areas in certain reserves which would afford opportunities for the re-distribution of the native population. It must also be recognised that increase of population in the reserves will be partly met by the movement of natives into the towns and into non-native areas, which the progress of civilisation brings in its train".

On the other hand there are those who hold the contrary opinion. The Provincial Commissioner, Kikuyu, for instance, in writing in his annual report for 1929 of the Kiambu and Fort Hall reserves remarks as follows:-

Extract in No.10 on this file.

"There exists in these two districts the more general problem of accommodating families of returning squatters in areas already thickly populated and the feeling that the land now reserved is barely sufficient for those on it and cannot take in those families which have sometimes for a whole generation been settled on lands long ago alienated as farms and mission grants".

See No.12 on this file.

Canon Leakey "seems to be sure that it will be necessary" to add to the existing native reserves. This is also the opinion of his son Mr. L.S.B. Leakey, who indeed considers the present Kikuyu reserve as quite inadequate.

In view of these different opinions it is worth while to examine the position a little further.

Figures from Sir C. Bottomley's minute of 28.3.30 on 16078/30.

The following table gives the total area, the area of arable land, the population and the number of acres and of arable acres per head, for each of the main divisions:-

Group

Group.	Area sq.miles.	Arable Sq.miles.	Population. x	Acres per head.	Arable acres per head.
Kavirondo	7,086	4,500	943,000	4.8	3.
Lumbwa	802	700	76,000	6.6	6
Nandi	653	600	36,000	11.6	10.
Kerio	6,400	629	156,000	26.4	2½.
Kikuyu	6,068	3,570	692,000	5	3
Wakamba	7,000	190	349,000	12.8	.3

More detailed figures are given in the large volume of maps sent home in Jan: 1928 in connection with Masai claims a volume attached.

(The Masai are not included in the above since the population of the reserve is only 3.4 to the square mile and there is no scarcity of land, but only of water which can be found by boring).

(x The population figures are for <u>districts</u> and in many cases give too high a density for <u>reserves.</u>)

These bare figures by themselves are not very helpful for judging the <u>present</u> sufficiency of the land since they give no indication of two very important factors, namely whether the population is agricultural or pastoral and what is the fertility of the soil. Still less do they help for judging whether the reserves will be sufficient in, say, 70 years time.

However the figures only show the <u>average</u> density for the whole area. In some parts of the Kikuyu area the density gives only 1/3 acres per head (not arable acres). see X below

As regards present sufficiency it may be remarked that:- (a) The Kavirondo country with only 4.8 acres per head (133 to the square mile)* is very fertile and the people are agricultural; (b) The same applies to the greater part of the Kikuyu country which has 5 acres per head (116 to the square mile, which rises in at least one instance, the Dagoretti district, to 500 to the square mile. The map at the end of the Land Tenure Report shows the density very clearly). (c) In Kerio on the other hand the population are pastoralists and very backward; the country is subject to drought and

*The Report on Land Tenure in North Kavirondo just received gives a density map at the end. C.G.E. 14.4.31 X

unfertile

unfertile (d) The Wakamba are also pastoralists and the fertility of their country is being ruined by the large number of stock which they keep and use for no economic purpose. (It may be noted that the Ormsby Gore Commission[x] and the Southern Rhodesia Commission of 1925, as well as an earlier Southern Rhodesia Commission in 1916 did not regard an increase in native stock due to the cessation of tribal raids etc. as alone entitling a tribe to an increase of territory. Some extension of territory might however become a necessity until they could be persuaded to dispose of their stock in a more economical fashion, and the Wakamba have in fact been allowed to graze their stock on the Yatta plains.)

x page 32

As regards future sufficiency, it is necessary in addition to take into account the rate of increase of the population and the effect of improved agriculture, neither of which are capable of exact measurement.

There is a complete absence of any reliable figures of the rate of increase of the population; for one reason or another - small pox, famine, the Great War - the rate of increase appears to have been slow in the past. There is however a general consensus of opinion that with improved health conditions and general development the population is bound to increase very quickly. x

It is quite clear that it is impossible for anyone without great local knowledge to judge accurately of the sufficiency of the reserves. The general impression left by consideration of the facts given above is however that parts of the Kikuyu reserve are definitely insufficient, that there is very little margin for expansion in the Kavirondo country, but that for the other larger groups the reserves are adequate.

It

It may be added as regards the Kikuyu that the existence of "islands" of reserve in the middle of alienated areas and forest reserves must make the districts very difficult to administer and must lead to many and burdensome restrictions on the natives inhabiting the "islands". See the map at the end of the Kikuyu Land Tenure Report.

(4) <u>Should separate native purchase areas be constituted?</u>

The following quotation from the Memorandum on Native Policy is relevant at this point:-

"It is, however, for the Government to make provision not only for the protection of the lands allocated for the occupancy or use of the native tribes or other organised native groups or communities, but also for the individual occupancy or use, by [illegible]ership or under lease, of such natives as have left their tribes and who desire to cultivate land for themselves and their families. Whilst having no desire to go back on the decision come to by Lord Elgin in 1908, confirmed by the White Paper of 1923, with regard to the restriction of agricultural land sales in the so-called Highlands of Kenya to persons of European descent, His Majesty's Government are not willing to see any restriction extended to other agricultural areas in any part of East Africa. In general, so far as they are not precluded in any particular case by previous decision, they adhere to the principle of equality of opportunity in the disposal of all Crown lands irrespective of race, colour or

religion -

religion - a principle in effect imposed in the Mandated Territory of Tanganyika on His Majesty's Government by terms of the Mandate upon which administration of the territory is based, and one which they have no idea of abandoning. But in the view of His Majesty's Government their trusteeship for the natives involves something more than what, as it must be feared, can in most parts of East Africa for many years be little more than a theoretical equality of opportunity of natives with Europeans in the purchase of individual holdings of land. Whilst His Majesty's Government must continue to affirm the right throughout East Africa of individual natives equally with other persons, including Indians, subject to the provisos just mentioned, to purchase or take on lease land outside the Native Reserves, the obligation of trusteeship requires that effective opportunity should be afforded to the natives - perhaps in areas outside the Native Reserves specially allocated for this purpose - to take up individual holdings of appropriate extent on lease or by purchase with payment by easy instalments, for cultivation by themselves and their families, on terms that will render this policy genuinely practicable.

