

we must have a great perpetuity
of rent without reserves
of rent

para. 5

In his memo 27233/2, before going out
to S.A.P. the Governor recommended
a grant for 877 years to perpetuity, and ~~and~~
~~and~~ ~~nothing~~ his remarks in para 13 as
a measurement of rent at intervals of
5 years from a sale to be paid, ably
equally to the longer term and to the 99
year term, which have formed the
subject of subsequent discussion. The
Committee (see report in 31805) clearly
regarded rent of rent as part of the
877 years principle, though they pointed
out that rent had been decided
against the rent of rent rather than
against the short term.

The S. G. P. decided against the longer
term, which he recommended in a very well
known.

In the report by the Land Officer & the
Director of Agriculture in this desk, the
latter adds a para (marked A) in
which he advocates a perpetual rent
rent tenure & refers to his memo of
1907, in which he recommended such a
tenure on the Cape Colony basis. He now
modifies his recommendation by omitting
the proposal to allow freehold or
commutation of rent, but in other respects
adheres to his original scheme, which

Encl. 3

12-14
p. 124/11 (14/11)

20.9
417

did not refer to a a I think clearly
did not contemplate revision of
rent [In para 8 of his report of 1908
1908, he had spoken of commenting on
the resolution of the Land Board (which
was based on his recommendations: probably)
said that he would not contemplate
"perpetual lease, without ^{renewal} ~~renewal~~
of rent."]

Here are three main types of proposals

- 1) Perpetual quit rent, without revision
proposed in 1907, introduced in 1908, now
proposed again by the S of Agriculture, &
said by the Governor to be the only means
of allaying discontent.
- 2) Perpetual quit rent, with revision;
proposed by the Gov in 1911, introduced
in 1909, and now recommended
suggested by the Gov in a private
letter to the G. Fisher ("Recommendation
30 years' notice"). This system is
provided for in the 1911 Land Decree
1911 (S. 10) which provides that leases
of 30 years or more shall be subject to a
after 10 years (or 20 years) shall be
State land deprived of whether by grant
(999 years or more) or lease (less than
999 years). This provision seems to be

Amended +

expected, until 1903 & it may therefore
be presumed to work satisfactorily.

The case is however rather different,
as between a planter's & a settler's
country, but so long as the reasons
do, similarly not lead to an unfair
increase of rent the principle is the
same in each case. I should suppose,
however, that the arrangements for arrears
would have to be very different from those
laid down in the 89 year lease, viz.

After 33 years 1% on the unimproved value
66 2%
99 (if renewed) 3%

— i.e. an increasing rate, or a permanently
increasing value. The principle of increasing
rate could hardly be continued at 30 year
intervals for all time. The F.M.S.
Government definitely contemplates the
possibility of a reduction of rent.

We have little info as to local feeling
in the States, of which reflects the renewed
opinion of the highlanders, from which
the Bill of 1861 (before the Bill
was introduced) was a result of a meeting
of the highlanders & a meeting of the
settlers, & a meeting of the highlanders
(with the settlers) in the States
(which) was carried, but it is not
clear that such a system (for the whole)

It was proposed
to be put into effect
till 1908 etc.

I do not regard
S.M.P. as
mainly country
ordinarily
of the Bill
— i.e. find the
same

I am having
M. Z. Law
copy (see)

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If the Gov. & State decide that the
matter is not open to further confer the
Gov. or the Sts. is not over. We must be
prepared for a very important agitation
the Gov. or the Sts. as soon as possible
which he has to do.

However, I do not ask this and say
that the Gov. will do better and a further
step - we would fully develop his view
on the proposal suggested in § 7 & then pending
the Gov. or the Sts. decision.

Pr. 11.2.11

Like Mr. A. Belfield I favour the system
of a perpetual title with periodical
reassessment, but land has been fully
taken on 99 yrs leases with reassessment,
and no doubt given the ~~fact~~ of 99 yrs
leases gives the Gov. much strength be-
hind than a perpetual title.

Ch. 11.2.11

Mr. A. Belfield's letter to Mr. Fiddes & his
§ 7 in this despatch are inconsistent, I can't
help thinking the fundamental objection,
if one could get to the bottom of it, is to
revision of rents. So long as we stick
to reassessment the terms of the original
lease is not so vitally important, altho
I prefer the 99 yrs lease to the 999 yrs.

Ch. 11.2.11

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA

2000 January 8th. 1914.



KENYA PROTECTORATE

CONFIDENTIAL

No. 3

Sir,

I have the honour to transmit herewith six copies of a Bill intituled as Criminals to make further and better provision for regulating the leasing and other disposal of Crown lands and for other purposes, together with a copy of a Memorandum by the Attorney General and one by the Director of Agriculture and the Land Officer.

Bill
Memorandum
Att. General
Memorandum
Dir of Agri.
and L.O.

2. The Bill was introduced at the Session of the Legislative Council opened on the 18th ultimo and read a first time.

A Special Committee was then appointed to enquire into and report on the provisions of the Bill, consisting of the following:-

- The Chief Secretary (Chairman)
- The Attorney General or the Officer acting in that capacity
- The Land Officer
- The Director of Agriculture
- Mr. J. H. Wilson

3. It is proposed in order to save time that this Committee shall hold sittings locally so that persons interested in the subject may appear before it and state their views and I shall be in a position

THE RIGHT HONOURABLE
LEWIS HARCOURT, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

position to address you further when the Committee has concluded its deliberations.

4. The comparative table which is attached to the Attorney General's Memorandum indicates the differences between the new Bill and the 1911 draft and his Memorandum on the latter, which was printed in the margin of the copies considered by Departmental Committee appointed by you, in its turn calls attention to the variations between that draft and the 1909 Ordinance which was rejected by your predecessor.

5. Some considerable correspondence has taken place between us since the receipt of your Confidential despatch of November 3th 1912, in which you reviewed the then recent history of the question of the policy to be adopted with regard to the alienation of Crown land and informed me of the extent to which you were at the time able to modify the principles on which the 1911 draft had been prepared.

6. Any additional modifications which have so far resulted from such further correspondence have been embodied in the new Bill which now provides inter alia for the following important principles:

✓ (a) The abolition of the licence and substitution of a lease from the beginning.

(b) Occupation by Manager and not necessarily by the lessee himself.

✓ (c) Inclusion of stock as a part of permissible development conditions.

✓ (d) Payment of purchase money by instalments.

7. Although the new Bill may possibly be more acceptable

(3)

acceptable to the Community than would have been the 1911 draft. I feel strongly that general discontent with our Land Laws will continue until provision is made for a grant in perpetuity or some long term lease without revision of rent. I advised the adoption of a tenure of this nature in August 1912, and my experience of the country has strengthened my opinion that the point should be conceded. I am now entirely satisfied that the conclusion which I originally formed, and expressed in paragraph 3 of my Confidential Report of January 7th 1912 was premature and erroneous, and in the light of later and wider knowledge desire to withdraw it. I do not, however, propose to dwell on this subject at the present stage but will confine my remarks to supplementing the Attorney General's Memorandum in the few cases where it appears desirable to do so.

B. I have omitted from the new Bill all provision for the constitution and duties of a "Land Board". The Land Board has without doubt been of considerable assistance to Government in the past, while land has been alienated under the 1902 Ordinance which did not provide for many important matters of land policy, but I do not consider that any useful purpose can be served by perpetuating a body of this description whose duties as prescribed in the 1909 Ordinance and 1911 draft were merely to examine into and report on any matter or question referred to it by the Head of the Land Department. Should Government desire to ascertain the feeling of the Community on any question of policy or detail there are other properly constituted bodies of a far more representative character than was the Land Board

to

(4)

to which such questions can be referred.

9. I have made new and special provision to meet the case of persons who may wish to divide their holdings whereby the original leases will be surrendered and fresh leases issued for each of the subdivisions. Sections 24, and 44 to 47 deal respectively with the cases of township plots and farms.

10. With regard to the occupation covenants in Sections 39 and 40, it is possible that some modification will be necessary to enable a European lessee to place a non-European Manager on his land in the more tropical districts. Government itself has placed coloured West Indian Managers in charge of its experimental plantations at Mazeras and Kibos, and it seems difficult to justify a prohibition against the public doing the same. I shall be ready to consider any reasonable amendment of these sections which may be suggested by the Special Committee so long as the principle of occupation by European Manager in the Highlands is safeguarded.

11. I am not satisfied with Part VIII of the Bill which provides that all transfers of and dealings in land shall be subject to the Governor's veto. As it stands the possibility of a veto being exercised on a transaction within three months of the date thereof would unquestionably most seriously affect the security of the title especially in the case of a mortgage. This point is certain to be one which will receive the attention of the Special Committee and I have no doubt that a satisfactory amendment will be forthcoming in due course. As

you

(5)
 you are aware the object of this Part of the Bill is to prevent farms in the Highlands coming into the hands of Asiatics or natives.

12. In Part XI I have made provision for a central Land Registration Office on the lines suggested in paragraph 17 of my Memorandum of 27th August 1912 to which you agreed in your Confidential despatch referred to above.

13. As I have already stated I do not consider the new Bill to be acceptable to the Community in its present form and I am convinced that unless an unpopular measure is to be forced on the country some further modifications of important principles, apart from any necessary amendments of details, will be necessary before it becomes law.

I have the honour to be,

Sir,

Your humble, obedient servant,

Alansay Bayard,

GOVERNOR.

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 31805
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MEMORANDUM.

...
 THE BILL FOR THE CROWN LANDS ORDINANCE, 1913.
 ...

1. This Bill is founded on the Bill which was drafted in 1911 and submitted to the Secretary of State. Changes in principle since approved by the Secretary of State has necessitated considerable alterations in some parts of the Bill, in particular in that part which deals with the alienation of agricultural lands.

The Part relating to Land Tax has been omitted and a new Part making provision for the registration in a Central Registry of all transactions affecting Crown Lands has been inserted.

2. My Memorandum furnished with the 1911 Bill gives the origin, and when necessary an explanation of the object, of the clauses in that Bill, and that Memorandum should be read with the Comparative Table sent herewith.

3. The Land Officer and Director of Agriculture have written a joint memorandum in explanation of the development conditions prescribed in connection with agricultural land.

NAIROBI,
 December, 1913.

J. H. Lamb
 ATTORNEY GENERAL.

COMPARATIVE TABLE.

...

THE BILL FOR THE CROWN LANDS ORDINANCE, 1913.

...

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 1.	Sections 1 & 2.	The provisions of Section 15 of the Interpretation and General Clauses Ordinance 1912 authorise the issue of rules and the making of appointments under an Ordinance before the Ordinance comes into operation for other purposes.
Section 2.	Section 3.	
Section 3.	Section 4.	The East Africa Land Regulations 1897 were repealed by the Crown Lands Ordinance 1904. The provisions of Section 5 of the Interpretation and General Clauses Ordinance 1912 render reference to the 1897 Regulations unnecessary.
Section 4.	Section 5.	As it has been decided that no provision shall be made in the Ordinance for the imposition of a land tax, the last part of Sub-section (3) of Section 5 of the earlier Bill has been omitted.

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
	Section 6.	See paragraph (v) of Section 6 in the new Bill.
ion 5.	Section 7.	<p>(1) The Interpretation and General Clauses Ordinance 1912 has rendered ^{some of} the definitions in the earlier Bill unnecessary.</p> <p>(2) The alteration suggested by the Committee which considered the earlier Bill in the Colonial Office has been made in the definition of the term "Crown Lands." The definition of the term has been further extended so as to remove any doubt as to the power of the Government to regulate the occupation of lands occupied by Native tribes and take action to remove persons in unlawful occupation of such land.</p>
	Section 8.	The division of the Protectorate into Highland and Lowland is no longer necessary having regard to the decision to require residence on a farm wherever situated.

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 6.	Section 9.	Paragraph (iv) is new.
Section 7.	Section 10.	
Section 8.	Section 11.	
Section 9.	Section 12.	
Section 10.	Section 13.	The wording of the Section has been altered so that any power to be exercised by the Land Officer under the Section shall be subject to the directions of the Governor.
Section 11.	Section 14.	
Section 12.	Section 15.	
Section 13.	Section 16.	The term "Ordinance repealed by this Ordinance" has been defined so as to include both the Crown Lands Ordinance 1902 and the Land Regulations 1897.
Section 14.	Section 17.	
	Sections 18-22.	The provision for the appointment of a Land Board has been omitted.

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 15.	Section 23.	
Section 16.	Section 24.	
Section 17.	Section 25.	Paragraphs (b) (c) and (d) are new.
Section 18.	Section 26.	
Section 19.	Section 27.	Altered.
Section 20.	Section 28.	
Section 21.	Section 29.	
Section 22.	Section 30.	Altered.
Section 23.	Section 31.	
	Section 32.	This has been omitted. It is intended that ^{any} building conditions shall be imposed by special covenants to be made in the lease.
Section 24.		This section is new and makes useful provision regulating the subdivision of Township plots.

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
IV.		The abolition of the occupation licence and the introduction of sales by auction has necessitated a substantial alteration in the provision of the Bill relating to agricultural farms.
ion 25.	Section 38.	
ion 26.		This section reserves to the Governor the power to direct that in any special case a lease may be disposed of otherwise than by auction.
ion 27.		
ion 28.		
ion 29.		This section gives to the purchaser the option of paying the balance of the purchase money by instalments to be spread over ten years from January 1st of the year following the sale. As the instalments will be added to the rent and payable with the rent, the balance of the purchase price can be conveniently recovered.

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		The provision that there shall be no assignment of the lease until the whole of the purchase price has been paid gives further protection to the Government.
Section 30.		
Section 31.		
Sections 32 & 33.		The rules referred to in these sections provide that any lease granted in pursuance of the rules shall be subject to the provisions of any law for the time being in force regulating the alienation of Crown land.
Section 34.		
Section 35.		
Section 36.		
Section 37.	Section 58.	
Section 38.	Sections 59 & 60.	Altered.

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		<p>The lessee is not allowed to surrender his lease if unwilling to pay the increased rent, but if he is dissatisfied with the valuation he may require the question of the value of the land to be referred to and determined by arbitration.</p>
	<p>Sections 61 & 62.</p>	<p>Have been omitted and no obligation is now imposed on the Government to pay compensation in respect of improvements effected on land the lease of which has terminated by surrender, forfeiture or efflux of time.</p>
<p>Sections 39 & 40.</p>		<p>These sections provide for residence on the farm by either the lessee or his manager. It will be observed that under the sections as drafted the nationality of the person who may be placed in residence as manager is governed by the nationality of the person to whom the lease was first granted and not by the nationality of the lessee for the time being.</p>

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
on 41.		This section enables the Governor to suspend the operations of the covenants regarding residence on good cause being shown.
ons 42 & 43.		These sections and the ^{and} Schedule give effect to the development conditions last approved by His Excellency.
ons 44, 45 & 46.		These sections are new and enable the Government to regulate the subdivision of farms.
on 47.		The provisions of this section which are new are I consider legitimate. There would appear to be no sufficient reason for permitting a subdivision to deprive the Government of the rights which might have been exercised under the original lease.
on 48.	Section 63.	Sub-section (2) has been omitted as it deals with matters which could be conveniently covered by rules under the Ordinance.

