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9

EAST AFR. PROT

C. B.
44388

N^o 1

(Subject)

Tenure of Land.

Submits letter from Com^r covering views of
Land Board as regards land in the uplands
with observations as to his views on question
discussed by telegraph as early as possible

(Minute)

Mr. Hunt on letter attached

PRINTED FOR PARLIAMENT
Cd. 4117 JUNE 1906.

H. R. G.

Mr. Read

He had letter telegraph

Referring to your des^{ch} No 322

Send same impossible
for me to embody views in
a telegram

Hope to
address you by des^{ch}

P.T.O.

1907

Paper.

Furnish - as - Com^r 134 19-10-06

321/100

Printed Paper

Mr. Introductory

Here are several papers 46214, 46988, 46810, 44500, 44998 and 46010. All concerned with the proposed Land Ordinance for the East Africa Protectorate, which it is proposed to introduce in pursuance, or perhaps it would be more correct to say, in contravention of the Secretary of State's despatch of 23rd April last (p. 56 et seq. of the Parliamentary Paper H. of L. 155 herewith).

In some important respects the local Government, and to others, the settlers desire the Secretary of State to modify the decision conveyed in his despatch mentioned.

The despatch which may be taken as summing up the others is 44998, which contains the recommendations of the Land Board (which includes representatives of the settlers) and Colonel Montgomery's remarks upon them, and I have therefore attached this memorandum to that paper. I would have observed that though we do not appear to have any definite statement as to how the Land Board is constituted, it is in keeping from the papers given as proposing or recommending Resolutions that there were five unofficial and only two official members. This is not what the Secretary of State suggested (page 56 of the H. of L. paper para. 25 of despatch of 23rd April) which suggested three officials and two or three unofficials - an official majority by casting vote or otherwise being clearly indicated. This is a very important point in view of the wide powers proposed to

be given to the Land Board. The Commissioner of Lands is to be practically subordinated to them in most important matters, as he is to act by and with the advice of the Board. I think an official majority must be maintained. I take the resolutions as written.

14. The Board recommended that land should be granted on perpetual leases without power to the Government to revise the rent. This is recommended by Mr. MacDonald, the Director of Agriculture, whose views were specially invited by the Secretary of State. He bases his views on his South African experience (43-40) and I don't know that the South African farming system, under which the country remains dependent on foreign sources for much of its supplies of food, can be regarded as a model, and all readers of the general experience of the Colonies (par. 2) does not accord with mine.

There is no doubt that the Secretary of State's proposal that perpetual leases should be limited to 21 years with renewal for 21 years at the rates then prevailing, and even the amended suggestion that the renewal might be for 20 years providing the enhancement of rent for the 2nd term was of a tangible amount (despatch of 22nd August 1925) are extremely unpopular.

I understand Colonel Montgomery and Sir G. Gaisford recommend (see 43714) Lease of all lands (outside townships) to be for 99 years. Area to be limited to 3000 Acres. Classification of land according to actual value. A fair rent charged according to such classification. Strict compliance with conditions of occupation and development. (It appears that Mr. Churchill is still in favour of the Secretary of State's proposal

of a lease for 21 years with option of renewal for 21 or 42 years, in the case of perpetual leases which are the more important.

I must say that I think we must hold in the opinion that the Government must be enabled to find some way to obtain a share of the increasing value of land due to the settlement of the country, and I would add, to the large expenditure of the Government on roads and railways and veterinary and agricultural departments. If long leases for 99 years are to be granted the rent must be subject either to periodical revaluations or to automatic increases after certain periods. I should give the Legislative Council to understand that no law will be acceptable which does not provide for ~~the~~ ^{periodical revaluations} ~~the~~. The doctrine in question seems to me to be most necessary to maintain because we are much hampered in raising revenue from the white community by the fact that our Customs duties are limited to 10 per cent. Mr. Churchill has in another connection advised a land tax, but it seems to me that where the Government is the sole landlord the imposition of a land tax, or a lease fixed at the time of granting the land, would be justly resisted as being merely an increase of a rent already fixed by covenant.

The Board, and also Colonel Montgomery, and the Governor, recommended that persons deprived of their holdings for non-development or non-occupation should be paid the value of their improvements of a permanent

personal nature - and this I think should be allowed.

They advise, and Mr. Churchill concurs, that a leaseholder should be allowed to transfer his property without the consent of the Government as soon as he has perfected his title by "beneficial occupation".

Beneficial occupation means (see resolution) occupation for a certain period (the period) of 5 or 10 years of years and entails the payment of a rent of 10 or 20 times the rent.

The objections of the Secretary of State to free transfer were twofold.

(1) That it led to speculation in land nearly as a speculative matter. This objection is, I think, for the most part removed by the condition as to beneficial occupation, provided that is properly enforced.

(2) That it would lead to the administration of leasehold properties in all hands. This objection remains. Mr. Churchill proposes to deal with it by a graduated land tax, see para. 5 of the minute of 16th November.

On the whole I think if free transfer is granted it will be the best way of dealing with the danger. The tax will be a graduated one, and will vary with the Ordinance, and should be payable only to those who take advantage of the Ordinance in order to come under its provisions. All leaseholders would be exempt from its provisions - but they should not acquire any more land unless they were prepared to submit all their lands to the tax. The tax would of course apply to freehold and leasehold alike.

Resolutions

Resolutions 4 to 13. I agree with Colonel Montgomery's observations on these. He is in the main in agreement with the Board.

Resolution 14. Classification of land. The Board suggested 4 classes of land rated at 1d, 1d, 1d and 1d respectively. The present rate is 4d per acre and I agree with Colonel Montgomery that this should be maintained as the rate for the forest class, and that the other rates should be double the rates proposed by the Board.

The "acts" of the Board on this resolution to the effect that the Government should not regard "rentals as a source of general revenue" is characteristic of the attitude of the settlers in a community impoverished by a Treasury grant. The same people urge that the railways should be run at a loss, and that Customs duties on their supplies should be removed; and, if they had their way, would leave the entire coat of the country to be borne by the natives and the British taxpayer.

Resolutions 14 and 15.

Classification and size of farms. The Board recommends that this should be left entirely to the Commissioner of Lands acting "by and with the advice of the Board".

Unless the Board has an official majority I think these suggestions are out of the question and in any case I think the size of the farms should be fixed within certain limits by the Ordinance.

400 acres	1st Class
800	2nd
1200	3rd
2400	4th

the price being 10 times the rent of £100.

Resolution 18. - Land in Townships.

see p. 5 of Colonel Montgomery's minute. He proposes that land plots should be put up to auction by the authority at a minimum premium for each "stand" and at a rent fixed for each locality from time to time by the Land Commissioner or the Municipality (if any) for 99 years, subject to the obligation to pay a tax on the land so long as a suitable house is not erected. I should not, however, as the Board propose, lay down that all town lands must be vested in the Municipality. That is a matter it seems to me to be decided by the Government with reference to the particular circumstances of each case. I see no reason why the central Government should not continue to draw revenue from lands in the districts of Bombay and Madras.

Free transfer of township lands should only be allowed when an appropriate house has been erected - not otherwise except by consent of the Commissioner. The Board and Colonel Montgomery recommend the conditional free transfer.

Resolution 19.

If holders of land are to have the option of coming under the Ordinance or not, the Governor should have the option of refusing to allow them to do so, as Colonel Montgomery suggests.

*instead of as
at present being
planned to be
made laws
I see. I
think this may
be a mistake.*

Power must be reserved to the Governor to make
orders of roads in special cases otherwise than in con-
formance with the provisions of this Ordinance.

I would observe that Colonel Montgomery and
Sir J. Sadler hardly seem to me to have the grip of this
important subject which one would wish - and the former's
idea that the Secretary of State should give an answer by
1st January by telegraph to a despatch which arrived on
27th December and which involved proposals modifying his
considered decisions in most important particulars, implies
a belief that the Secretary of State is in the habit of
forming and changing his opinions with great levity.

V.J.R.