We have seen that in Southern Rhodesia separate native purchase areas have been set up - but that the

corollary

corollary of this was the relinquishment of the natives right to purchase land elsewhere on equal terms with other races. This would not be possible in Kenya without departing from the principles laid down in the extract from the Memorandum on Native Policy quoted above. (His Majesty's Government "have no idea of abandoning".... "the principle of equality of opportunity in the disposal of all Crown lands"). There would be no particular point in setting up these areas in the parts of the Colony in which there is no non-native settlement. But in the highlands the position is different. The restriction of agricultural lands sales to Europeans means in effect, as the Memorandum recognises, that in these areas there is not equality of opportunity at present. Unless therefore special areas are set aside for native purchase, equality of opportunity cannot exist for the highland natives. The establishment of such separate areas in the highlands could hardly be held to be contrary to the restriction policy, since (a) it would not affect the underlying principle of segregation, (b) the establishment of sufficient native areas must be regarded as "a first charge on the territory" and (c) it may safely be assumed that those who were responsible for the policy were concerned solely with Europeans versus Indians and never took into account the question of European versus native. If it was desired to throw open bidding for all farms in the highlands to natives, that no doubt would be regarded as an infringement of the policy, since the underlying principle of segregation would be reversed.

It

It may be said that there would be no demand from natives for individual tenure.x The absence of demand at present may be largely due to the fact that most natives do not know that they can acquire land outside their reserves. There are definite signs of demand for individual tenure within the Kikuyu reserve, and there are also the Kikuyu whose Ithaka have been alienated and who have now only the choice between "squatterism" and, if they are lucky enough to be able to find a friend to allow them to reside on his land, of becoming Ahoi (tenants at will) in the reserves. In Southern Rhodesia 150 applications were received as soon as it became known that certain areas were to be reserved for native purchase.

x A P.Q. has now been asked [illegible] The reply is that the info is not available but will be obtained. There must be some natives holding land individually, especially on the coast - eg. [illegible]. Info now in. The answer is "None except on the coast".

D.6051/28.

There would therefore appear to be a good deal to be said for the establishment of native purchase areas in the highlands -- possibly also in other parts of the country in which land may be alienated to non-natives. The form of tenure in such areas would however require very careful consideration.

(5) <u>Is there then any land which could be added to the reserves or made into native purchase areas?</u> The 1930 Agricultural Census gives the following figures of the area of the Colony:

p.4.

	Acres.
(1) Native reserves	30,908,800.
(2) Forest reserves	2,666,880.
(3) Land surveyed into farms and alienated	6,766,080.
(4) Land surveyed into farms and available for alienation	892,800.
(5) Government reserves (outspans, quarantine areas etc:)	154,880.
(6) Township and Township reserves	206,080.

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(7)

		Acres.
(7)	N.F.P. Turkana etc.	76,931,200.
(8)	Areas yet unclassified	25,547,680.

The only possible areas for addition to reserves (apart from land brought back from Europeans) would be (4), the 892,800 acres surveyed into farms but not yet alienated, and (8) the 25,547,680 acres of areas not yet classified.

The second map in the Non-Native Census for 1926 gives a fairly general idea of the position as it then was. In this map the "land available and suitable for alienation", marked brown, works out at about 3,000,000 acres. The difference between this figure and that of 892,000 in the 1930 Agricultural Census cannot wholly be accounted for by alienations in the meanwhile, since the areas alienated have been comparatively small, (the figure for the two years 1928 and 1929 appears to be about 116,000 acres and that for the previous two years is not likely to have been much more), and there must therefore have been some alteration in the method of computation. Certainly at the moment there exists more land than this 3,000,000 acres which is of value, enough at any rate to allow of a 15% expansion of all the reserves except the Masai.

See Sir C. Bottomley's minute of 28.3.30 on 16078/30.

(Reports of Commissioner of Lands for 1928 & 1929. 1927 report not available.)

Unfortunately however the areas available are not always contiguous to existing reserves. The Lumbwa, Kerio and Wakamba groups would have land available near by, but the Kikuyu, Kavirondo and Nandi would have either none or very little.

It would not however seem absolutely essential that ~~the~~ for native purchase areas ~~should~~ the latter should necessarily be contiguous ~~to~~ the existing reserves. An area which

suggests

suggests itself as possibly suitable for such a purpose is the Yatta plains. It is not perhaps necessary to rule out the possibility of buying back land from Europeans, but such expropriation would probably be too expensive to be practicable on at all a large scale.

(6) Present position as to alienation of land to non-natives.

The present position is briefly that "ordinary" alienation of land is going on steadily, provided that no possible native rights or claims are involved. No survey has been made to ensure that this alienation does not conflict with possible native needs.

See the Bottomley-Martin agreement of 1927 - in Mr. Allen's memo. on 16078/30.

State-aided settlement is in abeyance for the present.

III. SUMMARY.

All the matters discussed in this memorandum are such as cannot properly be settled without detailed local knowledge. There would however appear to be at least a case for enquiry of the Governor:-

(a) whether it is considered ~~possible~~ practicable & desirable to take any steps to define and give legal validity to the rights of natives to land outside the reserves, especially in the case of natives who at present occupy land in alienated areas under the provisions of Section 86 of the Crown Lands Ordinance.

(b) whether it is desirable to introduce some amendment of Section 86 of the Crown Lands Ordinance to provide (1) for the definition of the rights of natives who remain on any area that is alienated in the future, and (2) that if they abandon the land, the Central Native Lands Trust Board or some such

body

body should be satisfied that they do so of their own free will and that the compensation offered is equitably adequate and of a nature to secure their future livelihood and well-being.