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 49.	Section 64.	
Section 50.	Section 65.	The conditions of leases and licences for special purposes should generally be prescribed by rules, and the section has been altered to enable rules to be issued for such purpose.
Section 51.	Sections 66 & 67.	
Section 52.		New.
	Section 68.	This section has been omitted as it is not proposed that freehold shall be granted except for a special purpose the granting of which will be regulated by any instructions which may from time to time be issued by the Secretary of State, vide Section 6 (i).
Section 53.	Section 69.	
Section 54.	Section 70.	
Section 55.	Section 71.	

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 56.	Section 72.	
Section 57.	Section 73.	
Section 58.	Section 74.	The proviso at the end of the section is new.
Section 59.	Section 75.	The words "for trading centres" have been inserted. It is the practice to grant licences or leases for short terms of plots for shop or trade purposes in the areas selected for trade centres in Native Reserves.
Section 60.	Section 76.	
Section 61.	Section 77.	
Section 62.	Section 78.	Section 69 has been substituted for Part VIII of the earlier Bill.
Section 63.	Section 79.	
Section 64.	Section 80.	
Section 65.	Section 81.	
Section 66.	Section 82.	

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Bill 67.	Section 83.	
Bill 68.	Section 84.	
Bill 69.	Section 85.	
Bill 70.		New.
Bill 71.		New.
Bill 72.	Section 86.	
Bill 73.	Section 87.	
Bill 74.	Section 88.	
Bill 75.	Section 89.	
Bill 76.	Section 90.	<p>(1) It was suggested by the Committee which considered the 1911 Bill in the Colonial Office that it would not be equitable to extend the provisions of Part VII to land sold before the coming into operation of the Ordinance. I think, however, that in this Protectorate it is recognised</p>

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		<p>that it is imperative that the Government should be authorized to veto transactions in relation to any land which would be contrary to the interests of the Community, and that, having regard to object of this Part, it is necessary that the interests of the individual should be subordinated to interests of the Community.</p> <p>(2) Paragraph (5) of the section in the earlier Bill has been omitted.</p> <p>A lessee under the 1902 Ordinance can, if he so desires, surrender his lease and obtain a lease under the new Ordinance.</p>
Section 77.	Section 91.	
Section 78.	Section 92.	
Section 79.	Section 93.	Sub-section (3) is new.
Section 80.	Section 94.	<p>Altered by the insertion of the words "subject to such conditions as may be prescribed." The insertion of these words will I think meet the objection to the section raised by the Committee in the Colonial Office, since the rules could provide</p>

Bill submitted to the Secretary of State in 1911.	Remarks.
	that exemption from the provisions of this Part shall not extend to a lease to a Non-European from a European.
Section 81.	Section 95.
Section 82.	Section 96.
Section 83.	Section 97.
Section 84.	Section 98.

- (1) I have altered the wording of this section so as to include amongst the minerals reserved to the Crown the minerals mentioned in the Second Schedule, and to authorise the removal of such minerals by the purchaser or lessee of the land on which they are found.
- (2) Under Sub-section (4) of the section in the earlier Bill the minerals mentioned in the Second Schedule could not be removed by the Government except they were situate within 600 feet of a public road or Railway. This provision has been omitted from Sub-section (4) of the new Bill.

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 85.	Section 99.	
Section 86.	Section 100.	The alteration suggested by the Colonial Office Committee has been made in this section.
Section 87.	Section 101.	
Section 88.	Section 102.	
Section 89.	Section 103.	
Section 90.	Section 104.	
Section 91.	Section 105.	
Section 92.	Section 106.	Sub-section (4) is new.
Section 93.	Section 107.	The alteration in Sub-section (4) suggested by the Colonial Office Committee has been made.
Section 94.	Section 118.	Sub-section (3) of this section is new.
Section 95.	Section 119.	
Section 96.	Section 120.	

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 97.	Section 121.	
Section 98.	Section 122.	Has been substantially altered to give effect to the recommendations of the Director of Surveys.
Section 99.	Section 123.	
Section 100.	Section 124.	The words "which shall comprise all land within 20 feet of the centre mark of such station" are new and have been inserted on the recommendation of the Director of Surveys.
XI.		<p>The whole of this Part is new and makes provision for the establishment of a Central Registration Office at Nairobi which should be in the Land Office or conveniently near that office in which all conveyances leases and licences from the Crown, whether granted before or after the coming into operation of this Ordinance, shall be registered, and in which all transactions affecting registered land shall be registered.</p> <p>This Part further applies to Crown land and a system of registra-</p>

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		tion of transactions affecting such land similar to that which has been applied to land in respect of which certificates of ownership have been granted under the Land Titles Ordinance.
tion 101.		
tion 102.		The regulations under the Mining Ordinance 1912 provide that all leases under that Ordinance and all transfers of such leases shall be registered in the office of the Commissioner of Mines.
tion 103.		
tion 104.		
tion 105.		
tion 106.		
tion 107.		Documents registered under the Registration Regulations 1901 are copied into the register of the District in which the land is situated. With the exception of the registers kept in the Coast District where land is privately owned without a grant from the Crown, all registers

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		<p>kept under the Registration Regulations 1901 can at once be transferred to the new Registration Office in Nairobi, and the work of taking extracts from the registers transferred can be done in that office.</p>
Bill 108.		
Bill 109.		
Bill 110.		<p>Section 9 of Ordinance No. 11 of 1910 applied also to wills.</p>
Bill 111.		<p>The second proviso to the above.</p>
Bill 112.		<p>Under the Registration Regulations 1901 any document registrable under those regulations may at any time be registered on payment of the prescribed penalty for late registration, and a registered document has no priority over an unregistered document.</p> <p>If the provisions of this Part are to be effective in so far as they relate to land sold or leased before the commencement of the Ordinance, it is essential that any document executed before that date affecting such land shall if not already registered be registered under this Part.</p>

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		The period of 6 months prescribed in this section will give all concerned ample time in which to comply with the requirements of the section.
Section 113.		
Section 114.		
Section 115.		
Section 116.		The power conferred by this section will enable Registrars to compel compliance with the provisions of Section 119.
Section 117.		
Section 118.		Section 14 of Ordinance No. 11 of 1910.
Section 119.		Section 15 of Ordinance No. 11 of 1910.
Section 120.		Section 16 of Ordinance No. 11 of 1910.
Section 121.		Section 17 of Ordinance No. 11 of 1910.

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
		The period of 6 months prescribed in this section will give all concerned ample time in which to comply with the requirements of the section.
Section 113.		
Section 114.		
Section 115.		
Section 116.		The power conferred by this section will enable Registrars to compel compliance with the provisions of Section 119.
Section 117.		
Section 118.		Section 14 of Ordinance No. 11 of 1910.
Section 119.		Section 15 of Ordinance No. 11 of 1910.
Section 120.		Section 16 of Ordinance No. 11 of 1910.
Section 121.		Section 17 of Ordinance No. 11 of 1910.

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Hon 122.		Section 18 of Ordinance No. 11 of 1910.
Hon 123.		Section 19 of Ordinance No. 11 of 1910.
Hon 124.		
Hon 125.		Section 21 of Ordinance No. 11 of 1910.
Hon 126.		
Hon 127.		Section 22 of Ordinance No. 11 of 1910.
Hon 128.		Section 23 of Ordinance No. 11 of 1910.
Hon 129.		Section 24 of Ordinance No. 11 of 1910.
Hon 130.		
Hon 131.		Section 26 of Ordinance No. 11 of 1910.
Hon 132.		Section 27 of Ordinance No. 11 of 1910.

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Bill 133.		Sub-section (1) is necessary if documents of title from the Crown are executed in duplicate only since one duplicate will be in the register and the other in the custody of the purchaser lessee or licensee.
Bill 134.		
Bill 135.		Section 28 of Ordinance No. 11 of 1910.
Bill 136.		Section 29 of Ordinance No. 11 of 1910.
Bill 137.		Sub-sections (2) and (3) of Section 30 of Ordinance No. 11 of 1910. Sub-section (1) is covered by Section 158 of the Ordinance.
Bill 139.	Section 125.	
Bill 140.	Section 126.	
Bill 141.	Section 127.	

Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
Section 142.	Section 128.	
Section 143.	Section 129.	
Section 144.	Section 130.	
Section 145.	Section 131.	
Section 146.	Section 132.	
	Section 133.	Has been omitted from the new Ordinance; the sale of leases by auction having been substituted for the allotment contemplated in the 1911 Bill, this section is no longer necessary.
Section 147.	Section 134.	
Section 148.	Section 135.	
Section 149.		New. See the last paragraph of the second rule in the First Schedule.
Section 150.	Section 136.	
Section 151.	Section 137.	

New Bill.	Bill submitted to the Secretary of State in 1911.	Remarks.
ion 152	Section 138.	
ion 153.	Section 139.	Extended to cover the obstruction of a water-way.
ion 154.	Section 140.	
ion 155.	Section 141.	Sub-section (3) has been altered so as to include purchasers lessees and licensees under the 1902 Ordinance.
ion 156.	Section 142.	
ion 157.	Section 143.	A Bill for an Ordinance intituled "The Arbitration Ordinance 1913" will be introduced at the next meeting of the Legislative Council. Should that Bill not be passed and enacted as an Ordinance, it will be necessary to alter Sub-section (3) of this Section.
ion 158.	Section 144.	Paragraph (vii) is new.

CROWN LANDS ORDINANCE.

Alienation of Agricultural and Pastoral
Lands.

In a letter dated the 5th October, 1913, the Land Officer submitted schedules in respect of development on areas of 320 acres, being the minimum unit hitherto granted in the Highlands, the idea being that, if areas of less than this were given out, in the future, rules would be framed to meet such cases. We have, however, been informed that it would be advisable to provide in the Ordinance for all cases from the smallest unit likely to be granted as a farm, equally with large areas.

We have, therefore, reconsidered our previous proposals and now put forward a fresh schedule of developments which not only has the merit of simplicity, but which we think carries out the instructions of the Secretary of State. Further His Excellency, at a recent interview, agreed in principle with our suggestions and instructed us to put them forward for final consideration.

As it is more than probable that in some parts of the Coast Belt small areas, to suit the needs of Indians and Arab cultivators, will be alienated, we suggest:-

- (a) That the minimum area to be granted as a farm lot be 20 acres.
- (b) That on this area a minimum expenditure of Rs.300/- (220) be required to be expended in permanent improvements as per attached schedule.

(c)

-2-

(c) That for every additional acre up to and including 300 acres, an additional Rs.15/- (£1) shall be required to be expended on permanent improvements.

(d) That at least two-thirds of the sum required to be spent be expended in the first three years and the balance within the subsequent two years.

In the event of farms of over 300 acres being allotted it may be taken for granted that on the majority of these lots mixed farming will be pursued, and it would be unreasonable and in fact unbusinesslike to demand of a tenant to expend any further sum over Rs.4,500 (£300) on permanent improvements as any outlay in excess of this amount might be more profitably invested in live stock, implements, machinery, and industrial appliances. We therefore suggest:-

(a) That for every additional acre over 300 acres taken up by a tenant he be required to expend in addition to the Rs.4,500 (£300) a sum of Rs.3/- per acre to be spent at his option either in permanent improvements or in live stock, implements, machinery or industrial appliances.

(b) That at least two-thirds of this further sum be expended in the first three years and the balance within the subsequent two years.

The Secretary of State in his despatch dated 20th August 1918 considers that white occupation should be an essential, it being in his opinion a

strong

-3-

strong safeguard against the accumulation of land in the hands of individuals. We have given this matter very careful consideration and are fully convinced that such a restriction would not be in the interests of the Protectorate. Land has now become so enhanced in value that those owning properties and who cannot make full use of all the land are being tempted to part with portions. In fact the feature of the past year has been the subdivision and sale of portions of the many larger estates creating a number of smaller estates and it is estimated that the farming population has almost doubled during the past eighteen months. It is the opinion of those who have closely followed the agricultural prospects of the country that privately owned, undeveloped land is not now likely to further increase in value beyond the present price plus interest on its prairie value and to hold up such land any longer would be too speculative, and at the present moment two of our largest land-holders are having large areas of their properties surveyed into small lots with a view to their disposal to incomers who desire to settle in the country and have the means to develop these smaller areas.

As all Crown Land to be alienated in the future is to be sold by public auction it is

hardly

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hardly likely that any person will now purchase any large area and retain it in an undeveloped condition when he can otherwise invest his capital on good security at from 7 to 8 per cent.

While all who are interested in the Protectorate are in favour of and believe in closer settlement, it is considered that to insist on white occupation would in effect, be a bar to the progressive development of the country. For illustration the case is here considered of a settler who by industry and the employment of adequate capital has made a success of his original holding. Such a man may desire to extend his productive activity to adjoining Crown lands and with existing plant he can work such land to the most economic advantage. He can afford to pay the best price for it, and by his competition he ensures that the price realized at auction is near to the actual productive value of the land. But by insistence on white occupation of the new area the competition of the man who best knows the value of the land is practically eliminated. The following example may be cited:-

A rural estate in which extensive machinery and plant have been established. The owner proposes to extend his operations to a further

contiguous

contiguous area. The sisal from this area could be effectively treated on the original farm without such further expenditure in additional machinery, houses, or supervision. On the new area development money will be spent in clearing, ploughing and planting. On the original holding monies may be spent in a new decorticating machine run by power already installed and in salaries paid to additional white employees. The same arguments may be applied to plantations devoted to the production of coconuts, coffee, wattle, rubber, flax and other valuable products. Insistence upon white occupation in all such cases practically makes it impossible for the best buyer to compete for land when offered for sale by auction, and yet the nearer the price obtained for the land at such sale approximates to the actual productive value of the soil the greater is the guarantee that the land will and must be developed.

Paragraph A by the
Director
Agriculture,

A. The foregoing considerations affecting the question of white occupation indeed and indeed compel a reference to the broader issue of the particular form of land tenure which is best calculated to serve the interests of the Protectorate.

As.