*I find on reviewing this memo that
there is still one unimportant part
of the resolution (1) which is
a little more essential than
the other parts of it
qualifying for the
the resolution (that act in
the resolution see 44985)
Thus the London is
from the London is
before of all hands, but not
apparently from becoming a
life by further
the matter has gone up
before see 449843 7*

H of L. 158 of 1907.

On that occasion the P. & P. stated that it would not be in accordance with the policy of H. M.'s Govt. to exclude any class of His subjects from holding land in any part of a British Protectorate. But he added that he opposed of the Govt in furtherance of the principle that land outside municipal limits in the highlands should only be granted to European settlers.

In view of this recent & public declaration of principle I do not think the P. & P. can allow the edicts to be drawn by legislation. The existing practice, which has the same effect, will no doubt continue. In private life such a line of policy might be thought somewhat dangerous but the problem is one which hardly admits of anything but a compromise.

W. C. G.

Mr. Arthur, I agree with Mr. Ellis, but it seems

to me that the whole question should
come before the Commission. I have his paper
showing the view, Mr. Ellis' views, & I think
a copy of the report should be circulated
to the members of the Com. as soon as possible
& a meeting held at an early date, so that
Mr. Ellis should attend the meeting, as I see
the matter at his finger ends.

H. J. R.
6/11

Mr. Cox
of your views, proceed as
Mr. Reid proposes
Wm. J. R.

Sir J. Lubbock

Personally I have no objection
but I would point out that this is not
comes in a railway. It is a question
the whole of the policy of the Protectorate. If
the railway is so important a subject
I am a recommendation from the former
will go, but I do not gather from the
despatch to the R. of the first Colonies, that
lay down the principle of our organization
that your line of policy relating to one Protec
should be dealt with by a body constituted for
purpose of coordination between different Colon
I am anxious that such a Comm
should not consist of functions which belong to the
responsible officers in the Colonies. Dept. The
responsible officers in the Colonies are not responsible

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come before the Committee. If the L's paper
shows the view, Mr. Ellis' views, ^{the} ~~the~~ L's paper
is open of the subject, ^{as} ~~as~~ he consulted
to the members of the C.C. as soon as possible
+ a meeting held at an early date, ^{and} ~~and~~
Mr. Ellis should attend the meeting, as he has
the matter at his finger ends.

H. J. R.
6/1

Mr. Cox
If you concur, proceed as
Mr. Reed proposes
Wm. J. R.

Sir Stephenson

Personally I have no objection
but I would point out that this is not
"concern" in a railway. It is a question
of the White and policy of the Protectorate. If
I believe that it is so important a subject
deserves a recommendation from the former
well of good, but I do not gather from the former
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that question of policy relating to one Protec
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I am anxious that such a Comm
should not usurp functions which belong to the
responsible officers in the Crown Colonies. Dept. Th
Dept. & the Committee are not responsible

the sound policy of the Crown Colonies.

I think therefore that as deputy
Chairman of the Commission
Committee I should take the
role of Lord Selkirk as to the
functions in this case. The
Committee are attached
with me.

HBC
11/1

Mr Churchill
Lord Selkirk

I am clearly of opinion that
the Commission Standing Committee
should be used as best to deal
with this subject. Mr
Churchill has taken special interest
in it both here & in fact
Africa & would be a source of
the most valuable assistance
in careful settlement of a scheme
of land tenure to obviate a state
of affairs the members of the Commission
Committee should take an interest in
the subject & have all the basis
of future Commission.

JHC
11/1

Land Tenure in U.S.P.

Mr. ~~Scott~~ Artstein.

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The Committee's recommendations
on this question are now ripe
for submission to the P.P.P.

MM 25/2

Mr. Ellis has rendered valuable
assistance in this matter, possessing as
he does an intimate knowledge of all its
details - Mr. Anderson, to whom the
subject was now, has drafted the
report with great skill.

H. J. R.

26/2

26/2

26. 2 July 1922

J. R.

Mr. Churchill

27/2

Love Dignity

to all ... in this question
without ... the ... knowledge
& industry of Mr. Ellis always displays
the secretarial work of the committee has
also been of great ...

27/2

I accept the report ... and ...
the ... 29/2

Summary of recommendations of Concessions and Railways Committee.

stitution of
Board.

The Land Board should be of the nature of an advisory Committee and the Commissioner of Lands should be at liberty to act in opposition to them on recording his views for so doing.

The Governor might be informed that the Secretary of State has considered the personal composition of the Board as reported in his telegram of the 3rd of February, that the large unofficial majority is scarcely what was contemplated, but that, as he has come to the conclusion that the Board should have an advisory function merely, he will not interfere with the arrangement, understanding that it is being found to work satisfactorily. The Committee think that the Land Board should be defined in the law as being "a consultative body consisting of such official and unofficial members as the Governor in accordance with the directions of the Secretary of State may from time to time appoint" and that it should be provided that all appointments shall lapse and the Board be reconstituted on a definite date (say the 1st of April) in each year.

Law of Land
should be
repealed.

Land for farms should be granted to settlers on leasehold tenancies of 99 years at rentals revisable on a basis of 5% of the unimproved value of the land, subject (except where the land in question at the time

Note. The Committee recognise that it is essential to provide a title which shall be a marketable and mortgageable security and they think that while the tenure shall be leasehold 21 years is too short a term. At their suggestion steps are being taken to confirm by the opinion of a competent authority their belief that a title granted on the terms proposed would in fact be a marketable and mortgageable security.

of valuation is included in a township) to maxima of 9d. per acre respectively at the 33rd and 66th year, with complete reversion to the Crown at the end of the term on payment of compensation for improvements.

If the lessee should not within 6 months of the notice of revaluation accept the same, his lease should determine at the end of the current period.

Six months before the determination of the lease the land should be offered in one or more blocks at the rent fixed by the Board, and at a premium representing the value of the improvements made by the late tenant.

The latter sum should be paid over by the new lessee to the outgoing lessee.

If no tenant should be found within 6 months of the determination of the lease, the Commissioner should pay from Government funds the assessed value of the improvements to the late lessee less any amount due from him under the expired lease and should then be at liberty to offer the land at a reduced rent.

A temporary occupation title should be granted in the first instance and the settler should be on probation for 5 years during which he must spend a sum equal to 40 times the amount of his rent on development (i.e. on certain specified improvements (Schedule A) and after which if he fulfils the conditions his title should be confirmed on the leasehold tenure described above. If within a period of not less than 3 years he spends the stipulated sum of money on development, it should be open to him to claim a secure title then. If, on the other hand, the land leased has been unoccupied for any period exceeding 2 months or if at the end of the probationary period the stipulated sum of money has not been expended the Government should have the power to

resume

Application of
Principle of
Social Occupancy
The Committee
considered the
question of remit-
ting the rent
in the proba-
tionary period but
refused against

resume on giving compensation for improvements. The probationary period should be included in the first term of 33 years.

SCHEDULE "A"

The word "improvements" shall embrace the following:-

- Farm buildings of all descriptions
- Fencing
- Furrows
- Planting trees or live hedges
- Walls
- Wells
- Draining land or reclamation of swamps
- Roads
- Bridges
- Clearing of land for agricultural purposes
- Laying out and cultivating gardens and nurseries
- Water boring
- Water races
- Sheep or cattle dips
- Sanitation or protective works of any kind.
- Planting of long lived crops
- Water tanks
- Irrigation Works
- Filed machinery

Resolutions 3 and 4 of the Land Board should be adopted mutatis mutandis, viz.

(Resolution 3

Alienation of Land.

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- Planting of long lived crops
- Water tanks
- Irrigation Works
- Mixed machinery

Alienation of Land.

Resolutions 3 and 4 of the Land Board should be adopted mutatis mutandis, viz.

(Resolution 3

(Resolution 3) "That the holder of the leasehold title be allowed to sell or otherwise alienate his land either partly or wholly subject to the following conditions viz., that no alienation of any farm or any portion of a farm be considered as legal before the same is surveyed, a diagram made there-of, and likewise registered in the Deeds and Land Revenue Office."