(c) whether it is now practicable to compensate native tribes, whose lands have in the past been alienated to Europeans, by the grant of additional land.

(d) whether (having regard to the recommendation of the Hilton-Young Commission that the provision of adequate native areas should be a first charge on the territory) each of the existing reserves contains sufficient land to enable the existing population to maintain a reasonable standard of life according to the methods of agriculture or stock-keeping at present practised and to provide for such increase of population as may be expected before the natives have time to learn better or more intensive methods.

(e) If as a result o[illegible] consideration of (c) and (d) above it is decided that additional land is required for the use of the natives, what land can be made available, either contiguous to the present reserves or in separate areas. (Any such land would normally be unalienated Crown Land, but the possibility of expropriation should be borne in mind).

(f) whether any such land should be made available for occupation on the customary native tenure of a communal nature, or whether it should be set aside as areas in which individual natives, and only natives, can acquire land; if the latter, what form the individual tenure should take.

(g)

(g) whether in addition further areas should be reserved for future determination and

(h) what areas, ~~if any,~~ can be thrown open to alienation to non-natives forthwith.

In the somewhat similar enquiries carried out by the Southern Rhodesia Land Commission of 1925, one point on which the Commissioners laid great emphasis was that any decision ~~now~~ reached should be final. The same would appear to apply in this case, except as regards (g) above. On the other hand a loophole must always be left for alteration in case of unforeseen necessity.

[signature]

23.3.31

3. The next point which Canon Leakey mentioned was the alienation of land. Here he is up against Mr.O'Shea and others who are most anxious to press on with alienation of Crown land. Canon Leakey urges that there should be kept in reserve areas which can, if necessary, (and he seems to be sure that it will be necessary) be added to the existing native reserves. He mentioned particularly native squatters on land now held by Europeans. These squatters are really in a cleft stick because the land owner tells themthat, if they are not satisfied with the terms which he offers, they can go back to their reserve, and yet as Canon Leakey maintains they have no reserves to which to go back. Even Mr.Maxwell, he says has told him that the squatters can go back to their natives reserves if they are not satisfied. Canon Leakey's point is that there is nowhere in the Reserves as now gazetted, to which they can go back, because, in point of fact, they did not go from those areas. They may be able to fit in somewhere and somehow or other in the gazetted native reserves, but it is a fundamental mistake to talk of their going back. Actually what has happened is that in the past, before Government, or anyone, Missionaries included, had any idea of the facts, large areas of land which were apparently unoccupied, but which

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if

if the facts had then been known, were under the ownership of natives, have been acquired by non-natives. He said quite frankly that he himself had taken a hand in the matter, and pointed out nice areas of land to new settlers which they might occupy which, as he now realised, belonged at that time to natives although there was no sign of occupation at the moment. He fully realised that it is impossible to put right the mistakes which were then made. It is out of the question that the Government should attempt to recover the land disposed of. But this makes it all the more important in his opinion that areas should be kept in reserve for possible addition to the gazetted native reserves.

4. The next point which Canon Leakey raised is connected with the land question just discussed. He says, speaking as I understand really of Kikuyu, that a very large number of the native cattle now have to graze on land in the occupation of Europeans. It is not a question, as in the case of the Akamba Reserve, of the pasturage land having been eroded; the point simply is that there is no suitable land upon which the cattle can graze. He suggested, although he was not very definite on ~~the facts of~~ this point, that the payment for this grazing takes the form of a free supply of milk to the owner of the land. The result appears to be that the natives in their own reserves have not the milk which is required for the use of themselves and their families. He said that the native was so fond of money that it might well be that he would sell the milk if there were a market for it even though this had the same effect of

preventing

16166/30. 88

EXTRACT FROM MEMORANDUM BY THE ATTORNEY GENERAL OF KENYA REGARDING THE MARAGUA-TANA SCHEME.

x x x

Paragraph 24 of the majority report reads as follows:-

"24." The Majority of the Tribunal have no hesitation in recording their opinion that this exchange, considered on the basis of value and suitability of land, is not only adequate but generous. The C.N.C. and Canon Leakey do not agree with this view for reasons which they propose to elaborate in a separate report. A point was raised by the C.N.C. in regard to the availability of those lands for exchange. He was not satisfied that there were not already existing native rights to all the farms offered but the Chairman ruled that it was beyond the scopeof this Tribunal to hold enquiries into questions of land rights: and that for its purposes it must take the situation as its exists at present. That position briefly is that the Fort Hall Native Reserve has been gazetted and does not include any of the lands now proposed for exchange".

It is to the last paragraph of that citation that I take exception, for it appears to me to mean that over all Crown land which is not situated within a gazetted native reserve the Crown has an unfettered right of alienation.

For the proper consideration of this very important question it is, I am afraid, necessary to go at some length into the history of the Colony, and its land laws.

The Imperial British East Africa Company entered into a number of treaties with Chiefs of various tribes, both in the Sultan's dominions and elsewhere. These treaties recite that the Chief has placed himself and all his territories, countries, peoples and subjects under the protection, rule and government of the Company and has ceded to the Company all his

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sovereign

sovereign rights and rights of government. There is no cession of rights, other than sovereign rights, over land: communal and individual titles to land are left unaffected by the treaties.

On the establishment of a Protectorate Her Majesty succeeded to the benefit of these treaties. (vide East Africa Order in Council 1897). The East Africa (Lands) Order in Council 1901, defined "Crown Lands" as "all public lands within the East Africa Protectorate which for the time being are subject to the control of His Majesty by virtue of any treaty, convention, or agreement, or of His Majesty's Protectorate, and all lands which have been or may hereafter be acquired by His Majesty under the Lands Acquisition Act 1894, or otherwise howsoever". The Order in Council of 1902 contains practically the same definition.

The Crown Lands Ordinance 1902, contains no definition of "Crown Lands", but section 30 provides that "in all dealings with Crown land regard shall be had to the rights and requirements of the natives, and in particular the Commissioner shall not sell or lease any land in the actual occupation of the natives".