As the value of soil is becoming better understood, it is becoming increasingly clear that the cause of development can best be served by a simple rather than complicated form of land tenure. The tendency in the Protectorate is now towards closer settlement on comparatively smaller areas, for with the agricultural data now available it has been proved that it pays to work land, and with this healthful tendency now definitely assured, the arguments employed during the last seven years of discussion in favour of perpetual quit rent tenure obtain increasing force and added value, and it must be the desire of Government to produce a Land Bill which shall effectively meet the legitimate requirements of the settler. Even at the eleventh hour it must be desirable to obtain some measure of finality in the new Land Laws, and we therefore regard it as a clear duty to refer to the memorandum submitted by the Director of Agriculture to the Commissioner of Lands dated 12th October, 1907. In that document the Director of Agriculture recommends the adoption of a perpetual quit rent tenure convertible into freehold by commutation of the rent charge. In view of the fact that provision is about to be made for the accommodation in the Coastal and other suitable areas of the small Indian farmer,

and

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and in view of the further fact that it is not desirable by the creation of freehold areas to make the Highlands available for purchase by Indians, the Director of Agriculture withdraws his recommendation that the holder of land in quit rent title shall have the power to make such land freehold, but the adoption of the perpetual quit rent tenure is strongly advocated as offering the best guarantee for the speedy development of the land and the contentment of the people and which is the prime factor in the well being of a country.

B. I would add that the foregoing paragraph A is written by the Hon^{ble} the Director of Agriculture, and I feel diffident in pressing this point in view of the very clearly and definitely expressed opinion of the Secretary of State, laying down the principle of 99 years' lease with revisible rent, and I feel that again raising this point is likely to cause further delay which would be a pity.

H. H. H. H.
Land Officer,

H. H. H. H.
Director of Agriculture.

Paragraph B. by
Hon. Land
Officer.

Original in file No. L.133 '0'. Develop-
ment and Occupation of Farms.

MEMORANDUM

Suggested Schedules of Develop-
ment to provide for all classes of farming.

The following is the schedule of Improvements
which qualify as Development under the existing leases:-

- 1 Farm buildings of all descriptions.
- 2 Fencing.
- 3 Furrows.
- 4 Planting trees or live hedges.
- 5 Walls.
- 6 Wells.
- 7 Draining land or reclamation of swamp.
- 8 Roads. Bridges.
- 9 Clearing land for agricultural purposes.
- 10 Laying out and cultivating gardens & nurseries.
- 11 Water boring.
- 12 Water races.
- 13 Sheep or Cattle dips.
- 14 Embankments or prospective works of any kind.
- 15 Planting of long lived crops.
- 16 Water tanks.
- 17 Fixed machinery.
- 18 Irrigation works.

and to this I should very much like to see added:-

- 19 Reservoirs.
- 20 Dams of a permanent character, increasing
the producing capacity of the land.

INCLOSURE No 1

Part
In Despatch No. 3 of 8-1-19143080
PAGE 2 FEB 14

A Bill

intituled

An Ordinance to make further and better provision for
Regulating the Leasing and other disposal of Crown-Lands,
and for other purposes.

A Bill**intituled**

An Ordinance to make further and better provision for Regulating the Leasing and other disposal of Crown Lands, and for other purposes.

PART I**Preliminary.****(1) Title, Divisions and Repeals.**

1. This Ordinance may be cited as "The Crown Lands Ordinance, 1913," and shall come into operation on such date as the Governor, by notice in the "Gazette," shall determine.

Short Title and
Commencement.

2. This Ordinance is divided into parts as follows:

Divisions.

PART I**Preliminary.**

- (1) Title, Divisions and Repeals.
- (2) Definitions.

PART II**Administration.**

- (1) Governor.
- (2) Land Officer.
- (3) Land Rangers.

PART III**Disposal of Land within Townships.**

- (1) Offering of Town plots.
- (2) Subdivision of plots.

PART IV**Disposal of Agricultural Land.**

- (1) Offering of land for agricultural purposes.
- (2) Leases in pursuance of certain licences granted before the commencement of the Ordinance to be granted under this Part.
- (3) Term of lease and rent to be reserved.
- (4) Covenants as to occupation.
- (5) Covenants as to development.
- (6) Subdivision of farms.

PART V.

Disposal of Land for special purposes.

- (1) Leases and licences for special purposes.
- (2) Licences for temporary occupation of small areas.

PART VI.

Reservation of Land for the use of Native Tribes.

PART VII.

General provisions relating to Leases, Licences and Agreements.

- (1) Implied covenants and conditions.
- (2) Rent, royalties and other payments.
- (3) Forfeiture for breach of covenants or conditions.

PART VIII.

Transfers and other dealings in land subject to Governor's veto.

PART IX.

Reservations

- (1) Water.
- (2) Foreshore.
- (3) Minerals.
- (4) Roads, thoroughfares and outspans.
- (5) Resumption of land for public purposes.
- (5) Reservation of lands in occupation of Natives.

PART X.

Surveys—Survey and Boundary Marks

PART XI.

Registration of Transactions relating to Crown Lands

- (1) Crown Lands Registry.
- (2) Registration of Crown grants, leases and licences.
- (3) Registration of transactions affecting Crown Lands.

PART XII.

Miscellaneous

- (1) Legal procedure, etc.
 - (2) Prohibitions and offences.
 - (3) Compensation and arbitration.
 - (4) Power to make rules.
3. The Crown Lands Ordinance 1902 is hereby repealed.
4. (1) So far as consistent with this Ordinance each repeal shall not affect: Repeal.
Saving Clause.
- (i) The past operation of the Ordinance hereby repealed.
 - (ii) Any agreement, lease or licence heretofore granted or agreed to be granted, under the said Ordinance hereby repealed.
 - (iii) Any estate, right, title, interest, power, duty, obligation, liability or burden of proof created or imposed by or acquired or exercisable under the said Ordinance repealed hereby in respect of or under, or in relation to such agreement, lease or licence.
 - (iv) Anything lawfully done or commenced or agreed or authorised to be done under or in pursuance of the said Ordinance repealed hereby in respect of or under or in relation to any such agreement, lease or licence.

- (v) Any divisions, exchanges, proclamations, reservations, dedications, rules, grants, appointments, payments, surveys, surrenders, disabilities, acts, proceedings, matters and things lawfully made, had, done, created or authorised by or under or in pursuance of the said Ordinance repealed hereby.
- (2) All such matters and things mentioned in the foregoing subdivisions of this section are, so far as consistent with this Ordinance, hereby preserved and continued and declared to be of the same force and effect as if the said Ordinance were still in force or as if they were, under this Ordinance as the case may require.
- (3) Provided, however, anything in the preceding subdivisions to the contrary notwithstanding, on and after the coming into operation of this Ordinance land sold under the provisions of the Crown Lands Ordinance 1902 shall not be liable to forfeiture under the provisions of section 9 of such last mentioned Ordinance.
- (4) Any proceeding which at the time of the commencement of this Ordinance may be pending in any Court, or before any arbitrator or other authority shall be proceeded with, heard and determined and the decision or award enforced as if the said Ordinance repealed by this Ordinance was still in force.
- (5) Except where otherwise provided, all offences committed, and penalties, forfeitures and liabilities incurred before the commencement of this Ordinance or which may hereafter be committed or incurred in respect of any matter or thing under or against the said Ordinance repealed by this Ordinance may be tried, punished, inquired into and enforced as if the said Ordinance were still in force.
- (6) All fees chargeable under the said Ordinance repealed by this Ordinance shall, until other provision is made, continue to be payable for the like matters done under this Ordinance.
- (7) Whenever in any Ordinance, Regulations, Rules, Proclamation or document any reference is made to the Crown Lands Ordinance 1902, such reference shall be read and construed as if this Ordinance had been included in such reference.

(2) Definitions.

5. In this Ordinance and in all Rules hereunder and all conveyances, leases and licences and in all agreements, notices and documents relating to Crown Land, unless inconsistent with the context,

"Agricultural purpose" shall include grazing and stock raising

"Constantly reside" and "constant residence" shall mean actual residence for not less than nine months out of every twelve months.

"Crown Land" shall mean all public lands in the Protectorate 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 for the public service or otherwise howsoever, and shall include all lands occupied by the native tribes of the Protectorate and all lands reserved for, or dedicated to, the use of the members of any native tribe.

"Director of Surveys" shall include a Deputy Director of Surveys and any officer of the Survey Department authorised by the Director of Surveys to perform the duty in relation to which the term is used.

"European" shall mean a person of European origin.

"Farm" shall mean an area leased for agricultural purposes.

"Government" shall mean the Government of the East African Protectorate.

"Ordinance repealed by this Ordinance" shall include Regulations repealed by an Ordinance repealed by this Ordinance.

"Purchaser," "Lessee" and "Licensee" shall include personal representatives, heirs and assigns.

"Prescribed" shall mean prescribed by this Ordinance or by any Rules or Regulations made thereunder.

"Principal Registrar" shall mean the Principal Registrar of Crown Lands.

"Registrar" shall mean a Registrar of Crown Lands and shall include the Principal Registrar.

"Registry" shall mean the Registry of Crown Lands.

"Township" shall include a Township within the meaning of the Townships and Africa Townships Ordinance 1902, and in relation to the same, a Municipality and an Urban Council.

PART II

ADMINISTRATIVE

(1) Governor.

6. The Governor, in addition to, but without limiting his other powers and authority vested in him under the Ordinance may

- (i) Subject to the provisions of the Ordinance, grant to any person, general or special licence or licence to the Secretary of State, or to any lease or otherwise, in accordance with the Majesty's Letters Patent, Land for any purpose, and to any instrument or agreement which he may think fit;
- (ii) Wholly or partly suspend, except where otherwise provided, all or any of the conditions, agreements or covenants contained in any lease, agreement or licence, which may, in any special circumstances, compromise thereof, the well-being of the public or the great hardship which be inflicted upon the lessee or licensee or licensee;
- (iii) Extend, except as otherwise provided, the time of the performance of any agreement, lease or licence, and to extend, in any period, and upon such terms and conditions as he may think fit, and the period so extended, and the terms and conditions so imposed shall be deemed to be inserted in the agreement, lease or licence, and shall be binding on the parties to the lease or licence, and all transferees, mortgagees, assignees and other persons claiming through him;
- (iv) Accept the surrender of any lease or licence under this Ordinance; and
- (v) Accept the surrender of any certificate granted under the Land and Africa Land Regulations 1897, or of any lease granted under the Crown Lands Ordinance 1902, and grant to the holder of the lease under this Ordinance of the area comprised in the surrendered certificate or lease.

7. All conveyances, leases and licences of or for the occupation of Crown Lands and all proceedings, notices and documents under this Ordinance made, taken, issued or drawn shall have as therein otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Ordinance and of all Rules for the time being in force under this Ordinance.

(2) Land Officer.

8. The Governor shall appoint a Land Officer who shall have charge of the administration of this Ordinance, and shall further appoint such Assistant Land Officers as the Governor may deem necessary to transact the business of the Ordinance and of any law regulating the sale, letting, disposal and occupation of Crown Land.

The Land Officer and Assistant Land Officers holding office at the coming into operation of this Ordinance shall be deemed to have been appointed under this Ordinance.

An Assistant Land Officer may subject to any general or special directions from the Land Officer perform any of the duties or do any of the acts or things required or authorised by this Ordinance to be done by the Land Officer.

9. The principal office of the Land Officer (in this Ordinance referred to as the Land Office) shall at be Nairobi, and there shall be such sub-office or sub-offices at such place or places as the Governor may from time to time determine.

10. The Land Officer may subject to any general or special directions from the Governor, execute for and on behalf of the Governor any conveyance, lease or licence of or for the occupation of Crown Lands and do any act or thing, exercise any power, and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the Governor under this Ordinance. Provided, however, that nothing in this section shall

Land Officer and Assistant Land Officers

be deemed to authorise the Land Officer to exercise any of the powers conferred upon the Governor by sections 6, 8, 9, 12, 18, 25, 26, 41, Part VI, Part VII or sections 103, 187 or 188.

11. (1) All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor or the Government respecting Crown Lands, or respecting any contract relating thereto, or any breach of any such contract or any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents, purchase money, or other moneys in respect of such land, or in respect of any damages or wrongs whatsoever in any way suffered by the Crown in respect of Crown Lands or for the recovery of any fine or the enforcement of any penalty under this Ordinance, may be commenced, prosecuted and carried on by and in the name of the Land Officer, and the Land Officer may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding. In any such action, suit or proceeding the Land Officer may be represented by any advocate, or by any officer of the Land Department or by any administrative officer.
- (2) The Land Officer may on behalf of His Majesty or the Governor distrain for rent due under any lease or licence granted under this Ordinance, or under any Ordinance repealed by this Ordinance, and may authorise any person to act for him in this behalf.

(3) Land Rangers.

12. The Governor may appoint Land Rangers who shall perform such duties as may be prescribed by this Ordinance or as may from time to time be ordered by the Land Officer.
13. A Land Ranger with such assistants as he thinks fit may enter from time to time during the day time, upon any Crown Land whether sold or leased under this Ordinance, or any building or enclosure or other place within such land, for the purpose of performing any duty imposed upon him, but shall if required by the owner or occupier, produce and show the authority under which he claims to enter or has entered on such land.
14. If any person shall wilfully obstruct or hinder any Land Ranger or his servant or assistant in the execution of his duty, he shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description or to both for a term not exceeding one month or to both.

PART III

DISPOSAL OF LAND WITHIN TOWNS

(1) Offering of Town plots.

15. The Land Officer may cause any portion of a Township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the manner hereinafter prescribed, but the Governor may direct.

16. Leases of town plots may be granted for any term not exceeding thirty months.

17. Before any town plot is disposed of and in the next two years following the Land Officer shall determine

- the rent which shall be payable in respect of such plot;
- the upset price at which the lease of such plot will be sold;
- the building conditions to be inserted in the lease of the plot; and
- the special covenants, if any, which shall be inserted in the lease.

18. Leases of town plots may, unless the Governor shall otherwise order in any particular case, only be sold by auction.

19. The place and time of sale shall be notified in the "Gazette" not less than four weeks or more than three months prior to the day of sale, and the notice shall state

- the number of plots and the situation and area of each plot;

- (b) the upset price at which the lease of each plot will be sold;
- (c) the term of the lease and the rent payable in respect of each plot; and
- (d) the building conditions and the special covenants, (if any), to be inserted in the lease to be granted in respect of any plot.

Provided, however, that any plot may be withdrawn from sale by the Land Officer, at any time prior to the same being offered for sale.

20. The Auctioneer shall, before the commencement of the sale, read the terms and conditions of the sale, and all persons bidding at the sale shall be bound by the terms and conditions so read.