An efficient check upon undue accumulation of land should however be provided. The Committee suggests for this purpose a graduated land tax - see below.

(Resolution 4.) "That, on the division of any farm held under leasehold title, the purchaser to be responsible for the payment of his rent pro rata, after such division has been registered."

Resolutions 5 and 6, viz.,

(Resolution 5.) "That the holders of land under perpetual quit-rent title shall not be liable to any other burdens but those to which all freehold lands are subject or which may hereafter be prescribed."

(Resolution 6.) "That the holder of any land under perpetual quit-rent title have the power to freehold such land on payment of 20 times the annual quit-rent."

should be rejected, the existing rule permitting a homestead freehold (of 3.0 acres) being allowed to stand.

Resolutions 7 (Schedule B), 8, 9, 10, 11, 12 and 13 should be adopted, viz.,

That

(Resolution 7) "That the lessee or owner of the farm
"have the ownership of such minerals or materials
"as are mentioned in Schedule "B" except in so far
"as these are required for public works, provided
"such quarry or pit is within 600 feet of the
"middle of a public road or railway and always
"provided that such pit or quarry and the access
"thereto be properly fenced by Government."

SCHEDULE "B"

- Clay
- Country Rock
- Gravel
- Lime
- Sand
- Shale
- Shingle
- Slate
- Surface Salt
- Surface Boils

(Resolution 8) "That Government reserve the rights to all
"minerals and precious stones except as above pro-
"vided in Schedule "B".

(Resolution 9) "That, subject to such Irrigation laws
"as may be from time to time enforced, the Govern-
"ment reserve the right to the water in rivers and
"streams flowing through the farms except so
"far as such water is required for domestic
"purposes."

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 "provided that such pit or quarry and the access
 "thereof be properly fenced by Government."

SCHEDULE "B".

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 "streams flowing through the farms except so
 "far as such water is required for domestic
 "purposes."

Government reserve the right of making public roads, &c., &c."

(Resolution 10) "That, subject to the passing of laws dealing with Mining, Public Roads, and Railways, &c., The Government reserve the right of making and repairing railways and public roads, the raising material for that purpose, as also the laying of telegraph and electric lines, the erection of poles for the carrying such lines, water pipes and sewers on the premises where not inconsistent with previous resolutions".

Compensation for land acquired by Government, (under 200 acres)

(Resolution 11) "That compensation shall be given for all land acquired by Government for public purposes, including outspans, on all farms not exceeding 200 acres in extent".

Compensation for land acquired by Government, (over 200 acres)"

(Resolution 12) "That, in the event of land being acquired by Government for such public purposes, including outspans, as are stated in Resolution No.10 of these recommendations, compensation only for damage done to such improvements as are mentioned in Schedule "A" shall be paid by the Government where the land acquired is from a farm exceeding 200 acres in extent, provided always that in the event of a larger proportion than 1/4 of the total area of such farm being acquired, compensation for the amount of land in excess of a ratio of 1/4 to the whole of the farm shall be paid, where not inconsistent with previous resolutions."

Arbitration Board
Composition of

(Resolution 13) "That all questions of Compensation to be decided by an Arbitration Board consisting of three members, one to be appointed by

the lessee or owner of the land, one by the Government, and a third to be mutually agreed upon by the parties concerned; failing mutual agreement to the third arbitrator the same shall be appointed by the High Court".

It should be made clear, however, that in paying compensation all that will be taken into account is the actual value of the land or improvements as the case may be.

Resolution 14 should be adopted with the amended rents proposed by the Governor, viz.,

(Resolution 14) "That all land outside Township, Municipal and Suburban, areas shall be considered as falling into one of 4 classes and that the rental basis shall be 3d. 2d. 1d., and 1d. respectively per acre per annum, the first class to pay 3d with a minimum rent of 30/- for any holding".

Resolution 15 should also be adopted with the substitution of "after consulting" for "by and with the advice of "before "the Land Board" and the insertion of the words underlined, viz.

(Resolution 15) "That the classification of lands for allotment shall be fixed by the Honourable the COMMISSIONER of LANDS after consulting the Land Board and that it shall be open to the COMMISSIONER to reclassify so as to reduce rents but not to raise them".

The normal size of farms in the different classes of land should be stated in the law and should be the following:

		<u>Rent at rates proposed.</u>
1st Class land	700- 900 acres	£8.15. 0. - £11. 5. 0.
2nd "	" 1000-1400 "	£8. 6. 8. - £11.13. 4.
3rd "	" 2200-2600 "	£9. 3. 4. - £10.16. 8.
4th "	" 4600-5000 "	£9.11. 8. - £10. 6. 4.

It should be made clear that these figures indicate only the average size of farms and the maximum areas which would be granted in ordinary circumstances and that persons desiring a smaller portion of land than the stated minimum in any class would be provided for.

Municipal Areas.

Resolution 13 should be adopted with the substitution throughout of Commissioner of Lands for Municipal Authority, viz:

"That land within the boundaries of proclaimed Municipalities shall be dealt with (unless reserved for purposes of the Executive Government) as follows:-

(a)

- A Note. The Committee consider that the time is not yet ripe for conferring upon Municipalities in East Africa the extensive powers proposed by the Resolution in its original form. They presume that as time goes on and municipal institutions develop steps will be taken by legislation to give the municipal authorities all the powers usually held by municipalities, which would not necessarily include control of Crown lands within the municipal area.

"(a) All such land shall be vested in the
"Commissioner of Lands including township lands
"already allotted.

list

"(b) The Commissioner of Lands may grant
"leases of areas in sizes at his discretion,
"on the payment by the lessee of a premium
"plus an annual rental for 25 years.

of

"(c). The stand premium and ground rentals
"of leases thus granted shall be fixed at the
"time allotment by the Commissioner of Lands
"after consultation with the Land Board.

"(d). Leases not to contain any covenant
"regarding building, but the leases shall be
"granted with the reservation that a special
"annual tax may be imposed upon the unimproved
"values of unbuild land and this tax shall
"be in addition to the ground rents fixed
"under the lease.

"(e). Freedom of transfer to be allowed
"immediately leases are granted subject to
"such fees for registration and survey (if
"any) as the Treasury may impose for revenue.

Application of
the new condi-
tions to
existing
holders of

Existing holders of land should be allowed
the option of coming under the new Ordinance or not,
but the Governor should have the option of refusing
to allow them to do so. *Colonel Montgomery*
suggests.

As

Land Allotment

As soon as the survey fees have been paid a convenient parcel of land of approximately the area desired should be beaconsed off and a temporary occupation title should then be issued without awaiting the survey so that the holder may at once enter into occupation in full security. Holders of land should not be dependent upon the Government for their survey but should be free to employ licensed surveyors and when the survey has been carried out by a private surveyor the fee deposited with the Government should be paid over less a small percentage for expenses as soon as the work has been inspected and found satisfactory. It will be necessary that survey fees should be paid into a special suspense account instead of, as at present, being credited to revenue.

(Note. This recommendation is designed to remedy two faults of the present system -

- (1) A survey is insisted upon before grant of title.
- (2) Geometrical portions of land containing so many acres are parcelled out without regard to natural features).

The Committee suggest that a despatch should be addressed to the Governor stating that it is not within

Grants

1121/07-8

within the general view of His Majesty's Government to inflict legal restriction on any particular section of the community, but that as a matter of administrative convenience grants in the high land area will not be made to Indians; expressing entire concurrence in His opinion as to allotments to Indians, as stated in paragraph 3 of his despatch, overruling the proposal of the Land Board, and requesting him to submit proposals in detail for regulating such allotments, and enquiring whether it is possible yet to give a definition of the uplands and whether a mere definition by altitude would be sufficient.

and Areas.

/1827/01/8.

The Committee think that it is clear that, although the general principles of tenure laid down for the highlands are applicable to lowland areas, different regulations will be necessary, and they suggest that the Governor should be invited to submit detailed proposals.

The Committee, therefore, submitting for the Governor's consideration, the following proposal as indicating the general lines to be followed.