In 1915 a new Crown Lands Ordinance was passed, in section 5 of which the expression "Crown land" includes "all public lands in the Colony which are for the time being subject to the control of His Majesty by virtue of any treaty, convention or agreement, or by virtue of His Majesty's protectorate, and all lands which shall have been acquired by His

Majesty

Majesty for the public service or otherwise howsoever, and shall include all lands occupied by the native tribes of the Colony, and all lands reserved for the use of the members of any native tribe". This Ordinance for the first time gave statutory recognition to the system of native reserves (vide Part VI), but in section 86 it clearly contemplates the existence of native settlements and villages and native occupation in areas outside reserves.

The Ordinance was published as a Bill in 1913 and at once aroused interest and criticism. Mr. T.E. Harvey, M.P. characterised the addition to the definition as "a monstrous act of theft" (vide Secretary of State's despatch of 7th March 1914). The Bill was committed to a Select Committee (of which Mr. (now Sir Jacob) Barth was Chairman), and that Committee commented on the proposed definition in the terms set out in paragraph 17 of the minority finding. Sir Henry Belfield in his confidential despatch No.144 of 25th August 1914, wrote "Those gentlemen in England who are anxious that the rights of the natives should remain inviolate need be under no mis-apprehension that the Government is actuated by any predatory instinct or is preparing to despoil the native for the benefit of the settler".

In 1920 by the Kenya Annexation Order in Council the Protectorate, except the territories forming part of the dominion of the Sultan of Zanzibar was annexed to His Majesty's Dominions, and made a Colony.

The

The Kenya Colony Order in Council 1921, contains a definition of "Crown lands" which is the same as that in the Crown Lands Ordinance 1915, with the omission of all reference to His Majesty's protectorate.

I turn now to the construction which the Judicial Committee of the Privy Council have placed on the Crown's rights to alienate land in Colonies and Protectorates.

By the treaty of Waitangi (February 6th 1840) the Chiefs of New Zealand ceded to Her Majesty all their rights and powers of sovereignty, and Her Majesty confined to the Chiefs, families and individuals the full exclusive and undisturbed possession of their lands and estates, the Chiefs in return yielding to Her Majesty the exclusive right of preemption over any land. The Land Act of 1892, No.37, defined Crown land as "all native lands which have been ceded to Her Majesty by the natives, or have been purchased or otherwise acquired from the natives on behalf of Her Majesty, or have become vested in Her Ma. sty by right of her prerogative".

By proclamation the Governor "being satisfied that the lands described in the schedule hereto are free from native claims" advertised certain land for sale as waste lands of the Crown. A native applied for an injunction restraining the sale, as he claimed rights over the land. It was argued that the mere assertion of the claim of the Crown is in itself sufficient to oust the jurisdiction of a court of law, and that no

suit

suit for a declaration of title as against the Crown could be brought upon a native title of possession and occupation only. Lord Davey in delivering the judgment of the Privy Council said "Their Lordships, therefore, think that, if the appellant can succeed in proving that he and the members of his tribe are in possession and occupation of the lands in dispute under a native title which has not been lawfully extinguished he can maintain this action to restrain an unauthorised invasion of his title. Whatever may be the opinion of jurists as to the strength or weakness of the native title, it cannot be too solemnly asserted that it is entitled to be respected that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the native occupiers or in strict compliance with the provisions of a statute". Niresha Tamaki v Baker (1901) A.C.561.

This judgment seems to have successfully eluded the research of the Supreme Court of the Colony for quarter of a century.

In the case of Amodu Tijani vs the Secretary, Southern Nigeria (1921) 2 A.C. page 399, the question at issue was the effect of the cession of Lagos by treaty on the Crown's rights to land. The definition of "Crown Land" in the Nigerian Ordinance is for all practical purposes the same as that in the Kenya 1915 Ordinance. The following portions of Lord Haldane's judgment appear to me to have a bearing on the case now under consideration:-

"Their

"Their Lordships make the preliminary observation that in interpreting the native title to land, not only in Southern Nigeria, but other parts of the British Empire, much caution is essential. There is a tendency, operating at times unconsciously, to render that title conceptually in terms which are appropriate only to systems which have grown up under English law. But this tendency has to be held in check closely. As a rule, in the various systems of native jurisprudence throughout the Empire, there is no such full division between property and possession as English lawyers are familiar with. A very usual form of native title is that of a usufructuary right, which is a mere qualification of or burden on the radical or final title of the Sovereign where that exists. In such cases the title of the Sovereign is a pure legal estate, to which beneficial rights may or may not be attached. But this estate is qualified by a right of beneficial user which may not assume definite forms analogous to estates, or may, where it has assumed these, have derived them from the intrusion of the mere analogy of English jurisprudence. Their Lordships have elsewhere explained principles of this kind in connection with the Indian title to reserve lands in Canada. But the Indian title in Canada affords by no means the only illustration of the necessity for getting rid of the assumption that the ownership of land naturally breaks itself up into estates, conceived as creatures of inherent legal principle. Even where an estate in fee is definitely recognised as the most comprehensive estate in land which the law recognises, it does not follow that outside England it admits of being broken up. In Scotland a life estate imports no freehold title but is simply in contemplation of Scottish law a burden on a right of full property that cannot be split up. In India much the same principle applies. The division of the fee into successive and independent incorporeal rights of property conceived as existing separately from the possession is unknown. In India, as in Southern Nigeria there is yet another feature of the fundamental nature of the title to land which must be borne in mind. The title, such as it is, may not be that of the individual, as in this country it nearly always is in some form but may be that of a community. Such a community may have the possessory title to the common enjoyment of a usufruct, with customs under which its individual members are admitted to enjoyment and even to a right of transmitting the individual enjoyment as members by assignment inter vivos or by succession. To ascertain how far this latter development of right has progressed involves the study of the history of the particular community and its usages in each case. Abstract principles fashioned a priori are of but little assistance, and are as often as not misleading.