21. The highest bid for each plot, together with the name of the purchaser shall be announced by the auctioneer before proceeding to offer the next plot, and the purchaser shall thereupon pay one-quarter of the purchase money. In default of payment of the deposit, the plot may be offered for sale immediately, and any subsequent bid by the person who has made default may be ignored or refused.

22. (1) The balance of the purchase money together with the rent due to the 31st December, next following, the prescribed survey fee and the fees payable for the preparation and registration of the lease and the stamp duty payable in respect of the lease shall be paid to the Land Officer at the Land Office within seven days from the date of the sale, and upon such payments being duly made the purchaser shall be subject to the provisions of this Ordinance and if the conditions of the sale have been complied with, be entitled to a lease of the plot, which lease shall be presented to him for execution as soon as conveniently may be.

(2) The lease shall commence on the 1st day of the month next following that in which the sale shall have been held and rent shall be payable from the commencement of the lease.

23. If the balance of the purchase money together with the rent fees and duty mentioned in the preceding section is not paid to the Land Officer within seven days from the date of the sale, the Land Officer may order that the deposit made by the purchaser be forfeited to the Government and that the purchaser shall have no further claim to a lease of the plot.

(27) Subdivision of Town Plots.

24. (1) In every lease of a town plot under this Ordinance there shall be implied by virtue of this Ordinance a covenant by the lessee not to divide the plot and assign any portion thereof.

(2) If the lessee of a town plot is desirous of dividing such plot and assigning a portion thereof, application shall be made to the Governor through the Land Officer to accept a surrender of the lease of the plot and to issue new leases of the plot in parcels.

No such application shall be entertained unless the building conditions, if any, in the lease have been complied with.

(3) If the Governor shall approve of a proposed division of a plot, he may authorise the Land Officer to accept the surrender of the original lease, and to grant leases of the plot in such parcels as he may have approved.

Such new leases shall be granted for a term equal to the unexpired period of the term of the original lease, and shall be granted on the same terms and conditions as the original lease subject only to such modifications as the Governor may approve in consequence of the reduced area of the parcels. Provided, however, that in no case shall the annual rent reserved on any parcel be less than 5 rupees.

(4) All cost and expenses of and in connection with the surrender of the lease and the granting of the new leases shall be paid by the person making application under sub-section (2).

PART IV.

DISPOSAL OF AGRICULTURAL LAND.

(1) Offering of Land for agricultural purposes.

25. The Land Officer may cause land available for leasing for agricultural purposes to be surveyed and divided into farms which shall not, except with the consent of the Governor, exceed 5,000 acres, or, except with the consent of the Secretary of State, exceed 7,500 acres.

26. Leases of farms shall, unless the Governor shall otherwise order in any particular case or cases, be sold by auction.

Leases to be sold by auction, except when Governor shall otherwise order
Nature of auction.

27. When land available for leasing for agricultural purposes shall have been surveyed and divided in farms and it is proposed that leases thereof shall be sold by auction, the Land Officer shall give notice in the Gazette of the place and time which shall not be within 3 months of the date of the publication of such notice, at which leases in respect of such farms will be offered for sale by auction.

Such notice shall state:

- (a) the situation of the farms and the approximate area of each farm;
- (b) the upset price at which the lease of each farm will be sold;
- (c) whether persons other than Europeans will be permitted to bid for the farms;
- (d) any special covenant or condition to be inserted in any lease to be granted;
- (e) the annual rent to be paid for each farm for the first period of the lease, as hereinafter defined, and
- (f) the survey fees to be paid in respect of each farm.

Provided, however, that the Land Officer may withdraw any lease from sale at any time before the same is offered for sale.

28. The provisions of sections 20 and 21 of this Ordinance shall, *mutatis mutandis*, apply in the case of every sale by auction under this Part, except that the purchaser shall be required to pay one-tenth of the purchase price in hand at the quarter as in section 21 provided.

- 29. (1) The purchaser shall, on or before the first day of the month following the month in which the sale has been held, or if such day is a Sunday or public holiday, on the first day thereafter which is neither a Public Holiday or Sunday, notify the Land Officer in writing whether he desires to pay the balance of the purchase money forthwith or desires to pay the same by instalments as hereinafter provided.
- (2) If the purchaser shall elect to pay the balance of the purchase money forthwith, he shall pay the same together with the first and other payments as in the next succeeding section provided.
- (3) If the purchaser shall elect to pay the balance of the purchase money by instalments, such balance shall be paid by ten equal yearly instalments commencing on the first day of January next following the date of the sale. The amount of each instalment shall be endorsed on the lease and unless such endorsement shall have been cancelled as hereinafter provided the amount of each annual instalment shall be deemed to be added to the annual rent reserved by the lease for the period over which such instalments are to be paid and shall be payable and recoverable as rent.
- (4) Whenever the balance of the purchase money shall be payable by instalment, no assignment of the whole of the land leased or any part thereof shall be valid until the whole of the balance of the purchase money shall have been paid.

Provided, however, that the lessee may at any time pay to the Land Officer the balance of the purchase money, and the Land Officer shall on the receipt of such balance cancel the endorsement on the lease.

30. The purchaser shall, on or before the first day of the month next following that in which the sale has been held, or if such day is a Sunday or Public Holiday, on the first day thereafter which is neither a Sunday nor Public Holiday, pay to the Land Officer, the Land Officer, the rent due to the 31st of December next following, the survey fees, the fees for the preparation and registration of the lease, and the stamp duty payable in respect of the lease, and, if the purchaser shall have elected to pay the balance of the purchase money forthwith, the balance of the purchase money, and upon such payments being duly made, the purchaser shall subject to the provisions of this Ordinance, and if the conditions of the sale have been complied with, be entitled to a lease of the farm, which lease shall be presented to him for execution as soon as conveniently may be.

Rent Survey Fees
Stamp Duty
Registration Fee

31. (1) If the payments mentioned in the last preceding section are not made within the prescribed time, the Land Officer may order that the deposit made by the purchaser be forfeited to the Government and that the purchaser shall have no right of claim to a lease of the farm.
- (2) The lease shall commence on the first day of the month next following that in which the sale has been held and rent shall be payable from the commencement of the lease.

(2) Leases in pursuance of certain licences granted before the commencement of the Ordinance to be granted under this Part

32. Every person to whom a licence under the Rules under the Crown Lands Ordinance, 1902 (dated February 28th, 1911) or the Forests Ordinance, 1913 shall have been granted or to whom such licence shall have been transferred with the sanction of the Government, if he shall have complied with the conditions of the licence, surrender the same and obtain a lease under this Part.

33. Every lease granted in pursuance of a licence under either of the Rules referred to in the last preceding section shall be granted under this Part for a term of 99 years from the date of the licence. Provided, however, that in the case of lease issued in pursuance of a licence granted under the Rules dated February 28th, 1911 the lease shall, if the licence so shall require, be for a shorter term as prescribed by Rule 6 of the said Rules, in lieu of the term prescribed in this Part.

3. Term of Lease and rent to be reserved.

34. Every lease under this Part shall, subject to the provisions of this Ordinance, be granted for a term of 99 years.

35. For the purposes of the rent to be reserved under a lease under this Part, the term of the lease shall be divided into three periods, the first period to expire on December 31st 1947, the second period to expire on December 31st, 1950, and the third period to expire on the expiration of the lease.

36. The annual rent payable under a lease under this Part shall be payable in advance on the first day of January of each year and shall be, for the first period, at the rate of 10 cents per acre, for the second period, at the rate of 1 per cent on the value of the land in the year 1947, and for the third period, at the rate of 2 per cent on the value of the land in the year 1949.

37. The Land Officer shall, during the year 1947 and the year 1949, cause the land subject of such lease to be valued for the purpose of ascertaining the rent which shall be payable for the land for the second or third period, as such lease whichever shall be the next following to which in which such valuation is made.

In the ascertainment of the value of any land under this Section no account shall be taken into consideration in ascertainment of such value of any improvements made or done on the land.

38. (1) After such valuation shall have been made and before the expiration of the year 1947 or the year 1950, as the case may be, the Land Officer shall cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation will be payable by him during the next following period, and calling upon the lessee to state in writing whether he objects to the valuation.
- (2) If within one month of the date of the notice in the preceding sub-section mentioned the lessee does not notify the Land Officer in writing that he objects to the valuation, rent shall be payable in accordance with such valuation.
- (3) If within one month of the date of the notice mentioned in sub-section (1) the lessee notifies the Land Officer in writing that he objects to the valuation, the question of the value of the land shall be referred to and determined by arbitration.

4. Covenants as to occupation.

39. Except where expressly varied or excepted there shall, by virtue of this Ordinance, be implied in every lease granted under this Part to a European covenants by the lessee —

- (a) To commence to reside on the land leased or to place a European Manager in residence on such land within six months from the commencement of the lease.
- (b) On and after the expiration of six months from the commencement of the lease to constantly reside on the land leased or to keep a European Manager in constant residence on the land for the whole term of the lease.

40. Except where expressly varied or excepted there shall, by virtue of this Ordinance, be implied in every lease under this Part granted to an Asiatic or other Non-European covenants by the lessee —

- (a) To commence to reside on the land leased or to place a European or Asiatic Manager in residence on such land within six months from the commencement of lease.
- (b) On and after the expiration of six months from the commencement of the lease to constantly reside on the land leased or to keep a European or Asiatic Manager in constant residence on the land for the whole term of the lease.

41. (1) Whenever by virtue of a covenant whether express or implied in a lease under this Part a lessee is required to reside or to keep a manager in residence on the land leased, the Governor may, on a written application being made and for any reason appearing to him to be sufficient, suspend the operation of such covenant for such time and upon such terms and conditions as to the Governor may appear proper. Provided, however, that it shall be a condition of every such suspension that the lessee shall constantly reside or shall keep a manager in constant residence at some place to be named in the certificate of suspension in the neighbourhood of the land the subject of the lease in respect of which such suspension is allowed.

(2) Every such application shall be in writing and shall state the reasons for which suspension is required and the place at which the lessee wishes to reside or to keep his manager in residence.

(3) The Governor if satisfied that such reasons are sufficient and that the farm plantation or other undertaking on the land the subject of the lease in respect of which the suspension is asked can and will be efficiently supervised by the lessee or his manager residing at the place named in the application, may authorise the Land Officer to grant a certificate of suspension in the prescribed form for such time and upon such terms and conditions as the Governor may direct.

The terms and conditions so imposed by the the Governor shall bind the lessee and all persons claiming through or under him and the lease shall thereafter be construed as if such terms and conditions were inserted therein as covenants by the lessee.

(4) The Governor may at any time by giving the lessee or his manager notice in writing cancel a certificate of suspension, if it shall appear to the Governor that the farm plantation or other undertaking on the land is not being efficiently supervised by the lessee or his manager, or that the reasons for which he has allowed the suspension no longer exist.

(5) A certificate of suspension shall, on application on that behalf being made by the lessee in writing to the Land Officer, be forthwith issued.

(5) Covenants as to Development.

42. The First Schedule to this Ordinance including the rules therein shall have effect as part of this Ordinance.

43. Except where expressly varied or excepted there shall, by virtue of this Ordinance, be implied in every lease under this part covenants by the lessee—

- (1) That he will within the first three years of the lease effect or place on the land leased improvements of the nature and to the value specified in the First Schedule hereto as the improvements to be effected within such time upon a farm of the like area;
- (2) That he will at all times after the expiration of third year of the lease have and maintain on the land leased improvements of the nature and to the value required under the last preceding covenant;
- (3) That he will within the first five years of the lease effect or place on the land leased additional improvements of the nature and to the value specified in the said Schedule as the additional improvements to be effected within such time upon a farm of the like area; and
- (4) That he will at all times after the expiration of the fifth year of the lease have and maintain on the land leased additional improvements of the nature and to the value required under the last preceding covenant.

(6) Subdivision of Farms

44. In every lease under this Part there shall, by virtue of this Ordinance, be implied a covenant by the lessee not to divide the land leased and a portion thereof

45. (1) If a lessee of land leased under this Part is desirous of dividing the land comprised in the lease and assigning any portion thereof, application shall be made to the Governor through the Land Officer to accept a surrender of the lease of such land and to issue leases of the same in parcels. Provided that such application shall be entertained unless the whole of the purchase price in respect of such lease shall have been paid.

- (2) Every application under this section shall be accompanied by a sketch showing the proposed subdivisions and shall state—
 - (a) the parcel of the land to which the applicant would desire that the conditions as to personal residence or residence of a manager shall attach; and
 - (b) whether the applicant desires that the conditions as to development and maintenance of development expressed or implied in the original lease shall attach to one parcel only, and if so to which parcel, or to two or more parcels, and if so, in what proportions.

46. (1) If the Governor shall approve the proposed subdivision, he may authorise the Land Officer to accept the surrender of the original lease and to grant new leases of the land in such parcels as he may have approved.

(2) Every such new lease shall be granted for a term equal to the unexpired period of the term of the surrendered lease, and shall be subject to the same covenants and conditions as the surrendered lease except that—

- (a) the covenants implied by virtue of section 39 or 40 may be excepted from all but one of such leases;
- (b) in the lease from which the covenants implied by virtue of section 39 or 40 are not excepted, such covenants may be varied so as to impose a continuance of the obligations imposed by virtue of the said covenants under the original lease;
- (c) the covenants implied by virtue of section 43 may be varied, provided that the total development required under the combined new leases shall not be less than the development which was required under the original lease; and
- (d) the rent reserved in each lease shall be at the rate prescribed in section 36 of this Ordinance, provided that for so period of the lease shall the annual rent reserved in respect of any parcel be less than five rupees.

(3) All costs and expenses of and in connection with the surrender of the lease and the granting of new leases shall be paid by the person making application under section 45.

shall be implied in every lease under this part covenants by the lessee not to divide the land leased and a portion thereof

45. (1) If a lessee of land leased under this Part is desirous of dividing the land comprised in the lease and assigning any portion thereof, application shall be made to the Governor through the Land Officer to accept a surrender of the lease of such land and to issue leases of the same in parcels. Provided that such application shall be entertained unless the whole of the purchase price in respect of such lease shall have been paid.

46. (1) If the Governor shall approve the proposed subdivision, he may authorise the Land Officer to accept the surrender of the original lease and to grant new leases of the land in such parcels as he may have approved.

(2) Every such new lease shall be granted for a term equal to the unexpired period of the term of the surrendered lease, and shall be subject to the same covenants and conditions as the surrendered lease except that—

(a) the covenants implied by virtue of section 39 or 40 may be excepted from all but one of such leases;

(3) All costs and expenses of and in connection with the surrender of the lease and the granting of new leases shall be paid by the person making application under section 45.