As the size of holdings is to be proportionate to the quality of the land, total rent should form the basis of taxation. The rent of a maximum normal holding being rather more than £11, £12 might be the limit of exemption. From £12 to £24 annual rental (5,760 to 11,520 acres 4th class land) an annual

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surtax of 1d. for every 1/- of rent might be imposed, allowing, in order that the incidence of the tax should not be too sudden, a graduated abatement from £12 to £18, so that on rents from £12 to £13 a tax would be payable on £1, from £13 to £14 on £4, and so on up to £18, after which tax would be payable on the full rent. On rentals above £24 the scale would be as follows:-

£24 to £36..... 1d.
£36 to £48..... 1d.
£48 to £60..... 1d.

and so on in the same proportion.

In order however to put a further check upon excessive accumulations of land, the tax on holdings of more than 50,000 acres should be four times that indicated above and power should be given to the Government to prohibit absolutely holdings of more than 100,000 acres by a provision to the following effect:-

"that when an individual in his own name or that of a nominee or through any persons not possessing totally distinct interests holds more than 100,000 acres, it shall be open to the Government at any time to compel him to divest himself of any surplus within a certain period (say 6 months), and he shall be liable in default to a penalty (of, say £25) for each day during which any surplus may be retained after the said period has elapsed."

These provisions could not in the Committee's opinion be applied to existing estates, less than

same under the new law, but a fresh acquisition of land after the coming into force of the Ordinance should bring the holder under the law in respect of the whole of his land.

Note B. In order not to impair the value of leasehold titles, as securities care would have to be taken to provide for some relaxation of any restrictions of this kind in favour of banks, loan companies &c. The Committee suggest following the Canadian law under which Banks &c., are allowed to foreclose but must instal a bona fide settler within 12 months.

Note C. If such restrictions are to be effective it would be necessary to take measures to prevent clandestine transfers of land e.g., by requiring that every transfer should take the form of an assignment.

any law
of plural
applications.

To prevent "dummying" and plural applications, ~~the~~ The Committee recommend the adoption of the principle of the New Zealand Law (No. 37 of 1892) in the following form:-

"No person shall, by himself or through any other person for him, be entitled to acquire, obtain, or hold, either by original application or by transfer, or otherwise in any manner, any land under any tenure under this Ordinance unless it be exclusively for his own use or benefit."

"And no person who at the time of making his application has made any arrangement or Agreement to permit any other person to acquire, by purchase or otherwise, the allotment in respect of which his application is made, or any part thereof, or the applicants interest therein, shall become a lessee under this Ordinance."

"Any person who wilfully and fraudulently* commits or incites, instigates or employs any other person to commit, any breach of these provisions by obtaining such lands not exclusively for his own use or benefit, shall be liable to a penalty of not less than one hundred pounds nor exceeding five hundred pounds, or to a term of imprisonment not exceeding one year with or without hard labour; and every one aiding or abetting in such a breach shall be liable to the same punishment."

The Committee recommend this power should be reserved to the Crown to make grants of land outside the provisions of the Ordinance in special cases.

1998
45338
70007
Governor's Office,

Bathurst,

December 6th 1806 347

WEST INDIA PROTECTORATE

(No. 1)

PRINTED FOR PARLIAMENT
C. 117 JUNE 1806

My Lord,

In continuation of my despatches Nos. 506 and 508
of the 23rd and 25th ultimo I have the honour to submit a
letter from the Commissioner of Lands giving cover to the views
of the Board as far as they apply to land in the
plains, views which the Board are most anxious should
be submitted with the least possible delay to Your Lordship's
consideration. The views of the Board on the questions
concerning the tenure of land on the Coast will be
submitted as soon as the Board has assembled here and
prepared its report, but as the Commissioner of Lands observes,
there is little likelihood of the opinions it will put forward
differing in essential particulars from the recommendations
it has put forward as regards the highlands. I have been
through these recommendations with Colonel Montgomery.

Accepting the propriety of the measures they are in the
main of a nature recommended in the despatches
above quoted, and I concur with Colonel Montgomery in the
views he has taken of the various points discussed.

The rents payable on land are low, too low, as it is
at present, and I see no reason to further
reduce the rent of the lowest class.

Principal Secretary of State

For the Colonies,

Downing Street,

LONDON, S. W.

lant to 100,000 acres. To a man the means business
and who finds it worth while to work a farm, it can
stand an actual difference whether he pays 1d. or
2d. an acre.

4. As regards Resolution No. 16 of the Board, the maximum
area to be granted to an applicant under specified circumstances,
without reference to the Secretary of State will, of course
remain at 10,000 acres, until such time as Your Lordship
may see fit to modify the orders in this connection.

5. Regarding Resolution No. 15, land would only be vested in
a Municipality when the necessary authority to do so has been
obtained from Your Lordship. A bill dealing with
Municipalities and the powers to be entrusted to them will
be introduced for Your Lordship's consideration when
prepared. I would like to say that what I have said above
I see no reason why the provision made in this Resolution
should not stand.

6. I should be glad if I could be favoured with Your
Lordship's views on the main questions discussed by telegram
as early as possible.

I have the honour to be,
with the highest respect,
My Lords

Your Lordship's most obedient,
humble servant,

John Lubbock

Mombasa, 22nd Dec 1907

44398

349

DEC 27 1907

Office of the Commissioner of
Lands,

Mombasa, 6th December 1907.

Your Excellency

I have the honour to forward a copy of the complete proposals of the Land Board as far as they apply to land in the highlands. There is to be a meeting of the Land Board at Mombasa on the 13th Instant to consider the question from the point of view of the coast lands. The general principles however will be the same as those advocated for the highlands, the only difference being that whereas in the highlands personal residence by a white manager is insisted on as an essential part of "beneficial occupation", this will not be a sine qua non in the more unhealthy lowlands, but a corresponding increase will be made in the money value of the improvements required.

already

2. Your Excellency has forwarded certain general proposals as regards land legislation in your despatches Nos. 506 & 508 of the 23rd and 25th November respectively. It was requested in them that orders might be sent out by telegram when those despatches were received.

The Land Board has just asked that the whole of its proposals be sent home for the Secretary Of State's consideration. The request is only reasonable and should be complied with. I suggest that a telegram be despatched at the same time requesting a withholding of orders or orders on your Excellency's last despatches until the receipt of another one which will now be sent with the Land Board's recommendations. It is well that the Colonial Office should before passing orders on this important

question be in possession of the opinion of the experienced and practical men who compose the Board.

I will now deal with each proposal seriatim that your Excellency may have my views before sending the papers home.

3. Res. 1. Recommends the perpetual quit rent system. While admitting that this ^{form} ~~system~~ of tenure may have worked well in parts of South Africa, I am of opinion that we should not in a new country go to so great a length as is here proposed. I should not object to a perpetual lease coupled with conditions of a periodical revision of rents; but there is a very strong feeling against any such conditions. I think therefore it will be best to give 99 years leases of all agricultural land of whatever quality charging for all a sufficient rent fixed after the land has been classified by a qualified allotment Board; and I have reason to believe that most people will be content with this form of tenure.

The resolution of the Board may be accepted so far as it relates to the terms of beneficial occupation, including the conditions of residence of at least nine months in every year. The non-official members insist strongly on white occupation as a necessary condition of every grant in the highlands, and I support them in this. The words "permanent title" in this resolution would mean a 99 years lease under my proposal. That is, we should give a man in the first place a licence to occupy a specific area, and we should not give him his deed of the lease till he had fulfilled all conditions of beneficial occupation.

4. Res 2. I agree to this. If we turn a man out of his land for non fulfilment of conditions we should repay him

the then value of improvements of a permanent character. The money would come back to us from the next grantee of such land. Schedule A has been carefully drawn up and may be accepted.

Res.3. This is the concession of the right of free transfer which the Right Honourable Winston Churchill stated to be desirable. The resolution means that no one will have the right ~~and~~ after he has fulfilled conditions and received his deed.

Res.4. May be accepted as the rule for the division of any rents.

Res.5. If we do not give perpetual quit rent this resolution need not be considered.