No

No doubt there was a cession to the British Crown, along with the sovereignty, of the Radical or ultimate title to the land in the new Colony, but this cession appears to have been made on the footing that the rights of property of the inhabitants were to be fully respected. This principle is a usual one under British policy and law when such occupations take place. The general words of the cession are construed as having related primarily to sovereign rights only. What has been stated appears to have been the view taken by the Judicial Committee in a recent case, Attorney-General of Southern Nigeria v Holt, and Their Lordships agree with that view. Where the cession passed any proprietary rights they were rights which the ceding king possessed beneficially and free from the usufructuary qualifications of his title in favour of his subjects.

In the light afforded by the narrative, it is not admissible to conclude that the Crown is generally speaking entitled to the beneficial ownership of the land as having so passed to the Crown as to dis-place any presumptive title of the natives. In the case of Oduntan Onisiwo v Attorney-General of Southern Nigeria, decided by the Supreme Court of the Colony in 1912, Osborne C.J. laid down as regards the effect of the cession of 1861, that he was of opinion that "the ownership rights of private land-owners, including the families of the Idejos, were left entirely unimpaired, and as freely exercisable after the Cession as before". In this view their Lordships concur. A mere change in sovereignty is not to be presumed as meant to disturb rights of private owners; and the general terms of a cession are prima facie to be construed accordingly. The introduction of the system of Crown grants which was made subsequently must be regarded as having been brought about mainly, if not exclusively, for conveyancing purposes, and not with view to altering substantive titles already existing.

The title of a native community as they have pointed out, is prima facie based, not on such individual ownership as English law has made familiar but on a communal usufructuary occupation, which may be so complete as to reduce any radical right in the Sovereign to one which only extends to comparatively limited rights of administrative interference. In their opinion there is no evidence that this kind of usufructuary title of the community was disturbed in law, either when the Benin Kings conquered Lagos or when the cession to the British Crown took place in 1861. The general words used in the Treaty of cession are not in themselves to be construed as extinguishing subject rights. The original native rights was a communal right, and it must be presumed to have continued to exist unless the contrary is established by the context or circumstances".

At

At first sight the decision of the Privy Council In re Southern Rhodesia (1919) A.C.211, would seem to be in conflict with the decisions to which I have already referred. A careful perusal of the judgment however shows that the decision was based on facts which have no application to local Kenya conditions. Southern Rhodesia was a conquered country. If the native rights to land in Southern Rhodesia were not in the nature of private rights they were at the disposal of the Crown when Lobengula fled and his dominions were conquered (per Lord Summer at page 234). Kenya is not a conquered country, and the radical title of the Crown as sovereign is subject to a servitude in favour of native occupation.

It remains to consider the effect, if any, of the annexation of what is now the Colony of Kenya in 1920. In my opinion that Act of State makes no change in the legal status of the Crown in its relation to land over which natives claimed rights. The views of His Majesty's Government on this subject, as contained in Part II of the White Paper of 1923, are quoted in paragraph 20 of the minority finding.

In conclusion I would draw attention to Secretariat Circular No.10 of 19th February 1920, covering a minute by Mr. Muir Mackenzie, Acting Solicitor General, with which I am in agreement.

It follows from the foregoing that, in my opinion, in view of the statements in paragraph 15

of

of the minority finding regarding native occupation of the Saba Saba farms, I cannot regard these farms as available as compensation to the natives dispossessed. The fact that they lie outside the boundaries of the Fort Hall Reserve seems to me to be beside the point. They are occupied by natives, and in order to make them available for occupation by the natives dispossessed, the natives now in occupation would in turn have to be compensated.

It follows therefore that the compensation recommended in the majority report for land valued at £3415 is land valued at £753. 15. 0, to which must be added £3,000 in cash for disturbance and cost of removal.

I apologise for the length of this minute, but I was reluctant to differ from the majority of a tribunal presided over by His Honour the Chief Justice without fully setting out the grounds on which my opinion is based.

(Sgd) D. [illegible] MacGregor.
Attorney General.

16309/14/30.
97/10

EXTRACTS FROM THE ANNUAL REPORT ON THE
KIKUYU PROVINCE FOR 1929.

From the "Political and General" section,

Page 3. During the first six months of the year 1929 the political situation was quiet and satisfactory: the demarcation and survey of the reserve boundaries in Kiambu, Fort Hall and South Nyeri had been started in 1928 and was mentioned in my last annual report as the event of outstanding importance in that year.

At the beginning of 1929 this work was nearly completed and on the whole gave great satisfaction to the native population; everywhere the trouble taken by surveyors and district officers made a distinct impression on the natives, and the idea that the lands so demarcated were now really theirs gave deep satisfaction to the bulk of the Kikuyu people.

It is true that in some places in Kiambu and Fort Hall the line of the boundary caused protests and disappointment; and this final demarcation was treated in certain parts by the local natives as a last chance of getting back into the reserve land taken from or not included in it in the past. It is also true that in parts of Kiambu and Fort Hall there has been, and still is, considerable dissatisfaction over the land question on the more general ground of lack of sufficient land to accommodate natives returning from farm areas, many of whom have lost the land on which they were originally settled. While others have been away many years as squatters and returned with increased families not easily accommodated in locations already densely populated.

Pages 10-11. "The other political matter of importance is that of native lands of which some mention has already made: - it has been explained how this question was in the year under review thrust into the background first by locusts, food shortage and threat of famine and later by the excitement over the circumcision issue.

In the Meru and Embu districts the problem hardly exists, though in Meru the question of the boundary of the township caused a little anxiety among the natives in the immediate vicinity, and in Embu the old feeling of suspicion about the security of their land appeared among the natives and was fostered by the local members of the Association at such times as the more urgent problems of locusts famine and circumcision allowed.