17. Whenever any lease of an area of more than 200 acres shall have been surrendered and new leases shall have been granted in respect of parcels of land the rights reserved to the Governor under section 30 in respect of parcels of more than 200 acres may be exercised by the Governor in respect of any such parcel whether or not the area of such parcel shall be less than 200 acres.

PART V

DISPOSAL OF LAND FOR SPECIAL PURPOSES

(1) Leases and licences for special purposes.

48. Every application for a lease or licence of or relating to Crown Land for any special purpose shall be made in writing in the form prescribed and shall give such particulars as may be required by rules under this Ordinance.

If any person shall make a false statement in such application with regard to any of the particulars required as aforesaid he shall forfeit all money paid by him in respect of the lease or licence applied for.

49. Save as in this Part or in any Rules under this Ordinance otherwise provided, the Land Officer shall not entertain any application under this Part without the sanction of the Governor first obtained.

50. The rent to be reserved under any lease or licence under this Part and the covenants and conditions of the lease or licence shall be as may be prescribed by rules under this Ordinance or as may be determined by the Governor.

51. The Land Officer may, with the approval of the Governor, cause any licence under this Part to be sold by auction.

The provisions of sections 19 to 23 (both inclusive) of this Ordinance shall, so far as applicable, apply to every sale by auction under this Part.

52. Except where expressly varied or excepted, there shall, in every lease under this Ordinance, be implied in every lease under this Part the following provisions as to the lessee—

- (a) Not to assign subject or otherwise part with the possession of the land leased or any part thereof, without the sanction in writing of the Governor;
- (b) Not to use the land leased for any purpose other than the purpose or purposes specified in the lease.

(2) Licences for temporary occupation of small areas.

53. (1) Licences to occupy Crown Land for temporary purposes and to erect thereon a hut or huts or other temporary erection may be granted by the Land Officer.

(2) A licence under this section shall not permit the occupation of more than 10 acres of land.

(3) Unless it is expressly provided otherwise, a licence under this section shall continue for one year and then forward until the expiration of any three months' notice in writing given by the licensee that such notice to quit may be served upon the licensee at any time after the expiration of nine months from the date of the licence.

(4) The rent payable under any licence under this section shall be payable monthly or at such other period as the licensee shall provide.

(5) The benefit of a licence under this section may, with the consent of the Land Officer, be transferred by the licensee, and such transfer and the consent thereto shall be endorsed on the licence.

54. The occupant of any Crown Land under a licence under the preceding section may remove any hut or other building erected by him during his occupation of the land at any time before the licence expires.

55. If the rent payable under any licence granted under section 53 is unpaid for one month after it became due, or if any tax or taxes imposed upon the land, or upon the huts erected on the land, or upon the licensee are unpaid for two months after they became due, or if the occupant of such land fails to keep the land in a reasonably clean condition the Land Officer may declare the licence to be forfeited.

PART VI.

RESERVATION OF LAND FOR THE USE OF NATIVE TRIBES.

56. The Governor in Council shall, either on general or particular application, and whether the same has been surveyed or not reserved for the use of any native tribe, determine under this Ordinance any Crown Land which in his opinion is required for the use or support of the members of the native tribe to which the land is reserved.

57. Notice of every such reservation shall be published in the Gazette, and as it respects any reserved lands so reserved shall not be of any effect unless so published.

58. The Governor in Council may at any time by notice in writing to the persons interested therein, rescind or vary any reservation made under this Ordinance, and so reserve or dedicate the land so reserved, except such reservation as regards the whole or part of any land which has been reserved, and the reservation of which has been rescinded or varied, shall not be published unless the approval of the Secretary of State has been first obtained.

59. The Governor in Council may at any time by Proclamation in the Gazette exclude from lands reserved under section 56 any portion thereof required for any of the following purposes:

1. For or in connection with mining purposes.
2. For public roads.
3. For public reservoirs, aqueducts, canals or water courses.
4. For quays, wharves or landing places.
5. For railways or tramways, and buildings and works in connection therewith.
6. For public buildings.
7. For trading centres.
8. For any other public purpose that he may think fit, whether or not to any of those mentioned above or not, without paying compensation, except for buildings and crops destroyed or damaged.

60. Whenever any land which shall have been reserved for the use of the members of any native tribe shall have been surveyed, the Governor may grant and dedicate to the use of the members of such tribe the whole or such part of the land so reserved as he shall be satisfied is required for the use and support of the members of such tribe. Provided that not less than three months before any lands are dedicated under the provisions of this section papers relating to the proposed dedication shall be placed before the Legislative Council.

61. Whenever any lands shall be reserved or dedicated to the use and support of the members of any native tribe every sale lease or mortgage of any land within the area so reserved or dedicated and every document or agreement purporting to grant any interest in or to create any charge upon such land made or granted whilst the land is so reserved or dedicated, to or in favour of any person other than a member of such tribe shall be void unless the same shall have been made and granted with the consent of the Governor in Council, such consent to be certified in writing.

62. The provisions of section 59 of this Ordinance shall extend and apply to lands dedicated under section 60 in like manner as to lands reserved under section 56.

63. The Governor may make rules enforceable by penalties not exceeding three hundred rupees for the management and control of any land reserved or dedicated to the use of the members of a native tribe.

64. (1) Whenever after any land shall have been dedicated under section 60 it shall appear to the Governor that by reason of the decrease in the number of the members of the tribe for whose use the land shall have been dedicated a part of the land so dedicated is no longer required for the use and support of the members of such tribe, he may direct such persons as he may deem fit, to report, after full investigation, on all matters which should be taken into consideration in determining the question as to whether any portion of the land dedicated is no longer required for the purposes aforesaid.

- (2) If on the receipt of such report the Governor in Council is satisfied that a portion of the lands dedicated is no longer required for the use and support of the members of the tribe he may by Proclamation in the Gazette rescind the grant and dedication in respect of such portion of the land as is no longer required for the purposes aforesaid. Provided, however, that such Proclamation shall not be published unless the consent of the Legislative Council and the approval of the Secretary of State shall have been first obtained.
- (3) Any land the dedication of which has been rescinded as aforesaid may be sold, leased or otherwise disposed of under this Ordinance.

FART VII

GENERAL PROVISIONS RELATING TO LEASES, LICENCES AND EJECTMENT

(1) Implied covenants and conditions.

65. Except as otherwise provided there shall in every lease under this Ordinance be implied by virtue of this Ordinance covenants and conditions to the effect that

- (a) That he has full power to grant the lease;
 (b) That the lessee, paying the rent and fulfilling the conditions therein contained shall quietly hold and enjoy the premises without lawful interruption by the lessor or any person claiming under him, except so far as the lessor or any person claiming under him in the Protectorate may permit.

66. In every lease and licence under this Ordinance there shall, in addition to the covenants and conditions implied by the Ordinance, be implied covenants and conditions by the lessee or licensee to the effect that

- (a) That he will pay the rent and royalties thereon in accordance with the time and in the manner therein provided;
 (b) That he will pay such taxes, rates, charges, duties, assessments, or outgoings of whatever description as may be imposed, charged or assessed upon the land or the buildings thereon or upon the lessor or grantor, or lessee or licensee in respect thereof.

67. Save as in this Ordinance otherwise provided, and in the absence of special provisions to the contrary in any lease or licence under this Ordinance, buildings on Crown Lands leased or occupied under a licence whether erected by the lessee or licensee or not, shall, on the determination of the lease or licence, pass to His Majesty without payment of compensation. Provided, however, that in the absence of any special provision to the contrary in the lease when the land is leased by the Crown for a term not exceeding thirty years the lessee shall be at liberty within one month of the termination (otherwise than by forfeiture) of such lease to remove any buildings erected by him on the land leased during the currency of such lease, unless the Governor shall elect to purchase such buildings. In the event of the Governor and the lessee not agreeing as to the purchase price of such buildings the same shall be determined by arbitration.

68. (1) Every covenant or condition whether expressed or implied in a lease or licence under this Ordinance which is binding on a lessee or licensee shall, unless otherwise expressly provided in the lease or licence, be binding upon all persons claiming an interest in the land the subject of the lease or licence and whose title is derived through or under the lease or licence.

- (2) Every minor who becomes a lessee or licensee under this Ordinance shall be in the same position with regard to his liability and obligations under or in respect of his lease or licence as though he were of full age.

(2) Rent, Royalties and other payments.

69. The rent, royalties, and payments reserved under any lease or licence shall be a debt to the Crown and shall be paid by the lessee or licensee at the office of the Land Officer or at such other place as may be prescribed.

70. If the rent or any principal instalment, royalty or other payment payable under any agreement lease or licence under this Ordinance or under any Ordinance repealed by this Ordinance shall at any time be unpaid for a space of 30 days after the same became due, and the Land Officer shall have served a notice upon the person in default demanding payment, the person in default shall pay for such notice a fee of five rupees and such fee shall be recoverable by the Land Officer by action in his own name in any Court of competent jurisdiction.

71. If any rent, principal, instalment, royalty or other payment payable under any agreement lease or licence under this Ordinance or under any Ordinance repealed by this Ordinance shall be in arrear, the Land Officer will not prejudice to his right to recover in any other way, may sue for the same together with any fee which may be payable under the last preceding section in any Court of competent jurisdiction.

3. Forfeiture for breach of covenant or condition.

72. If the rent or royalties or any part thereof payable under a lease under this Ordinance shall at any time be unpaid for a space of 21 days after the same has become due, or if there shall be any breach of the lessor's covenants, whether express or implied by virtue of this Ordinance, the Land Officer may serve a notice upon the lessee specifying the rent or royalties in arrear or the covenant of which a breach has been committed, and at the expiration of one month from the service of the notice may commence an action in the High Court for the recovery of the premises, and, on proof of the facts, the High Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and the Land Officer may re-enter upon the land.

In exercising the power of granting relief against forfeiture under this section the Court shall be guided by the principles of English law and the doctrines of equity.

73. Where other provisions are made in this Ordinance, if the rent or any part thereof payable under a licence issued under this Ordinance shall at any time be unpaid for a space of 21 days after the same has become due or if the licensee shall fail to comply with, or shall commit any breach of, the conditions, whether express or implied, of his licence the Land Officer may cause an application to be made to a Magistrate of a Subordinate Court of the First Class within whose local jurisdiction the land the subject of the licence is situate, to declare the licence forfeited.

(2) Upon receipt of such application together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed the Magistrate shall cause to be served upon the licensee a copy of such statement together with a notice of the date, not being less than fourteen days from the date of such notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which such hearing is adjourned it shall be proved to the satisfaction of the Magistrate that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the licence, he shall, subject to such relief against forfeiture for non-payment of rent as to him may seem just, declare the licence forfeited.

74. No forfeiture shall operate to extinguish any debt to the Crown in respect of any rent, royalty or other payment to be made by a lessee or licensee under a lease or licence forfeited.

75. The acceptance by or on behalf of the Crown of any purchase money in respect of any rent or other payment under any lease or licence shall not be held to operate as a waiver by the Crown of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale lease or licence or respecting Crown Land whether the sale lease or licence be under this Ordinance or under any other Ordinance relating to the disposal of Crown Land.

PART VIII.

TRANSFER OF AND DEALINGS IN LAND SUBJECT TO GOVERNOR'S VETO.

74. This Part shall apply to:—

- (a) All lands sold or leased or otherwise disposed of under this Ordinance and
- (b) All lands sold or granted under the Crown Lands Ordinance, 1902 or the East Africa Lands Regulations 1897.

75. Whenever any land to which this Part applies is sold, transferred, mortgaged or leased whether by or under the orders of a Court or otherwise, however it shall be the duty of the purchaser, transferee, mortgagee or lessee to notify the Land Officer of the transactions within one month of the completion thereof and to furnish the Land Officer in the form and manner prescribed with full particulars of the nature of the transaction, of the lands affected, and as to the parties to the transaction or interest therein.

76. Any person who being required by the provisions of the last preceding section to give the notice aforesaid and to furnish the particulars required, shall if he shall without lawful excuse fail to give the notice and furnish the particulars within the time prescribed, be liable to a fine not exceeding 1,500 rupees, or if he shall in furnishing the particulars aforesaid make any statement which he knows to be false or if he wilfully withholds any information which he is required to furnish, be liable to a fine not exceeding 3,000 rupees and to imprisonment of either description for a term not exceeding one year. Provided, however no proceedings shall be taken under this section except with the consent of the Governor in Council.

77. (1) It shall be lawful for the Governor in Council to veto any sale, transfer, mortgage or lease of Crown Land to which this Part applies, provided that the consent of the Governor to such sale, transfer, mortgage or lease has not previously been given and provided further that, whenever notice of such sale, transfer, mortgage or lease has been given and the required particulars furnished as in this Part provided, the right of veto shall not be exercised except within three months of the receipt by the Land Officer of the notice and particulars of the transaction.

(2) Whenever the Governor in Council shall exercise the right of veto in respect of any sale, transfer, mortgage or lease, notice that such right has been exercised shall be published in the "Gazette," and from the date of such publication the sale, transfer, mortgage or lease in respect of which such veto has been exercised shall be null and void.

(3) The Principal Registrar shall cancel or cause to be cancelled the registration of every document evidencing or purporting to evidence any transaction in respect of which the veto has been exercised under this section.

78. The Governor may make Rules exempting lessees for short terms, subject to such conditions as may be prescribed, from the obligations under section 74 to notify such leases and the particulars thereof.

PART IX.

RESERVATIONS.

(1) Water.

79. A conveyance, lease or licence under this Ordinance, shall not unless otherwise expressly provided therein confer any right to the water of any river, lake, or stream, other than to such water as may be required for domestic purposes upon the land sold, leased or occupied under the licence.

(2) Foreshore.

80. A conveyance, lease, or licence under this Ordinance shall not unless otherwise expressly provided therein confer any right to the foreshore.

(3) Minerals.

83. (1) Except as herein or in any conveyance, lease or licence otherwise expressly provided, a conveyance, lease or licence under this Ordinance shall not confer any right to any gold, silver, copper, tin, or metals, ores, mineral products or substances containing metals or any gems or precious stones, or coal or mineral oils in or under or upon any Crown Lands. Reservation of minerals and precious stones.
- (2) There is hereby reserved to the Crown the right to enter upon any land granted, sold, leased or occupied under a licence under this Ordinance and to search for, work and remove any gold, silver, copper, tin, and metals, ores, minerals, mineral products and substances containing metals, and gems and precious stones, coal and mineral oils in or upon any such lands.
- (3) A purchaser or lessee of Crown Lands under this Ordinance or under the Crown Lands Ordinance, 1902 may remove and use any of the minerals mentioned in the second Schedule or which may hereafter be added to such Schedule by a Proclamation in the "Gazette" made by the Governor with the consent of the Secretary of State, and found in or upon the land purchased or leased.