Res.6. The Board proposes that any one may have the right to freehold the whole of his grant. I recommend the 99 years lease and the right to acquire a limited area of freehold. The question is dealt with further on in connection with Res.17.

5. Res.7. I agree. The Government will get free of costs what it needs for its public works, provided the materials are obtainable near a public road or railway, and the settler will not be unduly inconvenienced. I agree also that the materials entered in Schedule B may be allotted to the occupier without extra charge. This has been already admitted in previous correspondence. Surface salt has been entered in the list for the country contains salt licks and salt pans, not of great value, certainly not of such value that the Government need claim a royalty on them.

Res.8. May be agreed to.

Res.9. The same. At a later date we must bring out a water Ordinance. Before making proposals on this head

I await the reports of the Irrigation concession in the Transvaal.

Res.10. May be agreed to.

Res.11. This also is right. If the Government wished to acquire land from a small property it should compensate the occupier.

Res.12. Contains the sound principle that the Government should not have the power to acquire free of charge more than a certain proportion of the larger properties.

Res. 13. I think the proposal here advocated is reasonable. The Settlers will have more confidence in the decisions of an arbitration Board such as is here suggested than if compensation for land taken up is awarded by a Government Officer even though an appeal lies from his order.

6. Res. 14. This resolution fixes the rent for the class into which it is proposed to divide all properties in the highlands. The rates are too low. The present lowest rent is 1/6 an acre, there is no sufficient reason for going below that. At the rate proposed the rent on average sized farms as below will be 2.5 a year.

1st Class	800 acres.
2nd "	1,200 "
3rd "	2,400 "
4th "	4,800 "

This may well be doubled. It is true that the value is low, and that farming has as yet brought very small if any profits. Still it must be admitted that a farm of over a square mile of good land would be inadequately rented at 2.5. Even a 2.10 rental may be thought too low. But in view of the admitted uncertainties of the country we ought to charge low rents. I propose 2s. an acre for 1st class land, 2s for 2nd class, 1s for 3rd class and 1s for 4th class. The result will be a raising of rents in

the better classes only.

7. Res. 15. I agree that we should have a free hand in the classification. All matters affecting the lands must be considered of which the principal would be, actual quality of the soil, water available and situation as regards communications and markets. I also agree to the basis proposed to guide the Board in marking off farms. This is again referred to in Res. 16.

8. Res. 17. According to the rent rates proposed by the Board the money which must be spent on farms of the average size would be £200. At first sight this appears low. But this ~~even~~ does not include the expenses necessitated by the residence conditions nor is the value of stock or agricultural implements taken into account.

Now there are cases in this country of farmers laying out nearly all their capital in stock and contenting themselves with a very small expenditure on permanent improvements, such men have done much to stimulate cattle and sheep breeding. Therefore I ~~was~~ am inclined to think that we may accept £200 as the minimum sum to be expended on permanent improvements on farms of the average size.

If this is approved and the rents proposed by me are accepted the monetary qualification will be ~~not less~~ 20% time of the annual rent.

I have before given my opinion that free title can be acquired as freehold in any one grant should not exceed 1000 acres.

The Board points out that this would act unequally in the different classes of land. To meet this objection we may fix the area which can be freeholded at a fixed maximum for each class of farm. I propose 400 acres of first class land, 800 of second class, 1,200 of third class

and 2,400 of fourth class; in other words half of what may be considered an average farm of each class.

Now there are four farms, one of each class, of the average area, the result, according to my proposals, would be as follows:-

Rent	£.10
Money to be spent on beneficial occupation	£.200
Payment due to Government for acquisition of freehold.	£.200

9. Res.18. I have had the opportunity of discussing the question dealt with in this resolution with the Land Board, as well as with a number of house owners.

Heretofore we have graduated the length of the lease for township plots according to the value of the buildings erected, insisting at the same time on a house being put up within a certain time. I am prepared to admit that the result of the latter condition has been of a certain amount of jerry building.

It will be better to adopt the new proposal which is in effect as follows.

All land will be put up to auction at a minimum stand premium, the rent to be charged being fixed for each locality. The buyer will be entitled to a 99 years lease, the only condition being that if a house is built he shall pay in addition to the rent a tax on unoccupied land. The Municipal or other authority empowered to deal with township lands will see what class and value of house is needed for each locality, and until a house of that description is built the lessee will have to pay the unoccupied land tax.

The same authority will be empowered to set apart definite areas for separate nationalities if this is deemed necessary.

Subject to these conditions I would grant the right of free transfer. In townships there is every reason for granting this concession.

Res. 19. May be agreed to, provided that the concession should not be claimed as a right. In most properties, if conditions have been fulfilled, we should be quite prepared to grant the privileges now advocated. But there may be difficulties in dealing with some of the larger properties; for this reason I would prefer to leave the matter subject to the approval of the Governor.

10. I have now commented on each resolution. Your Excellency will, I feel sure, appreciate the care and thoroughness with which the Land Board has approached the difficult problems it has dealt with. I do not anticipate that the meeting with the coast planters will result in any alternative of the general principles advocated above, and I trust that these papers will be at once forwarded to the Colonial Office with a request that orders may, if possible, be passed on them by telegraph not later than the 1st January. Should the meeting with the coast planters suggest any amendments they can be cabled home, and dealt with at the same time.

I have the honour to be,

Sir,

Your most obedient servant,

COMMISSIONER OF LANDS.

It was proposed by Mr. BAILLIE and seconded by Mr. FLEMING, -

"That farms be granted to settlers on the perpetual quit-rent title after 5 years personal occupation or another white man as substitute, in districts suitable for white colonization, and the expenditure of a stipulated sum on improvements, but it shall be open to the settler to claim permanent title after not less than three years should this stipulated sum have been already expended.

The above was CARRIED, Major LEGG dissenting on a point raised by him as follows, -

"Major LEGG supports the resolution but he desires to record his reservation of final recommendation of the quit-rent system in absence of information as to what scales of graduated rental the Government will accept for 25 years leases at rentals commencing at very low rates and revisable within pre-stated maxima at say the 33rd, 50th, and 66th years, and renewable in perpetuity thereafter."

A resolution was carried, on the proposal of Major SMITH, seconded by Mr. SWIFT, -

"That, if land in districts suitable for white colonization is not occupied by a white man within 5 months after Temporary Occupation Title is given, the Government shall have power to re-grant the land."

It was proposed by Major SMITH, seconded by Mr. SWIFT and carried

"That, if it is found that, during the probationary period from the date from which Temporary Occupation Title has been given to a settler, that the land leased has been unoccupied for any period exceeding nine months, or if it is found at the end of the probationary period that the full stipulated sum of money to be expended on improvements has not been so expended, the Government shall have power

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"resume such land but compensation for such improvements as
"are mentioned in Schedule 'A' which have been made shall
"be given at a valuation made at the period of resumption."

Note.- The Board brings to the notice of the Honourable the COM-
MISSIONER of LANDS that under the foregoing resolutions the
appointment of qualified inspectors of farms is a necessity
in order that assessment of improvements under Schedule 'A'
may be workable in practice and also under the rapid allot-
ment scheme.

3. It was proposed by Mr. FLEMMER, seconded by Major LEGGITT and
carried,-

alienation
Land.

"That the holder of the quit-rent title be allowed to
"sell or otherwise alienate his land either partly or wholly
"subject to the following conditions, viz., that no aliena-
"tion of any farm or any portion of a farm be considered as
"legal before the same is surveyed, a diagram made thereof,
"and likewise registered in the Deeds and Land Revenue Of-
"fice."

4. A proposition made by Major SMITH and seconded by Mr. WRIGHT was
carried, to the effect that,-

Payment
of
quit-
rent.

"That, on the division of any farm held under the per-
"petual quit-rent title, the purchaser to be responsible for
"the payment of his quit-rent pro rata, after such division
"has been registered."

5. It was proposed by Mr. BAILLIE, seconded by Mr. WRIGHT, and
carried,-

Liability of
quit-rent
holders.

"That the holders of land under perpetual quit-rent
"title shall not be liable to any other burdens but those
"to which all freehold lands are subject or which may here-
"after be prescribed."