In Nyeri, the District Commissioner writes:

'It can safely be said that here the natives are in possession of all the land they ever occupied: despite a growing population (the census returns and the tax collection indicate an increase of at least 5,000 a year for the last two years) they are not yet short of land either for cultivation or grazing; they have a pleasant country, rich and well watered, the climate one of the best and the rainfall one of the most reliable in the Colony; communications are good, a branch railway passing through the middle of their reserve and a P.W.D. main country road, markets are therefore satisfactory, and except for a few acres granted to mission stations all the land they occupied has been secured to them: in short they are well off and make but poor soil for agitators to sow in: at gatherings of natives, at sports and barazas and at meetings of elders, the general impression is always one of cheerfulness and goodwill'".

In the Kiambu and Fort Hall districts where the land problem has in the past caused most anxiety among the Kikuyu population the question is beginning to settle down. There are still some minor points for solution, in Fort Hall the question of the Maragwa

Tana

Tana Electric Power scheme on which the Commission appointed is still sitting, also the question of Paul Clarke's farm and the outlying patch of reserve in the middle of Maragwa Sisal Estate.

In Kiambu likewise a few small points still await settlement, and as has been mentioned above there exists in these two districts the more general problem of accommodating families of returning squatters in areas already thickly populated, and the feeling that the land now reserved is barely sufficient for those now on it and cannot take in those families which have sometimes for a whole generation been settled on lands long ago alienated as farms and mission grants.

Despite these difficulties which are local rather than general, the vast majority of the Kikuyu people feel that the demarcation has for the first time given them a real security in the possession of their tribal lands, and further that, since the appointment of the Committee, secu[illegible]ty of family even individual tenure is on the way.

From the "Native Affairs in Non-Native Areas" section.

Page 38.

"In the Kiambu settled area a serious complication has recently made its appearance: on some of the farms there and also on certain mission plots there have been squatters for many years and numbers of these squatters now claim a right to reside and occupy land there under the Crown Lands Ordinance on the ground that they were already settled there at the time of the grant of the lease.

This argument was originally produced by certain occupiers of farms to avoid the necessity

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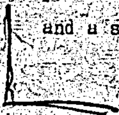
of squatters contracts; now large numbers of native squatters have adopted it, their claim of prior residence is almost impossible to disprove and a serious complication has resulted.



7005/30 Confid.
23477/30 Sec.

I. Extract from Memo. by the Director of Medical and Sanitary Services on the desirability of a forward movement in improving native health.

x x x x

16. In connection with the foregoing it is perhaps desirable to draw attention to inevitable new problems which will ensue on the adoption of any forward policy of development. The land question will assume added importance. The population density in the Kikuyu Reserve as a whole is estimated to be 116 to the square mile and in the Kavirondo Reserve 134 to the square mile. In the calculation no attempt has been made to exclude land unsuitable for cultivation. It is difficult to understand how a high level of civilisation and economic prosperity can be obtained if resources are to be restricted to the agricultural return from an area of land in the neighbourhood of five acres per head even if modern methods of agriculture are adopted. The process of advancement has, however, been started.

x x x x

II. Extract from despatch from Sir Edward Grigg (Confidential No.121 of the 14th August) covering the above memorandum.

x x x x

7. I agree generally with the Director of Medical and Sanitary Services in his views for the need for progress in education to march with improvement in all the various branches of economic progress if a higher standard of physical health is to be achieved; but with regard to his remark in paragraph 16 I consider that the available land resources of the natives are,

generally

generally speaking, ample to cope with the increased development which is needed to augment their material prosperity and so provide them with the means to improve their standard of living. In this connection I quote the following remarks of the Statistician to the Governors' Conference, with which I concur:-

~~"I do not altogether agree with paragraph 16 of the Memorandum.~~ "The density of population indicated even by the figures shown in this paragraph is not, if we compare it with other native areas (India and Mauritius for instance) incompatible with a "higher level of civilisation and economic prosperity". In Mauritius the density is over 500 per sq.mile and it is a very prosperous community except during periodic crises in the sugar market. I suggest that you should be very guarded in quoting these figures and still more so in drawing conclusions from them.

"In Uganda the density in some Districts notably the Bukedi District is much higher than that indicated for the Nyanza Province and I do not think it would be considered that the conditions in Uganda are economically defective."

x x x x

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"In Uganda the density in some Districts notably the Bukedi District is much higher than that indicated for the Nyanza Province and I do not think it would be considered that the conditions in Uganda are economically defective."

x x x x

MEMORANDUM.

In his original petition Kenyatta raised the question of compensation being paid to the Kikuyu for land previously held by them which had been leased or alienated as freehold.

In his comments on this petition, the Governor said that he believed it to be probable that in the early days of white settlement, mistakes were made in setting aside as available for alienation some sparsely populated land over which certain Kikuyu stated that they had claims. He continued:-

"In view of the presence of the Masai in the immediate neighbourhood I am of opinion that in many cases before the establishment of the Pax Britanica these claims must have been very difficult to enforce. This observation, however, does not apply to the land which was alienated between Kiambu and Limoru. At the time of alienation the dispossessed natives were compensated for disturbance and for cultivation and it was not realised that any particular hardship was inflicted on them. In the light, however, of completer knowledge of their system of land tenure it would seem that some of them had a genuine grievance in being removed from their own family holdings and forced to seek new homes on land to which they had no enforceable rights. On the other hand, a considerable area of land to the west

of

of Limoru and Kikuyu, which originally belonged to the Kakonyuke Masai and was ceded by the tribe to Government in the Agreement of 1911, was included in the Kikuyu Native Reserve in 1912. This is grazing land and while it is of great value to the Kikuyu of Kiambu district as a whole the fact remains, I fear, that it does not provide homes or agricultural land for those families whose specific holdings had been alienated, and these people have had to seek homes either in the Reserves or what are recognised tribally as the holdings of others, or by going out to farms as resident native labourers.

These statements are borne out by the Report of the CCR on Native Land Tenure in the Kikuyu Province.

(No 30) on 15540/A/29

Kenyatta was informed by the Secretary of State that he was not yet clear what lands were referred to and that further enquiry would be made.