Provided, however, that a lessee or licensee may, in private within a Township or leased for building purposes, he himself exercise the rights by this section conferred except in cases where the Land Officer first obtained and in accordance with conditions as the Land Officer shall impose for the purpose of preventing damage to the surface of the land sold or occupied. The right reserved to the Crown to enter upon any Crown Land sold or leased and to remove therefrom any of the minerals mentioned in the second Schedule, which may hereafter be added to such Schedule, shall not be exercised without the consent of the purchaser or lessee, or of his agent, if required for a public purpose.

Provided that any pit or quarry made in the exercise of this section shall be filled up, fenced or secured by and at the expense of the Government.

- (4) A purchaser or lessee of Crown land under this Ordinance may, subject to the provisions of this sub-section, without the payment of a royalty remove any of the minerals mentioned in the third Schedule hereto or any mineral which may hereafter be added to such Schedule by a Proclamation made by the Governor in the "Gazette," which may be found upon the land sold or leased provided that such minerals shall be removed in such quantities only as may be required for use on such land and shall be used for the purposes of the farm on such land only. Provided, however, that the right conferred by this sub-section shall not apply to any such minerals within any area included within any claim under the mining laws or which is the subject of a lease granted for the mining or working of such mineral.
84. A right reserved to the Crown under the preceding section may be exercised by any person or persons authorised by the Governor or by or under any Ordinance or law relating to mines or minerals. Delegation of rights reserved to Crown.

(4) Roads Thoroughfares and Outspans.

85. All proclaimed or reserved roads thoroughfares and outspans being or existing on any land sold or leased under this Ordinance or under the Crown Lands Ordinance, 1902, shall remain free and uninterrupted unless the same be closed or altered by the order of the Governor or by competent authority. Surrender of paths, etc.

86. Every purchaser, lessee, or licensee of Crown Land under this Ordinance or the Crown Lands Ordinance, 1902, shall, if there is no direct access to the land held by him by means of a reserved or proclaimed road, be entitled to a cart road of access and also to free ingress and egress thereby to and from the land held or occupied by him to a reserved or proclaimed road through and over any Crown Lands, whether under lease or licence or not, such road shall not interfere with any buildings, garden or stock yard and shall in every case follow Right of access to public roads.

such a direction and be so marked as to occasion as little damage or inconvenience as possible to the lessee or occupier of the land traversed as may be possible. In the case of any dispute as to the direction and marking of such roads or as to the persons who shall be responsible as to the upkeep of the same, any party to such dispute may refer the matter to the Land Officer whose decision thereon shall be final and binding on all parties to such dispute. The Land Officer shall have power to close any such road if in his opinion the road is unnecessary.

In the event of any land traversed by such road being sold, the road shall be deemed to be reserved without any expressed reservation in the conveyance.

(3) Resumption of land for public purposes.

The Governor may at any time enter upon any land sold, leased or occupied under a licence under this Ordinance and there set up poles and carry electric lines across such land and may lay sewers, water-pipes or electric lines thereon, without paying compensation, but making good all damage.

The Governor may at any time enter upon any land sold, leased or occupied under this Ordinance and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream, and may construct and maintain dams or divert any river or stream, without paying compensation except for buildings and crops destroyed or damaged.

When any land sold or leased under this Ordinance exceeds one acre and is resumed under a licence the Governor may at any time enter upon such land and resume any lands for roads, railways, tramways, canals, drains, ditches and outpans, without making compensation for the land but compensation shall be payable for buildings and crops destroyed or damaged. Compensation shall be payable for buildings and crops destroyed or damaged on any such land always that in the event of a larger proportion than 4 per cent of the total area of any land sold or leased under this Ordinance being taken up for any such public purposes the same shall be paid to the purchaser or lessee, as the case may be, in compensation for the land taken in excess of such proportion, but such compensation shall not exceed the value of the land taken in excess of the said proportion.

When any land sold or leased under this Ordinance is less than 200 acres and is resumed under a licence the Governor may at any time hereafter enter upon such land and resume any land for roads, railways, tramways, canals, water-channels and outpans paying compensation for the land taken.

91. The Governor may at any time hereafter enter upon any land sold, leased or occupied under a licence under this Ordinance and resume possession of land for railway stations, sidings or other public works of whatever nature whether similar to those mentioned or not, paying compensation for the land taken.

- (1) The Governor may by writing under his hand authorise Officers of the Government and contractors, their servants and agents to exercise the powers conferred upon him by sections 87 to 91 (both inclusive) of this Ordinance.
- (2) Whenever under any of the sections in the preceding sub-section mentioned compensation is payable, such compensation shall not, in any case, exceed, in the case of buildings and crops destroyed or damaged, the market value of the buildings or crops and, in the case of land resumed, the market value of such land.
- (3) Resumption of land under this Part may be effected before the compensation (if any) is paid either by actual entry on the land resumed, or by the service of notice of resumption on the purchaser, lessee or licensee.
- (4) Whenever land which has been leased is resumed under this Part the lessee shall be entitled to a proportionate reduction in his rent.

(6) Reservation of lands in occupation of Natives.

- (1) The Governor may grant leases of 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 lessees.

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

PART X.

Surveys Survey Marks and Boundary Marks.

- 94. (1) All surveys of Crown Lands for the purposes of any sale, lease or licence under this Ordinance or under any Ordinance repealed by this Ordinance shall be conducted under the direction of the Director of Surveys.
- (2) Whenever after the date of the coming into operation of this Ordinance any land sold or leased by the Crown whether before or after such date, shall be subdivided by the purchaser or lessee, the land subdivided shall, for the purposes of such subdivision, be surveyed by a Government or Licensed Surveyor, and no document which purports to convey or assign a portion of land sold as aforesaid or to assign the interests of a lessee in a portion of land leased as aforesaid shall be registered or accepted for registration under this Ordinance except there be attached thereto a plan approved and signed by the Director of Surveys for the purposes of such document.
- (3) Every Surveyor executing a survey for the purpose of a subdivision of land sold or leased by the Crown or Government shall send to the Director of Surveys all plans fieldnotes and computations, together with a written description of all boundaries. All such plans field notes and computations shall be deposited with and be the property of the Survey Department.

95. The Director of Surveys or any person authorised, either specially or generally, by him or his deputy,

- (1) May enter, from time to time, upon any Crown Land or private land whatever, with such assistants as he thinks fit for the purpose of making any survey which he is authorised to make; and may affix or set up thereon trigonometrical stations, survey pegs, marks, or poles; or for the purpose of inspecting any such survey or station, or of altering, repairing, moving or removing any trigonometrical station, survey peg, mark or pole; and
- (2) May do all things necessary for such survey, or for any inspecting, repair or alteration thereof.

Before entering the Director of Surveys or person authorised, as aforesaid, shall, when practicable, give reasonable notice to the owner or occupier of the land of the intention to enter thereon.

Compensation shall be paid by the Government to the owner of any crops or trees cut or damaged in the exercise of any power granted by this section.

96. If any person not duly authorised shall take away, or be found in possession of, or remove, destroy, displace, or alter the position of, any trigonometrical station, boundary or survey mark, front or ranging peg, post, block, or stone which shall be fixed, placed, or set up for the purpose of any survey authorised by the Government or of any local authority or of any survey carried on for the purposes of this Ordinance, or shall wilfully deface, obliterate, mutilate, break, or destroy any such station, mark, peg, post, block, or stone, every person so offending shall be liable to a fine not exceeding one thousand rupees or to two months' imprisonment of either description, or to both.

97. If any person shall wilfully obstruct or hinder any authorised surveyor or any servant or assistant of his, duly authorised by him, in the execution of his duty in or about ascertaining or marking out any boundary or survey-lines or in or about the fixing, placing, restoring, repairing, or setting up any trigonometrical station, boundary or survey mark, ranging-peg, post, block, or stone for the

Penalty for marking survey marks

Penalty for obstructing surveyors

purposes aforesaid, or shall in any way resist such surveyor or other person as aforesaid in the performance of his duty as aforesaid, every such person shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description not exceeding one month or to both.

98. (1) All permanent marks erected or placed for the purpose of denoting the boundaries of land sold granted or leased or the subject of a licence under this Ordinance shall be shown on the plan to be attached to the grant, conveyance, lease or licence.
- (2) It shall be the duty of every grantee, purchaser, lessee or licensee to ascertain within 60 days of the receipt of his grant, conveyance, lease or licence with a plan attached, that the boundary marks shown on the plan are in place as shown on the plan.
- (3) If a grantee, purchaser, lessee or licensee shall within 60 days of the receipt of his grant, conveyance, lease or licence with a plan attached notify the Land Officer in writing that he is unable to find the boundary marks shown on the plan, or shall deposit with the Land Officer the sum of one rupee, the Land Officer shall notify the Director of Surveys of the facts of the matter.
- (4) If as a result of the enquiry the Director of Surveys shall find that the boundary marks are not in place as shown on the plan he shall cause boundary marks to be erected or placed in accordance with the plan annexed and correct plan to be prepared, as the case may require, and in such case the sum deposited shall be refunded to the grantee, purchaser, lessee or licensee concerned.
- (5) If as a result of the enquiry the Director of Surveys shall find that the boundary marks are in place as shown on the plan, the sum deposited or such portion thereof as the Land Officer may determine shall be paid to the Government.
- Whenever the Director of Surveys shall cause a new or corrected plan of this section to be prepared, a new and correct plan of the same shall be attached to the grant, conveyance, lease or licence, and it shall be the duty of the grantee, purchaser, lessee or licensee to produce the grant, conveyance, lease or licence for the purpose, and such plan shall for all purposes be deemed to be the plan referred to in the body of the grant, conveyance, lease or licence.

99. Every purchaser, grantee, lessee or licensee of Crown Land shall maintain the marks erected for the purpose of denoting the boundaries of land sold granted or leased to him or occupied by him. Every purchaser, grantee, lessee or licensee who shall fail to maintain such marks shall be liable to a fine not exceeding seventy five rupees in respect of every such default, and shall also be liable to pay the expenses of and in connection with the re-marking of the same. Provided that where one mark is common to the land of two or more persons whether purchasers, grantees, lessees or licensees, each shall be severally liable to the aforesaid fine, but the expenses of and in connection with remarking shall be divided between them.

100. The land on which any trigonometrical station is situate which shall comprise all land within 20 feet of the centre mark of such station, together with a right of way to or from the same, shall, for the purposes of survey, and notwithstanding any alienation thereof, be deemed to be Crown Land and to have been and to be excepted out of such alienation.

PART XI

REGISTRATION OF TRANSACTIONS RELATING TO CROWN LANDS.

(1) Crown Lands Registry.

101. In this Part the expression "land registered under this Part" shall mean land in respect of which the grant, conveyance, lease or licence from the Crown or Government is required by the provisions of this Part to be registered in the Crown Lands Registration Office.

102. Nothing in this Part shall apply to or effect any lease or licence granted under the Mining Ordinance, 1912, or under any Ordinance repealed by such Ordinance or any transfer of, or other transactions in relation to, such lease or licence or any right thereunder.

103. (1) There shall be established at Nairobi an office to be known as the **Crown Lands Registration Office**.
 (2) The Governor shall appoint an officer to be known as the **Principal Registrar of Crown Lands**, with such assistant Registrars as may from time to time be required.

Crown Lands Registration Office to be established and Registrar appointed.

(2) Registration of Crown grants leases and licences.

104. The Land Officer shall on the coming into operation of this Ordinance deliver to the Principal Registrar for registration as hereinafter directed the original duplicate or counterpart of every subsisting grant, conveyance, lease or licence of or in respect to Crown Land made or granted by or on behalf of His Majesty or the Government before such date.

Land Officer to deliver to Registrar the original duplicate or counterpart of every subsisting grant, conveyance, lease or licence of or in respect to Crown Land made or granted by or on behalf of His Majesty or the Government before such date.

Every grant, conveyance, lease or licence of or in respect to Crown Land made or granted by or on behalf of His Majesty or the Government after the commencement of this Ordinance shall be in duplicate. The duplicates shall be delivered by the Land Officer to the Principal Registrar who shall on payment from the grantee, leaseholder, lessor or licensee the prescribed fee register the same in the manner hereinafter directed, and shall thereafter deliver one of such duplicates to the Land Officer for issue with a memorandum of registration in duplicate thereon.

Registration of Crown grants, leases and licences after the commencement of this Ordinance.

105. The Principal Registrar shall keep a book to be called the "Register of Crown Lands" and shall bind up therein every document delivered to him under section 104 and also a duplicate of every grant, conveyance, lease or licence delivered to him under section 105. The said book and the Principal Registrar shall cause to be recorded therein the particulars of every document, dealing with the matters specified in this Ordinance, which are to be registered or entered in the Register under the provisions of this Ordinance, and of each grant, conveyance, lease or licence.

Crown Lands Register to be kept and bound up therein every document delivered to him under section 104 and also a duplicate of every grant, conveyance, lease or licence delivered to him under section 105. The said book and the Principal Registrar shall cause to be recorded therein the particulars of every document, dealing with the matters specified in this Ordinance, which are to be registered or entered in the Register under the provisions of this Ordinance, and of each grant, conveyance, lease or licence.

107. The Principal Registrar shall as soon as conveniently may be after receipt from the Land Officer of an instrument under section 104 cause search to be made in the registers kept under the East Africa Registration Regulations 1901 for any registered transaction relating to the land the subject of such document and make abstracts of every such registered transaction subsisting or appearing to be subsisting as such date and enter such abstracts in the folio of the register of Crown Lands in which the aforesaid document is registered.

Principal Registrar to cause search to be made in the registers kept under the East Africa Registration Regulations 1901 for any registered transaction relating to the land the subject of such document and make abstracts of every such registered transaction subsisting or appearing to be subsisting as such date and enter such abstracts in the folio of the register of Crown Lands in which the aforesaid document is registered.

(3) Registration of transactions affecting Crown Lands.

108. All transactions entered into after the commencement of this Ordinance, affecting, or purporting to confer, declare, limit or extinguish any right, title, or interest, whether vested or contingent, in or over, land registered under this Part (other than a letting for one year only or for any term not exceeding one year) and all mutations of title by succession or otherwise shall be registered under this Part.

Transactions affecting registered land and mutations of title to be registered.