6. It was carried, on the proposition of Mr. FLEMMER, seconded
by Mr. SHANN,-

Power of
freehold-
ing.

"That the holder of any land under perpetual quit-rent
"title have the power to freehold such land on payment of
"the times the annual quit-rent."

SCHEDULE 'A'.

The word "improvements" as mentioned in Clause 2 and 4 shall embrace the following,--

- Farm buildings of all descriptions,
- Fencing,
- Furrows,
- Planting trees or live hedges,
- Walls,
- Wells,
- Draining land or reclamation of swamps,
- Road-making,
- Bridges,
- Clearing of land for agricultural purposes,
- Laying out and cultivating gardens and nurseries,
- Water boring,
- Water races,
- Sheep or cattle dips,
- Embankments or protective works of any kind,
- Planting of long lived crops,
- Water tanks,
- Irrigation works,
- Fixed Machinery.

Nothing is to be deleted but the schedule may be added to.

(continued.)

Note.- There is a strong feeling in the Land Board that although they would like to see freeholds acquired by conversion from quit-rent, that such a right to freehold is not nearly so important as the first stage towards freehold, viz., a perpetual quit-rent system.

Ownership of Minerals & Minerals.

Proposed by Mr. HAILLIE, seconded by Mr. CLARK and carried,-

"That the lessee or owner of the farm have the ownership of such minerals or materials as are mentioned in Schedule 'B' except insofar as these are required for public works, provided such quarry or pit lie within 500 yards of the side of a public road or railway and always provided that such pit or quarry and the access thereto be properly fenced by Government."

SCHEDULE 'B'

- Gley,
- Country Rock,
- Gravel,
- Lime,
- Sand,
- Shale,
- Slates,
- Surface Soil,
- Subsoil.

Nothing to be deleted from the above, but it may be added to.

Proposed by Mr. FLEMING, seconded by Mr. SWIFT and carried,-

"That Government reserve the rights to all minerals and precious stones except as above provided in Schedule 'B'."

Proposed by Mr. HAILLIE, seconded by Mr. SWIFT, and carried,-

"That, subject to such irrigation laws as may be from time to time enforced, the Government reserve the right to the water in rivers and streams flowing through the farms except so far as such water is required for domestic purposes."

Minerals (except Sch. 'B') precious stones belong to Government.
Government reserve the right to all water.

10. It was proposed by Mr. CLARKE, seconded by Major SMITH and carried, -

That, subject to the passing of Laws dealing with Mining, Public Roads and Railways, &c., the Government reserve the right of making and repairing railways and public roads, and raising material for that purpose, and also the laying of telegraph and electric lines, and erection of poles for the carrying such lines, water pipes and sewers on the premises where not inconsistent with previous resolutions.

11. Proposed by Mr. FLEMING, seconded by Major SMITH and carried, -
That Compensation shall be given for all land acquired by Government for public purposes, including outspans, on all farms not exceeding 200 acres in extent.

12. It was proposed by Mr. SPIGHT, seconded by Mr. FLEMING, and carried, -

That, in the event of land being acquired by Government for public purposes, including outspans, as are stated in Resolution No. 10 of these recommendations, compensation only for damage done to such improvements as are mentioned in Schedule 'A' shall be paid by the Government where the land acquired is from a farm extending 200 acres in extent, provided always that in the event of a larger proportion than 4% of the total area of such farm being acquired, compensation for the amount of land in excess of a ratio of 4% to the whole of the farm shall be paid, where not inconsistent with previous resolutions.

13. It was proposed by Mr. CLARKE, seconded by Major SMITH and carried, -

That all questions of Compensation to be decided by an Arbitration Board consisting of three members, one to be appointed by the holder or owner of the land, one by the Government and a third to be mutually agreed upon by the parties concerned; failing mutual agreement to the third member to be appointed by the High Court.

Proposed by Major LEGGETT, seconded by Mr. BAILLIE and carried.

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"That all land outside Township, Municipal and Urban Areas shall be considered as falling into one of a classes and that the rental basis shall be 1gd., 1d., 1d. and 1d. respectively per acre per annum, the first class to pay 1gd. with a minimum rent of Rs. 15/- for any holding."

NOTE, - In connection with this resolution, the Board desires to record its opinion that the general policy of the Government should be to fix the rentals of Crown Lands at a very low figure with a view to little more than covering the expenses of Land Administration and to cease to regard rentals as a source of general revenue but rather to rely for the latter on the general taxation which may be justifiably levied upon the results of successful development of the country as a whole.

Proposed by Major LEGGETT, seconded by Mr. BAILLIE and carried.

"That the classification of lands for allotment shall be fixed by the Honourable the COMMISSIONER of LANDS by and with the advice of the Land Board and that it shall be open to the COMMISSIONER to reduce rents but not to raise them."

NOTE, - In connection with this resolution the Board is strongly of opinion that any attempt to lay down a basis of classification of land in the Ordinance would defeat its own object, that the Honourable the COMMISSIONER of LANDS, with the advice of the Land Board, should be entrusted with the fullest power.

Note for the guidance of the Board in defining areas of

In future allotment grants of land should be of such size as would be considered by the Board to be sufficient to not only maintain a cottier and his family but to allow by increasing farming or other work at least two families.

18. Mr. FLEMING suggested Mr. FLANNERY proposed, which was carried, that the rate of land for allotment shall be fixed by the Honourable the COMMISSIONER OF LANDS by and with the advice of the Land Board.

NOTE.— In connection with this resolution the Board is strongly of opinion that the rate of land should be left entirely to the discretion of the Honourable the COMMISSIONER of LANDS acting by and with the advice of the Land Board.

Proposed by Major SMITH, seconded by Mr. FLEMING and carried.

That the amount required to be spent on improvements as mentioned in Schedule 'A' during the probationary period to be made to title deeds shall be calculated at 40 times the annual rent where white colonisation is possible.

Note.— It must be noted that white occupation is insisted on and that the value of all improvements of all sorts as also living and working expenses are not reckoned in Schedule 'A'.

These items were carefully excluded because of the obvious difficulty of deciding on the bona fides of persons claiming possession of movable property, which might be transferred from one farmer to another in order to deceive the Farm Inspector when making his assessment.

On this basis the Board considers the above expenditure is reasonable.

It will be seen that, if we assume 500 acres as the average farm of 1st. class land, the rent will be £5 and the amount required for beneficial improvements under Schedule 'A' will be £200. In the 2nd. class a farm of 1200 acres, in the third class a farm of 2000 acres, and in the 4th. class a farm of 4000 acres would pay the same rent and the same beneficial improvements under the Schedule would be required. The above-mentioned areas in the respective classes may be taken, for purposes of sale, as variable areas for farms or holdings. The rent having been determined the cost for improvements follows immediately by a simple calculation. A great advantage of this simple classification is that it suits methods of rapid al-

ment by leasing out a farm, and does not demand immediate survey in order that the conditions of tenure may be known at once.

On final survey the rent would be finally assessed and finally the conditions of improvements; but it would not be necessary for survey to follow at once as the provisional rent assigned to each farm would serve sufficiently well for the assessment of improvements, if that happened to precede survey.

It is possible under present conditions to freehold 1000 acres, and the Board understands that it is the intention of His Majesty's Government to continue the privilege whilst apparently a reduction of the extent of individual holdings is contemplated. Taking, again, for the sake of argument, the amount of 1000 acres as the area capable of being freeholded, the Board wishes to point out that such a limit irrespective of the class of land concerned would operate to the advantage of holders of first class land and to the disadvantage of holders of the poorer classes of land. Thus the holder of 500 acres of 1st. class land would be able to freehold the whole of his holding. The holder of 1500 acres of 2nd. class land would be able to freehold 1000 acres or 67% of his holding. The holder of 2400 acres of 3rd. class land would only be able to freehold 1000 acres or 42% of his holding; whilst the holder of 4800 acres of 4th. class land would be restricted to obtaining 1000 acres or only 21% of his holding. Ex hypothesi the farms held are of approximately equal value.