No.7 on 16010A/30.

Kenyatta said in his comments on this reply that it was a fact that a large proportion of the land now held by Europeans as coffee and other farms round Kyambu, Limoru, Kabete, Kijabe, Mangu, Ruiru, Ruirwaka and Kamiti was under Kikuyu ownership when it was taken by the E.A.P. Government, without compensation to the owners and given or sold to European farmers. He said that he understood that the Protestant Missions submitted a recommendation to the Parliamentary Commission that the matter should be looked into and repmration made to the victimised owners or their decendants.

No.16 on 16010/A/30.

The Governor in commenting on this writes as follows:-

"Though there is evidence that in the early days of

"of this country considerable areas of land now claimed by the Kikuyu were alienated to European settlers, financial reasons make it impossible in the interests of natives as well as non-natives, to re-open the question of Githaka claims outside the Reserves in the Kiambu-Nairobi areas.

At this date so remote from the time of alienation, the task of sifting the evidence, native and European, would present insuperable difficulty (an example of this difficulty is afforded by the fact that Sir Charles Hardinge in his Memoirs reports a Masai manyatta on the Nairobi Hill in 1895), and even if a clear case were made out for the restoration of certain areas to the Kikuyu, the compensation to dispossessed persons involved in such a decision would inflict a crushing financial burden on the whole community, native and non-native, from which the Kikuyu would suffer as severely as any others."

It appears, therefore, that the Governor does not consider that anything further can be done as to land outside the Kikuyu reserve, to which the Kikuyu have claims, and which is already alienated. He does not, however, refer to the case of Crown Land which has not been alienated and to which the Kikuyu have claims. We know that there is such land, e.g., ~~the~~ (1 Maragua and 2 Saba-Saba farms which it was intended should be given to the Kikuyu in part exchange for the land

required

required for the Maragua-Tana scheme.

In the Majority report of the Tribunal appointed to consider this claim appears a ruling of the Chief Justice (The Chairman), the effect of which appeared to be that over all Crown land not situated in a gazetted native reserve, the Crown had a right of alienation unfettered by any native claims. To any such idea the Attorney-General took exception.

There would appear to be room for an enquiry into native rights on unalienated Crown land outside the reserves.

(The case of (a) Individual rights within the reserve, and (b) The right of purchase outside the reserves is dealt with in the memorandum on native policy, pages 9 and 11 respectively. We shall hear further as to (a) when the Governor's comments on the report on Native Land Tenure are received.)

Some of the figures in the Land Tenure Report as to density of population in the Kikuyu reserve are interesting. Kiambu 282 per sq. mile
Fort Hall 369
Nyeri 320
In one location 770 } p. 11 para 24
Dagoretti division 497 p. 53 para

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EXTRACT FROM DESPATCH FROM GOVERNOR OF KENYA TO THE SECRETARY OF STATE FOR THE COLONIES. NO.106 CONFIDENTIAL DATED 4th July, 1930

X X X

Alienations of Kikuyu Land (page 5)

Though there is evidence that in the early days of this country considerable areas of land now claimedby the Kikuyu were alienated to European settlers, financial reasons make it impossible in the interests of natives as well as non-natives, to re-open the question of Githaka claims outside the Reserves in the Kiambu-Nairobi areas.

At this date so remote from the time of alienation, the task of sifting the evidence, native and European, would present insuperable difficulty (an example of this difficulty is afforded by the fact that Sir Charles Hardinge in his Memoirs reports a Masai manyatta on the Nairobi Hill in 1895) and even if a clear case were made out for the restoration of certain areas to the Kikuyu, the compensation to dispossessed persons involved in such a decision would inflict a crushing financial burden on the whole community, native and non-native, from which the Kikuyu would suffer as severely as any others.

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16010/A/30 Kenya

KENYA.
No. 347

DOWNING STREET
6 May, 1930.

Fr. Mr. Kenyatta 15.4.30.
To - do - 5 - 5.30.

Sir,

With reference to my despatch No.5 of the 2nd January, I have the honour to transmit to you the enclosed copy of further correspondence with Mr. Johnstone Kenyatta.

2. I have to request that the contents of Mr. Kenyatta's letter may be carefully considered, and I trust that every effort will be made to remedy any real grievances which it discloses. I should welcome, for my own information, any comments which you may have to make on the points detailed in the letter, as these and similar matters are raised here from time to time.

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

(Signed) PASSFIELD.

GOVERNOR
LIEUTENANT COLONEL
SIR E.W.M. GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.,
&c. &c. &c.

EXTRACTS FROM LETTER FROM THE KIKUYU CENTRAL ASSOCIATION TO THE SECRETARY OF STATE FOR THE COLONIES DATED 15th April '30

X X X

May I next be allowed to refer to certain of the numbered paragraphs in your Lordship's reply ?

X X X

"We are extremely pleased with Your Lordship's promise that enquiry will be made as to the lossof our tribe of lands granted to non-natives in freehold and that consideration will be given to this matter. It is a fact that a large proportion of the lund now held by Europeans as coffee and other farms round Kyambu, Limoru, Kabete, Kijabe, Mangu, Ruiru, Ruirwaka and Kamiti was under Kikuyu ownership when itnwas taken by the E.A.P.Govt. without compensation to the owners, and given or sold to European farmers. Although the Parliamentary Commission made no reference to the fact, we understand that it is the case that the Protestant Missions submitte[illegible] recommendation to that body that these cases should be looked into, and that reparation should be made to the victimised native owners or their descendants.No doubt this representation will come under Your Lordship's notice in the promised enquiry. There are hundreds of Kikuyu wandering about Kenya to-day, landless and homeless, because of their being evicted from their lands in the past without any compensation whatsoever. Some of the land so taken from us is now held on freehold tenure and much of the remainder is on 999 year leases, which is much the same time from our point of view. Under Kikuyu land law, land could not be alienated in freehold. The Kikuyu never understood that they would be deprived of the freehold of their land, and now press for its return, or adequate compensation.