109. No evidence shall be receivable in any civil Court:

- (1) of the sale lease or other transfer *inter vivos* effected after the commencement of this Ordinance of land registered under this Part, unless such sale lease or other transfer is effected by an instrument in writing and such instrument has been registered under this Part.
- (2) of a lien mortgage or charge (other than such as may arise or be created in favour of the Crown or the Government under or by virtue of any Ordinance or other enactment) of or upon such land created after the commencement of this Ordinance unless the mortgage or charge is created by an instrument in writing, and the instrument has been registered under this Part.
- (3) of a sale or other transfer *inter vivos* effected after the commencement of this Ordinance of a registered lien mortgage or charge, unless such sale or other transfer is effected by an instrument in writing and such instrument has been registered under this Part.

Transfers lease mortgages etc. to be effected by registered instrument in writing.

Provided, however, that nothing hereinbefore contained shall apply to an equitable mortgage by deposit of documents of title provided that a memorandum of such equitable mortgage shall have been registered in the register. On the discharge of such equitable mortgage a memorandum of such discharge shall be registered in the register. Every memorandum shall be transmitted to the registry in duplicate and shall be in such form and there shall be paid on the registration thereof such fee as may be prescribed.

Provision as to equitable mortgage.

110. Every document executed after the commencement of this Ordinance and every will of a person dying after the commencement of this Ordinance, creating, declaring, assigning, limiting or extinguishing any right, title, or interest to or in or over land registered under this Part, shall, unless registered under this Part, be deemed void against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent instrument which has been duly registered.

Provision as to wills executed after the commencement of this Ordinance.

Provided that:

- (1) Fraud or collusion in obtaining such last mentioned instrument, or in securing such prior registration, shall defeat the priority of the person claiming thereunder.
- (2) Priority shall not be lost merely in consequence of the person claiming under the registration having been adhered with actual or constructive notice of the document first registered, except in the case of actual fraud.
- (3) Nothing herein contained shall be deemed to give any greater effect or different construction to any document registered in pursuance thereof, save the priority hereby conferred on it.
- (4) Such priority shall not be affected by the subsequent registration of any document executed before the document first registered.
- (5) Every will of a testator dying after the commencement of this Ordinance shall, so far as regards any land registered under this Part to be affected thereby, take effect as against other documents affecting the same land from the date of its registration. Provided that every such will shall take effect from the date of the death of the testator if registered.
- (6) In the case of a person dying within the Protectorate, within three months next after such death.
- (7) In the case of a person dying elsewhere than in the Protectorate, within the twelve months next after such death.

111. Nothing in the last two preceding sections shall apply to:

- (a) any composition deed.
 - (b) any document relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of land registered under this Part; or
 - (c) any debenture issued by such company, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in land registered under this Part, except in so far as it entitles the holder to the security afforded by a registered instrument, whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property, or any interest therein, to trustees upon trust for the benefit of the holders of such debentures; or any enforcement upon or transfer of any debenture issued by any such company.
- any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in land registered under this Part, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest.

Documents exempt from provisions of sections 109 and 110.

a lease for one year only or for any term not exceeding one year.

112. Every document executed before the commencement of this Ordinance, creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in or over land registered under this Part, which shall not before the commencement of this Ordinance have been registered under the East Africa

Certain documents executed before the commencement of this Ordinance to be registered in the Registry.

Registration Regulations 1961, shall forthwith be registered under this Part by the person in whose favour the instrument is made or his successor in title. Provided, however, that if the document shall not be presented for registration within the times prescribed for the registration of such document under the aforesaid Regulations the person presenting the same for registration shall be liable to the payment of the fines prescribed in section 110 of the said Regulations and the Principal Registrar may impose such fine in his discretion, but delay registration until the same is paid.

2. Every such document as aforesaid if not registered within the months after the commencement of the Ordinance shall be void against all parties claiming an adverse interest therein by virtue of any subsequent document which shall have been duly registered, subject however to the like provisions as aforesaid in section 110 of this Ordinance.

113. G. Any person desirous of registering a document as aforesaid under this Part shall personally or by his agent or agent in law send the same together with a duplicate or corrected copy thereof and of any plan or map and the prescribed fee to the Registrar or the Registrar's Officer.

2. Upon receipt of such document and duplicate or corrected copy as aforesaid for a registration fee as aforesaid, the Registrar or Registrar's Officer shall, after making and consecutively recording the same, enter the same in a book to be kept in the prescribed form and which shall be called "The Day Book" and he shall forthwith advise the person or persons of this Part, who registered the document, of the date on which the same shall be registered.

3. Upon such registration of a document shall, save as hereinafter provided, be deemed to be duly registered at the time of its entry in the day book.

114. Any person who shall acquire an estate or interest in any land registered under this Part on the death, bankruptcy, or probate of any person, or under a certificate or order of, or on the sale by, or in pursuance of the registry a memorandum of the prescribed form shall be filed together with the prescribed fee for such registration.

115. Any person in whose favour any judgment, decree or order has been pronounced granted or made relating to or affecting any land registered under this Part may transmit to the registry a certified copy of such judgment, decree or order together with the prescribed fee for registration.

116. A registrar may refuse to register any document presented for registration under section 112 of the title of the person creating the same assigning limiting or extinguishing the right title or interest not extended by a registered document or memorandum or by some act in the register.

117. Powers of Attorney relating to or affecting land registered under this Part and revocations of such powers shall be registered in such manner as may be prescribed by rules under this Ordinance, and a registrar may refuse to register any document executed by an attorney whose authority has not been duly registered.

118. (1) Every registrar shall be entitled, if he sees fit so to do, to require any person applying for the registration of any document to prove its due execution, the identity of the property affected by the document or of the parties to it, and in case of a copy, other than the copy of a judgment decree or order of a Court, the loss or destruction of the original. And where he may have reason to apprehend that a fraud has been or is about to be committed on any person, he shall give notice to such person of the intended registration in order to prevent the same being effected to his prejudice.

(2) If the registrar is satisfied upon enquiry that the document was duly made and, in the case of an authenticated copy, of the loss or destruction of the original, and as to the identity of the property or the parties, and that there is no reason to believe that a fraud has been or is about to be committed, he shall subject to the other provisions of this Part and the rules under this Ordinance register the document, and the registration shall take effect from the time of the entry in the day book.

- (3) If he is not satisfied he shall refuse to register the document, and shall return the same unregistered, together with a statement of his reasons in writing and shall record his refusal in the day book.

119. (1) A document other than a judgment decree or order of a Court, to which there is attached a map or plan which is not signed by a Government or Licensed Surveyor, and countersigned by the Director of Surveys, shall not be accepted for registration.

Plans attached to documents presented for registration to be signed by a Government or Licensed Surveyor, and countersigned by the Director of Surveys.

- (2) Whenever a registrar shall consider that in regard to any document presented for registration a description of the boundaries of any land, sufficiently clear and accurate to prevent confusion cannot be obtained unless a plan is attached to the document he may refuse to register the document until a plan of the land the subject of the document signed by a Government or Licensed Surveyor, and countersigned by the Director of Surveys is attached to the document and presented for registration in the usual manner.

Registrar may require a plan to be attached to a document presented for registration.

And provided, however, in the case of such refusal if the document is presented for registration together with a plan to the satisfaction of the registrar within such time as the registrar shall consider reasonable under the circumstances of the case the registration of the document shall take effect as from the date when it was first physically presented for registration.

And provided further in appeal shall be preferred against the Registrar under this sub-section by the Principal Registrar, and the Principal Registrar may reverse or alter such order, and if the appeal is allowed the Registrar shall direct the document to be registered, the registrar shall obey the same, but if the Principal Registrar confirms the order of the registrar his decision thereon shall be final.

Every document produced to a registrar shall contain or be accompanied by a description of the property affected thereby, its boundaries, extent and situation, and either a reference to the volume and folio of the register book in which such property has been previously registered, or a reference to the grant conveyance lease or licence from the Crown or Government relating to the land affected by the transaction.

A description of the property affected by the transaction.

- (2) If such property consists of a divided portion of land, the property of the person alienating the same or any interest therein, such portion shall be clearly and accurately defined by its particular boundaries and extent, and accompanied by a plan signed by a Government or Licensed Surveyor and countersigned by the Director of Surveys.

- (3) If such property consists of an undivided share in immovable property, the proportion which the same bears to the entire property shall be stated, and a description of such property shall be given as required by sub-section (1).

121. No document which does not state the particulars required by the preceding section shall be admitted to registration except with the sanction of the Principal Registrar, upon the necessary particulars being supplied by affidavit by the person producing the document for registration, and on such other terms as the Principal Registrar may think expedient.

Document of documents accepted in violation of preceding section.

122. (1) An appeal shall lie against an order refusing to register any document from the registrar to the Principal Registrar, and the Principal Registrar may reverse or alter such order.

Appeal from order refusing registration.

- (2) Any person dissatisfied with the decision of the Principal Registrar on such appeal may, except as otherwise provided in sub-section (2) of section 119 appeal against the same to the High Court within thirty days from the decision being communicated to him. The registrar shall, in terms of the decision of the Principal Registrar or in case of an appeal being taken, of the High Court on appeal, register or refuse to register the same.

123. (1) If the registration of the document be ordered by the Principal Registrar or the High Court to be made on condition of the payment of a fee for registration or other terms, then upon the compliance of the person seeking registration with such condition or terms the registrar shall register such document, and the same shall be deemed to have been registered on the date of such compliance.

(2) If the Principal Registrar or the High Court in appeal shall decide that the document should have been registered when originally tendered to the registrar, the document shall, upon registration, be deemed to have been registered at the time of its entry in the day book.

124. If any document presented for registration is not written in English, the registrar shall refuse to register the same unless it is accompanied by a true translation in English, certified to the satisfaction of the registrar.

125. (1) It shall be competent to any person to lodge with the registrar a caveat in the prescribed form, to prevent the registration of any document or memorandum affecting any land registered under this Part, and such caveat shall state a postal address within the Protectorate of the person lodging the same, and, upon payment of the prescribed fee and upon the Registrar being satisfied that the person lodging the caveat has given or is about to give notice of the caveat to any person to whom the Registrar considers that such notice should be given, shall be registered.

(2) On such caveat being registered the party lodging the same shall be entitled to notice of any application for registration of any document or memorandum affecting the land mentioned in the caveat, which notice shall be deemed to have been duly given if posted to the address stated in the caveat.

(3) Where the caveat limits the time of its operation it shall cease to have any force upon the lapse of such time.

(4) No caveat shall be sufficient to prevent a registration applied for unless it be followed up within thirty days after the posting of the notice of application for such registration by an action before some competent Court and notice thereof to the registrar, in which case the registrar shall suspend the registration until the final adjudication of such action, and shall then give effect to such adjudication.

126. Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as may be just; and such compensation shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.

127. No document shall be registered unless the fee prescribed has been paid and, if the document is one which is liable to stamp duty under the provisions of the Indian Stamp Act 1879 or other enactment for the time being in force in the Protectorate, the document is duly and sufficiently stamped.

128. Save as may be otherwise prescribed by rule under this Ordinance, the registrar shall cause a duplicate or copy to be filed of every document or memorandum accepted for registration, and in the case of a document within section 129 also of the translation, and shall also enter an abstract or note of the document or memorandum in such part of the volume of the register as relates to the land affected by such document or memorandum. Every such duplicate or copy shall bear the number of the volume and folium in which the same is registered and the date of registration.

129. The registrar shall, immediately after registration, make and sign an endorsement thereof in the prescribed form on the document or memorandum registered, and the filed duplicate or copy thereof, and deliver the original to the person who presented it for registration, or his agent or representative.

130. The registrar may, upon such evidence as shall appear to him sufficient, subject to any rules under this Ordinance, correct errors and supply omissions in the register or in any entry therein and may call in any outstanding instrument for that purpose.

131. For the purpose of enquiries under this Ordinance, the Principal Registrar and any registrar shall have power to cite and examine witnesses upon oath or affirmation and to call for the production of any document material to the enquiry from the person having custody of the document.

132. Every appeal to the High Court under this Part shall be dealt with and disposed of in such manner as the High Court shall, by rules of Court, prescribe.

133. (1) A copy of any grant conveyance lease or licence from the Crown or Government registered in the registry, certified to be a true copy under the hand of a registrar, shall be admissible in evidence of its contents in all Courts of Justice in the Protectorate.

(2) In the event of the loss or destruction of any document registered under this Part, a copy certified under the hand of a registrar shall be admissible in evidence as to its contents in all Courts of Justice in the Protectorate.

134. Every certified copy of any entry in any register reporting to the Principal Registrar, shall be receivable in evidence in any case, without further proof or observation of thereof unless it is alleged to be a forgery.

135. A registrar or a person acting under his authority shall not be liable to any action, suit or proceeding for or in respect of any matter or act done or omitted to be done under this Ordinance.

136. Subject to such special or special orders as may be given by the Principal Registrar, and in accordance with the provisions of the register books and any book or books which may be prescribed by the Registrar for the transaction of business, the register books shall be open to be searched at any time and at any place by any person to whom the Principal Registrar may issue a certificate or licence in that behalf.

But no person shall be permitted to copy any entry in the register or to take any note or memorandum of any entry therein or to abstract any entry therein or to disclose the date of any entry therein.

137. The Principal Registrar may, by special order, require any person to whom a certificate or licence has been issued in pursuance of the provisions of this Ordinance, to deposit with him a sum of money or to furnish a security of such amount as may be specified in the order, for the purpose of ensuring the payment of any fees which may be payable by him in pursuance of the provisions of this Ordinance.

138. The Principal Registrar may, by special order, require any person to whom a certificate or licence has been issued in pursuance of the provisions of this Ordinance, to deposit with him a sum of money or to furnish a security of such amount as may be specified in the order, for the purpose of ensuring the payment of any fees which may be payable by him in pursuance of the provisions of this Ordinance.

139. The East Africa Registration Regulations, 1901, and the East Africa Registration of Documents Ordinance, 1902, shall not apply to any document registrable under this Part. Provided, however, if any document is registrable both to land registered under this Part and to other land, the document shall be registered under this Ordinance and also under the said Regulations.

PART XII.

MISCELLANEOUS.

(A). Legal Procedure, etc.

140. When any person without right, title or licence, or whose right, title or licence has expired or been forfeited or cancelled, shall be in occupation of Crown Lands, the Land Officer or some person appointed by him in writing may enter a suit in any Court of competent jurisdiction to recover possession thereof. If on the hearing of such suit the defendant does not appear or appears but fails to establish to himself an absolute right or title to the possession of the land, the Court shall order that possession of the land sought to be recovered shall be given by the defendant, either forthwith or on or before such a day as the Court thinks fit to name, and that the defendant do pay the costs or, if it is shown by or on behalf of the plaintiff to the satisfaction of the Court or, if it is shown by or on behalf of the plaintiff to the satisfaction of the Court, that the title under which the defendant claims has expired or been forfeited or cancelled, the Court shall declare such title to be extinguished, and may order that possession of the land sought to be recovered be given by the defendant to the plaintiff, either forthwith or on or before such a day as the Court thinks fit to name, and that the defendant do pay the costs.