The Board considers a quit-rent system throughout, whether convertible or not, into freehold, would be more equitable.

Proposed by Major LEGGITT, seconded by Mr. FLEMING, and carried.

"That land within the boundaries of prescribed municipalities shall be dealt with (unless reserved for purposes of the Executive Government) as follows;—

- “(a) All such land shall be vested in the Municipal Authority including township lands already allotted.
 - “(b) The Municipal Authority may grant leases of areas, in sizes at its discretion, on the payment by the lessee of a premium plus an annual rental for 25 years.
 - “(c) The stand premium and ground rentals of leases thus granted shall be fixed by the Municipal Authority at the time of allotment, subject to the approval of the Honourable the COMMISSIONER of LANDS, with the advice of the Land Board, and shall be payable by the lessee to the Municipality.
 - “(d) Leases not to contain any covenant regarding building, but the lessee shall be granted with the reservation that a special annual tax may be imposed by the Municipality upon the unimproved value of unbuild land and this tax shall be in addition to the ground rents fixed under the lease.
 - “(e) Freedom of transfer to be allowed immediately leases are granted subject to such fees for registration and survey (if any) as the Treasury may impose for revenue.
- “In townships not proclaimed as Municipalities sub-sections (b) to (e) shall be administered by the Land Department and the funds accruing shall be payable to the Revenue of the East Africa Protectorate.”

NOTE.— The Board recommends that an area adjoining every township be set aside for commonage purposes, such areas to be defined by the Honourable the COMMISSIONER of LANDS acting on the advice of the Land Board and that this commonage be vested in the Municipality.

The Board has not recommended these conditions to Municipalities and Townships on their opinion only.

Messrs. Roberts, Seed, Tarlton and Cowie, prominent citizens of Nairobi, together with Capt. Sanderson, the Town Clerk, were asked to attend the meeting of the Board and unanimously expressed opinions which agreed with the resolutions of the Board.

the Board, feeling strongly that rigid building conditions are likely to lead to jerry-buildings, recommend that they be abolished.

A properly regulated assessment, or a competent local authority, of a tax on undeveloped plots will, in the opinion of the Board, prevent undue speculation, afford a useful addition to the revenue and ensure that local wants should be duly met by suitable development.

The Board would add that it considers that free transfer should be granted.

An open market so established would tend to steady land values.

Proposed by Mr. BAILLIE, seconded by Mr. CLARKE and carried.

"That all persons holding land under the existing Ordinances should be allowed, if they so wish, with the assent of the Land Office, to come under the revised Laws. In the event of such assent being withheld, appeal shall be open to the Honourable the COMMISSIONER of LANDS, advised by the Land Board."

NOTE.— This is to allow for the many cases in which special grants have been made by the Government to applicants who have obtained large areas or concessions on special terms, which it may be considered should still hold good.

Proposed by Mr. FLEMING, seconded by Mr. SMITH, and carried.

"That the foregoing suggestions of the Land Board for the revision of the Urban Lands Ordinances be forwarded through his excellency the GOVERNOR to the Colonial Office by the next mail to give the Secretary of State for the Colonies an opportunity of considering them before the Land Ordinance has reached any important stage in the Legislative Council."

PRINTED FOR PARLIAMENT
Gd. 417 JUNE 1908

Parliament Street,

19 March, 1908.

DRAFT

EAST AFRICAN PROTECTORATE

NO. 134

GOVERNOR

SIR J. HAYES-BATLER, K.C.M.G., C.B.

Ac., Ac., Ac.

Sir,

MINUTE.

Mr. Ellis 16/2

Mr. Read. 13

Mr. Judd

Mr. Andrews 16

Mr. Cox 17

Mr. Lucas

Mr. F. Hopwood 17

Mr. Churchill 13

The Earl of Eglar

- (13771) Gov. to S. of E. No. 506. 25 November.
- (13998) Gov. to S. of E. No. 506. 25 November.
- (14200) Gov. to S. of E. No. 522. 3 December.
- (14297) Gov. to S. of E. No. 522. 5 December.
- (14311) Gov. to S. of E. No. 549. 17 December.
- (14327) Gov. to S. of E. No. 555. 19 December.

I have the honour to acknowledge the receipt of your despatches of the numbers and dates noted in the margin on the subject of the terms of land in the East African Protectorate.

2. I regret that I have been unable to reply to these despatches at an earlier date

in view of the natural desire of the Government and of the settlers to arrive at an early settlement of this important question.

3. I found, however, that there was a considerable divergence between the views expressed by the Land Board, in accordance with

which

537-15

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1961

which you proposed to legislate, and those which I had expressed on the subject, particularly in my despatch of the 23rd of April last, and the endeavour to reconcile this divergence was necessarily a matter requiring time and thought.

4. The most important point of difference was the question of the duration of the leases, and the conditions on which the lessees should be able to transfer their property. On the one hand the settlers are naturally anxious that the land on which they spend their labour should be a marketable and mortgageable security, while on the other hand, it is clear, looking to the experience of other Colonies, that steps must be taken to prevent the accumulation of estates of large areas of land in the hands of individuals through the operation of free transfer, and also that the conditions of tenure must be such that the

H of L 158

DRAFT

Government may be able from time to time to obtain its share of the unearned increment in the value of the land - that is the portion of its value which is due to the growth around it of an organised economic and political system.

5. Such a precaution is the more necessary in the East Africa Protectorate because resort to Customs duties - which is usually the most important branch of the revenue in ~~such~~ ^{newly settled} countries - is partially barred by the ~~existence of the present~~ ^{operation of international agreements} ~~and it is clear that the present state of~~ ^{which at the same time} things, under which so large a proportion of the expenditure is borne by the natives, and by the tax-payers of the United Kingdom, is not defensible as a permanent arrangement.

6. In proceeding to criticise the opinions of the Land Board, I have endeavoured to give due weight both to the wishes of the

settlers

settlers and the just claims of the Government
 and I trust that the legislation which you
 will introduce to give effect to their views
 subject to the modifications which I suggest
 will be found to furnish a reasonable working
 compromise.

I would observe in the first place
 that the personal composition of the Board as
 reported in your telegram of the 3rd of Feb-
 ruary with its large unofficial majority is
 scarcely what I contemplated, but that, as I
 have come to the conclusion, that the Board
 should have an advisory function merely, I
 will not interfere with the arrangement,
 understanding that it is being found to work
 satisfactorily. I think that the Land Board
 should be defined in the law as being a con-
 sultative body consisting of such official and
 unofficial members as the Governor in accord-
 ance with the directions of the Secretary of
 State may from time to time appoint and that

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it should be provided that all appointments shall lapse and the Board be reconstituted on a definite date (say the 1st of April) in each year.

For the reasons already indicated I cannot accept the proposal of the Board that land should be granted on perpetual leases without reassessment of rent; which involves a surrender by the state of the whole of the ~~unimproved~~ ^{unimproved} increment. On the other hand I have come to the conclusion that a 21 years' lease is too short having in view the difficulties of pioneer work in a new country, and after full consideration I have approved the following proposals as striking a fair balance between the interests of the lessee and of the state:

Terms of Land
Leases to be
adopted

Leases for farming to be granted to settlers on reasonable tenancies of 21 years at rent to be payable on a basis of 5% of the unimproved

unimproved value of the land, subject (except where the land in question at the time of valuation is included in a township) to maxima of 90 and 2/3 per acre respectively at the 25th and 50th year, with complete reversion to the Crown at the end of the term on payment of compensation for improvements.

Notice of the rent payable by the tenant should be given to the lessor should not within 3 months of the notice of revaluation accept the same, his lease should determine at the end of the current period.

before the end of the 31st of 1865

Six months before the determination of the lease the land should be offered in one or more blocks at the rent fixed by the board, and at a premium representing the value of the improvements made by the tenant.

The latter sum should be paid over by the new lessee to the outgoing lessee.