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EXTRACT FROM CONFIDENTIAL DESPATCH FROM THE SECRETARY OF STATE TO THE GOVERNOR OF KENYA. DATED 2nd January, 1930

X X X

As regards compensation for Kikuyu land which has been leased or alienated as freehold, an interim reply only has been given. The statement in para.10 of your despatch causesme considerable uneasiness; and while I recognise that it may not now be practicable in every case to adjust satisfactorily mistakes made in years past, I think that the position must be further investigated, and the precise nature of the Kikuyu grievance, so far as there may be a genuine grievance,ascertained. It is most undesirable that individuals or families who may have admittedly been deprived of their land and homes should remain without equitable compensation. I should be obligedtherefore if you would furnish me with the fullest information available as to the transactions to which reference is made in the petition, [illegible] recommendations for dealing with the matter if, as I hope, your Government may be able to see its way to recommend action which would prove beyond question the bona fides of the Government and its desire to meet any reasonable demand for redress.

I have, etc.

(Sgd) Passfield.

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Extract from letter from the Colonial Office to Mr. Johnstone Kenyatta dated 2nd January, 1930.

X X X

It is not yet clear to the Secretary of State what lands are referred to when it is suggested that Kikuyu lands which have been alienated in freehold should be redeemed and returned to their original holders or descendants, and that compensation should be paid, as also in the case of lands leased in the past to non-natives Enquiries will be made and further consideration will be given to this matter.

EXTRACT FROM CONFIDENTIAL DESPATCH FROM THE GOVERNOR OF KENYA TO THE SECRETARY OF STATE FOR THE COLONIES. NO.145 dated 14th NOVEMBER, 1929.

X X X

Compensation for Kikuyu land leased or alienated as freehold.

The Association does not specify the lands to which it refers, but I have to admit that I believe it to be probable that in the early days of White settlement some genuine mistakes were made in setting aside as available for alienation some sparsely populated land over which certain Kikuyu families assert that they have claims. In view of the presence of the Masai in the immediate neighbourhood I am of opinion that in many cases before the establishment of the Pax Britanica these claims must have been very difficult to enforce. This observation, however, does not apply to the land which was alienated between Kiambu and Limoru. At the time of alienation the dispossessed natives were compensated for disturbance and for cultivation and it was not realised that any particular hardship was inflicted on them. In the light, however, of completer knowledge of their system of land tenure it would seem that some of them may have had a genuine grievance in being removed from their own family holdings and forced to seek new homes on land to which they had no enforceable rights. On the other hand, a considerable area of land to the west of Limoru and Kikuyu, which originally belonged to the Kakonyuke Masai and was ceded by the tribe to Government in the Agreement of 1911, was included in the

Kikuyu

Kikuyu Native Reserve in 1912. This is grazing land, and while it is of great value to the Kikuyu of Kiambu district as a whole the fact remains, I fear, that it does not provide homes or agricultural land for those families whose specific holdings had been alienated, and these people have had to seek homes either in the Reserves or what are recognised tribally as the holdings of others, or by going out to farms as resident native labourers.

X X X

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Extract from petition from Johnstone Kenyatta dated 14th February, 1929.

LAND QUESTION.

"As regards land question, we most respectfully and earnestly pray:-

2. That the Crown Lands Ordinance 1915 (Kenya Colony) should be amended so as to recognise Native rights and titles to land, which the said Ordinance wholly swept away, substituting nothing by way of security equivalent to that which we formerly possessed, leaving us absolutely without any legal right to our lands and making us mere tenants at will of the Crown. This absence of legal title to our lands has exposed some of our people to exploitation and expropriation in favour of non-Natives and it leaves us all without security against further attempts at encroachment on our lands.

That all Kikuyu lands which have been given as freehold should be redeemed if possible and returned to their original owners (or their descendants) who should be paid compensation for the loss they have suffered during the years since the land was taken away.

Extract from Comments by the Attorney General of Kenya, on the Reports of the Tribunal appointed to enquire into the Maragua-Tana Electric Power Scheme.

x x x

7. Paragraph 24 of the majority report reads as follows:-

"24. The majority of the Tribunal have no hesitation in recording their opinion that this exchange, considered on the basis of value and suitability of land, is not only adequate but generous. The C.N.C. and Canon Leakey do not agree with this view for reasons which they propose to elaborate in a separate report. A point was raised by the C.N.C. in regard to the availability of those lands for exchange. He was not satisfied that there were not already existing native rights to all the farms offered but the Chairman ruled that it was beyond the scope of this Tribunal to hold enquiries into questions of land rights; and that for its purposes it must take the situation as it exists at present. That position briefly is that the Fort Hall Native Reserve has been gazetted and does not include any of the lands now proposed for exchange".

8. It is to the last paragraph of that citation that I take exception, for it appears to me to mean that over all Crown land which is not situated within a gazetted native reserve the Crown has an unfettered right of alienation.

Extract from Minutes on the above.

" The Attorney-General has read into paragraph 24 of the Majority Report the implication that the Crown

has

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END

has over all Crown lands which is not situated within a gazetted native Reserve a right of alienation unfettered by any native rights. This would, of course, be monstrous, and I don't imagine that the Chief Justice in ruling that the Tribunal was not to enquire into native land rights had any such idea in his mind. The ruling, however, was perhaps somewhat unfortunate, and it may be as well in the despatch to the Governor to draw attention to the point, and to ask for his confirmation that it is not the view of the local Government that over all Crown land outside the native reserves the Crown has a right of alienation unfettered by any native rights. +

Yes.
(Intld) T.D.S.

+ There certainly are fetters e.g. Section 86 of the Crown Lands Ordinance.
(sd) H.T.Allen
15.10.30.

(sd) C.G.Eastwood.

24.7.30.

Extract from Secretary of State's minute.

Note that a Confidential despatch may be required upon the Chief Justice's alleged dictum that land outside the Reserves can be alienated without regard to native occupancy rights.

(Intld) P. 17.9.30.