140. In any action, suit or proceedings against any person for or in respect of an alleged unlawful occupation, use of, or trespass upon any Crown Land, the burden of proof in question was authorised by the provisions of the Ordinance or of any other Ordinance or law or of any order, regulation or rule made in pursuance thereof, shall lie on the defendant, and in any action, suit or proceeding and in any action by or against the Government in which title to land shall be in issue the averment that any lands in question are Crown Land shall be sufficient without proof of such fact, unless the defendant prove the contrary and all maps, plans, licences, certificates, and copies certified as true under the hand of the Land Officer, Director of Surveys or Deputy Director shall be sufficient evidence of their contents without production of original records, and without the personal attendance of such officers, or proof of their signatures.

141. In any action, suit or proceeding in which the Crown or the Government is a party and in which title to the possession of land within such parts of the Protectorate as are at the date of the coming into operation of this Ordinance, the dominions of the Sultan of Zanzibar or the Sultan of Witul, claimed by the defendant, and in accordance with Ma'omnestan law, or the law of a foreign country, shall not be established, the person claiming such title shall not be entitled to recover the land or any part thereof, but he or some person or persons claiming title to the land from him shall be liable to pay to the Crown or the Government the sum of five hundred and fifty rupees.

142. No action or other remedy by or on behalf of the Crown or the Government for the recovery of any Crown Land shall be barred or affected by any statute, Ordinance or other law in force at the time when the land was first occupied.

143. No action or other remedy by or on behalf of the Crown or the Government for the recovery of any land, or any part thereof, shall be barred or affected by any statute, Ordinance or other law in force at the time when the land was first occupied, or by any licence or agreement made under this Ordinance or under any other law in force at the time when the land was first occupied.

144. No dedication or grant of a right of way shall be presumed or alleged to have been made by the Crown or the Government, or by any person acting on behalf of the Crown or the Government, unless it is established as against the Crown or the Government by reason only of user of the land for a period of not less than six months after the passing of this Ordinance.

145. All actions, suits or proceedings brought on behalf of the Crown or the Government for anything done under this Ordinance shall be commenced within six months after the cause of action shall have arisen, and not afterwards. Notice in writing of such action, and the cause thereof shall be given to the defendant, or to some person at least before the commencement of the action. In every such action the defendant may plead the general issue, and give in evidence at the trial to be had thereon, any matter in evidence at the trial to be had thereon. No plaintiff shall recover in any such action if, tender of sufficient amounts shall have been made before action brought, or if a sufficient sum of money shall have been paid into Court by or on behalf of the defendant after action brought, together with the costs incurred up to that time.

146. A notice served personally on the person to be served or sent by registered letter to his last known address in the Protectorate or published once in the "Gazette" shall be deemed to be good service for the purposes of this Ordinance.

(2) Prohibitions and offences.

147. Every person who shall directly or indirectly offer or propose to accept or receive money or other valuable consideration as an inducement to obtain from bidding or competing as a purchaser or intending purchaser of Crown Land, or of any lease or licence of such land, advertised for sale by public auction, and whether or not the land or the lease or licence shall actually be put up for sale, shall be guilty of an offence, and shall, on conviction thereof, be liable to imprisonment of either description for any period not exceeding twelve months, or to a fine not exceeding three thousand rupees.

148. Every person who shall actually receive money or other valuable consideration for abstaining from bidding for or competing for the purchase of Crown Land or of a lease or licence of such land which shall have been advertised for sale by auction, and whether or not the land or the lease or licence shall actually be put up for sale, shall be guilty of an offence, and shall, on conviction thereof, be liable to imprisonment of either description for any period not exceeding two years or to a fine not exceeding seven thousand five hundred rupees.

140. Whoever in any declaration made or subscribed or used or for any purpose of this Ordinance, shall make any statement which is false and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made used or required, may be punished with imprisonment of either description for a term which may extend to three years, or with a fine not exceeding three thousand rupees, or with both such imprisonment and fine.

141. A purchaser or lessee or licensee shall allow the Governor or any person acting under his directions or in the execution of his duty as an Officer of the Revenue to enter upon the land sold or leased or occupied under a licence.

Any person who shall wilfully prevent or attempt to prevent any such person from entering upon land aforesaid or shall obstruct or hinder such person in the execution of his duty shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding one month or to both.

142. Any person who shall unlawfully occupy Crown land, or any land whatsoever, shall, on conviction, be liable to a fine not exceeding seven hundred and fifty rupees.

143. Save as in any sale lease or licence otherwise expressly provided no person shall dam any river or stream or divert any water from any river or stream or lake or any land sold or leased or occupied under a licence, under this Ordinance or any Ordinance repealed by this Ordinance or on any undivided Crown land except with the consent of the prescribed officer and subject to such conditions as may be prescribed by rules under this Ordinance or in any licence or authority granted under such rules.

Any person who shall, in breach of the provisions of this section, dam any river or stream or divert water from any river stream or lake, shall, on conviction, be liable to a fine not exceeding one thousand five hundred rupees in addition to the expense of removal of the dam or other work erected or done in breach of the provisions of this section, and it shall be lawful for the prescribed officer or any person authorised by him in writing, without any warrant, to forthwith summarily remove such dam or work and prevent such diversion, at the cost of the party erecting the dam or causing the diversion.

144. Whoever shall, by materials of any kind, except by gates approved by the Governor, wilfully obstruct or injure any road street highway or waterway vested in the Crown, so as to hinder the free passage of any person carriage or vessel thereon, shall on conviction, be liable to a fine not exceeding one thousand five hundred rupees, in addition to the expense of removal, and it shall be lawful for any Magistrate, Justice of the Peace, Land Ranger, Police Officer, or person authorised in writing by any Magistrate, without any warrant, to forthwith summarily remove and prevent every such obstruction, at the cost of the party causing the same.

145. No purchaser or lessee of Crown land, and no person occupying Crown land under a licence or agreement to purchase shall impound any stock trespassing upon such land unless the land or the portion thereof trespassed upon was, at the date of the trespass, enclosed with a fence reasonably sufficient to keep out stock.

Provided always that nothing in this section contained shall apply to any trespass knowingly or wilfully caused by the owner or person in charge of stock, or shall be deemed to affect or limit the provisions of the Diseases of Animals Ordinance, 1906, or any Ordinance, Amendment or substituted for such Ordinance or any Rules under any such Ordinance.

146. (1) Travellers shall be allowed to encamp with their servants, animals, waggons and baggage, for a period not exceeding forty-eight hours on any land purchased or leased from the Crown or occupied under a licence under this Ordinance, which is uncultivated, and which is not within a quarter of a mile of a dwelling house, and shall be allowed access with their servants and animals to any river, stream or lake upon the land.

(2) Any person refusing to allow travellers to encamp, or to have access to water under this section, or interfering with travellers who are encamped, or any traveller refusing after request from the owner, lessee or licensee of the land, to depart after the expiration of the forty-eight hours, or interfering in any way with the comfort or convenience of the owner, lessee or licensee of the land, shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand rupees, or to imprisonment of either kind not exceeding two months, or both.

If any purchaser, lessee or licensee under this Ordinance or under the Crown Lands Ordinance, 1902 shall satisfy the Land Officer that by reason of lands having been reserved or resumed by the Crown for outpans or of there being other suitable places for encamping, on or near the land of such purchaser lessee or licensee, it is not necessary that travellers should be permitted to encamp on his land, the Land Officer may exempt such purchaser lessee or licensee from all or any of the obligations imposed on a purchaser, lessee or licensee by this section or by section 14 (d) or section 29 of the Crown Lands Ordinance, 1902, as the case may be.

Provided that such exemption shall not have effect unless and until public notice thereof shall have been given, at the request of the person exempted in such matter as the Land Officer shall determine.

(3) Compensation and Arbitration.

156. All claims for compensation in respect of any matter referred to in this Ordinance or any Ordinance repealed by this Ordinance shall be referred to arbitration if the Land Officer is agreed upon between the parties claiming compensation to be referred to arbitration.

When it is provided or agreed that any matter shall be referred to arbitration then such arbitrators shall be appointed by the Land Officer and an umpire to be appointed by mutual consent of the other party shall fail to appoint an arbitrator or within twelve days after being requested in writing to do so by the other party, then the arbitration appointed by the other party shall alone conduct the arbitration and his award shall be binding on both parties.

The said arbitrators shall within sixty days of the date having been appointed to them within sixty days of the date having been appointed to them the matter so referred shall be decided, and if the arbitrators being unable to agree on the award, such arbitrators shall be appointed by a Judge of the High Court whose award shall be final and binding between the parties.

Every such arbitration shall be carried on in the manner prescribed by the Arbitration Ordinance, 1913, and as to the effect of such last mentioned Ordinance in the same manner as a reference to such arbitration had been made by consent of parties under a written agreement.

(4) Every party shall pay his or its costs of such reference, and any costs incidental to the appointment of an umpire shall be paid equally by the parties to the arbitration.

(4) Power to make Rules.

158. (1) Whenever in any section of this Ordinance the expression prescribed is used in connection with any matter referred to in the context the Governor may in every such case make rules for the purpose of giving effect to the provisions of such section. The Governor shall have power from time to time to make, alter or revoke rules for the purposes of this Ordinance.

- i. For the examination of and for the issue of certificates to surveyors.
- ii. For imposing any reasonable charge for surveys or fees for any document or thing issued or done under the authority of this Ordinance or under any rule thereunder.
- iii. Providing for the mode by which any land for allotment shall be surveyed and boundaries adjusted, marked and maintained.
- iv. For prescribing the form of and the condition and mode of applying for land or for licences and leases to be issued under this Ordinance.
- v. For providing for all proceedings, forms of leases, licences and other instruments, and for the execution of all other matters and things arising under and not inconsistent with this Ordinance and not herein expressly provided for.

- vi For the care, management and protection in every manner of all unoccupied Crown lands.
- vii Prescribing the fees and charges which shall be levied in respect of any matter or thing to be done by a registrar or in the registry and generally for the better carrying out of the purposes of Part II.
- viii For the more fully carrying out the objects and purposes and guarding against evasions and violations of this Ordinance.
- ix For prescribing or regulating any matter or thing in relation to any sale, lease, licence or agreement under the Crown Lands Ordinance, 1902, or anything done or to be done under the said Ordinance which might lawfully have been prescribed or regulated by rules under the said Ordinance.
- (2) Any rules under this Ordinance may provide for their enforcement by penalties not exceeding in any case seven hundred and fifty rupees.
- (3) All rules under this Ordinance shall be signed by the Governor and upon being published in the "Gazette" shall be in full force and disallowance by His Majesty be void in law, as if they were enacted in this Ordinance, and shall be judicially noted; and all such rules shall be laid before the Legislative Council within fourteen days after the making thereof, if the Council be then sitting, and if the Council be not then sitting as soon as conveniently may be after the commencement of the next session of the Council.

First Schedule.

Nature and value of improvements to be effected and maintained on land leased for agricultural purposes.

Minimum value of improvements to be effected within first 5 years of the lease	Nature of improvement.	Value of additional improvement to be effected within first five years of the lease	Nature of additional improvements.
10 rupees per acre, subject to a minimum of 300 rupees.	Permanent.	5 rupees per acre, subject to a minimum of 150 rupees.	Permanent.
Rs. 3000	Permanent.	Rs. 1500	Permanent.
and		and	
in addition Rs. 2 per acre in respect of every acre over 300 acres.	Permanent and or	in addition Rs. 1 per acre in respect of every acre over 300 acres.	Permanent and or
	Non-permanent.		Non-permanent.

RULES.

For the purposes of this Schedule the term "Permanent Improvement" shall include buildings of all descriptions.

irrigation works,
trees or live hedges.

land or reclamation of swamp.

land for agricultural purposes.
laying out and cultivating gardens and nurseries.

960
[Stamp]

For 3960/14
Exp 466
1500



Substance in copies
acc'd
11.7.20
11/2/14
12-32 p.m.

Private + Personal

(1914), 17th at

DRAFT

For Nairobi

Unsd 10838

Your confd dep
of Jan 8th ~~then~~

MINUTE

- Mr.
- Mr.
- Sir G. Fiddes 16.2
- Sir H. Just.
- Sir J. Anderson 16
- Lord Esmott.
- Mr. Harcourt. 16.2.14

I shall await your
development of view
outlined in par 7
which however is
inconsistent with your
private letter to Fiddes
of Jan 4th

Submitted after discussion
of Mr. Anderson
[Signature]

Though with much
hesitation I should be
prepared to go along on
Fiddes system of
perpetual loan with

* No 3960
+ O. 3960/14

at intervals of 30 or
32 years but only if
~~the~~

~~the~~
I am assured to
be his accepted
as a fair &
sufficient.

I state this now for
your personal information
and maybe useful
to your acceptance.

Harcourt

GOVERNMENT HOUSE,
BRITISH EAST AFRICA

January 21, 1904

My dear Tiddie

So many thanks for your
 love and kind messages. The recipe
 he has not made me any more, and
 returns me to the belief that I may
 be doing some good. I returned
 yesterday from Mombasa and find it
 big bird up here. No for know, I am
 typical creature, and may stay in the
 basin and see all the food in the world.
 It was also very pleasing to hear from
 people down there.

I hope for a successful year, but am not
at all easy in my mind regarding the new
the man so as I agree with the people that
is not what it should be. I am giving the
every opportunity of representing their views
I am sure they will do with some force.

In addition to some minor alterations
will have to be made when the Bill goes
into Committee. I most solemnly hope that
the F. & S. will vote on this 11th and
concede the principle of tenure in perpetuity
as has of the 49 year term. I have full
responsibility for advising it after 15 months
experience of the country, because I feel
that nothing less is really given to the

100
existing tenancies I would have a
in perpetuity, with rent as at present
a main reason for recommending it but rather
at any time after being 30 years
This kind of measure gives us such a
and leaving the people to really believe
that with the year that it will be a
great price of the opportunity is lost, and
placing of the Bill upon them in its present
of capital and accounts, so it will
to the year. There are the views

the man on the spot. That is all I can
Under any circumstances I do not
hold a century year, so practically all

my Junior officers are young on leave
I shall have Zangibar as well!

With my kind regards and kin
to you & yours in 1910.

Your very sincerely

I am to say, I am
now looking at the
prospect of