If the tenant should be found within 3 months of the determination of the lease,

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the Commissioner should pay from Government funds the assessed value of the improvements to the late lessee less any amount due from him under the expired lease and should then be at liberty to offer the land at a reduced rent.

a temporary occupation, ^{also} should be granted in the first instance and the settler should be on probation for 5 years during which he must spend a sum equal to 40 times the amount of his rent on development (i.e. on certain specified improvements) and after which, if he fulfils the conditions, his title should be confirmed on the leasehold tenure described above. If within a period of not less than 5 years he spends the stipulated sum of money on development, it should be open to him to claim a secure title then. If, on the other hand, the land leased has been unoccupied for any period exceeding 9 months,

or if at the end of the probationary period the stipulated sum of money has not been expended, the Government should have the power to procure on giving compensation for improvements. The probationary period should be included in the first term of 33 years. The improvements should be those specified in schedule A of the report of the Land Board.

10 I am assured by banking authorities that such a tenure will be no obstacle to advances for cultivation; but I am advised that, in general, lenders prefer to look in the first place to the forthcoming crops as their security, and next to the improvements. Values in fact cannot be created by legislation, but only by industry.

"Alienation of land."

11 Resolutions 2 and 4 of the Land Board may be adopted mutatis mutandis, viz. (Resolution 2) "That the holder of the leasehold rights allowed to sell or otherwise alienate

alienate

8

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alienate his land either partly or wholly subject to the following conditions viz., that no alienation of any farm or any portion of a farm be considered as legal before the same is surveyed, a diagram made thereof, and likewise registered in the Deeds and Land Revenue Office".

(The question of how to impose an efficient check upon undue accumulation of land remains for consideration and in a later paragraph I have suggested the adoption of a graduated land tax for this purpose.)

(Resolution 4.) "That, on the division of any farm held under leasehold title, the purchaser to be responsible for the payment of his rent and grain, after such division has been registered". I regret that I am unable to do so.

Resolutions 5 and 6, viz., (Resolution 5.) "That the holders of land under perpetual quit-rent title shall not be

liable

liable to any other burdens but those to which all free old lands are subject or which may hereafter be prescribed.

(Resolution 6.) "That the holder of any land under perpetual quit-rent title have the power to freehold such land on payment of 20 times the annual quit-rent", since he already exercised I am opposed to the permanent surrender of the rights of the State over the land.

The rule permitting the acquisition of a freehold (of 320 acres) may be allowed to stand.

I concur in the Resolutions of the Board numbered 7 (Schedule 9, 9, 10, 11, 12, and 13, viz.,

(Resolution 7) "That the lessee or owner of the farm, or the lessee or owner of such mineral or water as are mentioned in Schedule 9-13, except where the lease are required for public works, provided such lease or purchase within

"Schedule of Minerals and Waters".

within 600 feet of the middle of a public road or railway and always provided that such pit or quarry and the access thereto be properly fenced by Government.

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SCHEDULE "B"

- Clay
- Country Rock
- Gravel
- Lime
- Sand
- Strals
- Scingle
- Slate
- Surface Salt
- Surface Soil.

~~Government shall reserve the right to all minerals and precious stones and precious metals to belong to Government.~~

~~Government shall reserve the right to all water.~~

(Resolution 8) "That Government reserve the rights to all minerals and precious stones except as above provided in schedule 'B'."

(Resolution 9) "That, subject to such irrigation laws as may be from time to time enforced,

the Government reserve the right to the water in rivers and streams flowing through the farms except so far as such water is required for domestic purposes".

~~Government reserve the right of making public roads, Ac., Ac."~~

(Resolution 10) "That, subject to the passing of laws dealing with Mining, Public Roads, and Railways, Ac. The Government reserve the right of making and repairing railways and public roads, the raising material for that purpose, as also the laying of telegraph and electric lines, the erection of poles for the carrying such lines, water pipes and sewers on the premises where not inconsistent with previous resolutions".

~~Compensation for land acquired by Government (under 200 acres)"~~

(Resolution 11) "That compensation shall be given for all land acquired by Government for public purposes, including estates, on all farms not exceeding 200 acres in extent".

~~Compensation for land acquired by Government (over 200 acres)"~~

(Resolution 12) "That in the event of land being acquired by Government for such public purposes,

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purpose, including outpans, as are mentioned in Resolution No. 10 of these recommendations, compensation only for damage done to such improvements as are mentioned in Schedule "A" shall be paid by the Government where the land acquired is from a farm exceeding 200 acres in extent, provided always that in the event of a larger proportion than 4% of the total area of such farm being acquired, compensation for the amount of land in excess of a ratio of 4% to the whole of the farm shall be paid, where not inconsistent with previous resolutions.

(Resolution 11) That all questions of Compensation to be decided by an Arbitration Board consisting of three members, one to be appointed by the lessee or owner of the land, one by the Government, and a third to be mutually agreed upon by the parties concerned, failing mutual agreement to the third arbitrator the

same shall be appointed by the High Court".

It should be made clear, however, that in arriving at the valuation to be taken into account is the actual value of the land or improvements as the case may be.

Classification of land.

14. I concur in Resolution 14 subject to the doubling of the rents which you propose viz.,

[Resolution 14] "That all land outside Township, Municipal, and suburban areas shall be considered as falling into one of 4 classes and that the rental basis shall be 3d. 2d. 1d. and 1/2d respectively per acre per annum, the first class to pay 3d with a minimum rent of 30/- for any holding".

15. Resolution 15 may be adopted with the substitution of ~~the words~~ "after consulting" for "by and with the advice of" before "the Land Board" and the insertion of the words underlined, viz.

[Resolutions 15]: "That the classification of

lands

16

lands for allotment shall be fixed by the Honourable the COMMISSIONER OF LANDS after consulting the Land Board and that it shall be open to the COMMISSIONER to reclassify so as to reduce rents but not to raise them.

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Size of Farms.

16 The normal size of farms in the different classes of land should be stated in the law and should be the following:

			<u>Rent at rates proposed</u>
1st Class land	700- 900 acres	£8.15. 0.	to £11. 5. 0.
2nd "	" 1000-1400 "	£8. 6. 8.	to £11.15. 4.
3rd "	" 2200-2600 "	£9. 3. 4.	to £10.16. 8.
4th "	" 4600-5000 "	£9.11. 8.	to £10. 8. 4.

It should be made clear that these figures indicate only the average size of farms and the maximum areas which would be granted in ordinary circumstances and that persons desiring a smaller portion of land than the stated within any class would be provided for.

Municipal Areas.

with regard to Resolution 13,

I consider that the time is not yet ripe for conferring upon Municipalities in East Africa the extensive powers proposed. No doubt as time goes on and municipal institutions develop steps will be taken by legislation to give the municipal authorities all the powers usually held by municipalities, which would not necessarily include control of Crown lands within the municipal area.

Accordingly the Resolution should be amended by the substitution throughout of "Commissioner of Lands for Municipal Authority,"
 viz:-

"That land within the boundaries of proclaimed Municipalities shall be dealt with (unless reserved for purposes of the Executive Government) as follows:-

- (a) All such land shall be dealt with by the Commissioner of Lands including township lands already allotted.

(b) The Commissioner of Lands may grant leases of areas in aises at his discretion, on the payment by the lessee of a premium plus an annual rental for 99 years.

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(c) The stand premium and ground rentals of leases thus granted shall be fixed at the time of allotment by the Commissioner of Lands after consultation with the Land Board.

(d) Leases not to contain any covenant regarding building, but the leases shall be granted with the reservation that a special annual tax may be imposed upon the unimproved values of unbuilt land and this tax shall be in addition to the ground rents fixed under the lease.

(e) Freedom of transfer to be allowed immediately leases are granted subject to such fees for registration and survey (if any) as the Treasury may impose for revenue.

76. with regard to Resolution 11 I agree that existing holders of land should not be

compelled to come under the new ordinance, but in the event of their wishing to do so the Governor should have the option of refusing permission.

14 With reference to your despatch No. 522 I agree generally in the proposals which you make for the more rapid allotment of land. As soon as the survey fees have been paid a convenient parcel of land of approximately the area desired should be measured off and a temporary occupation title should then be issued without awaiting the survey so that the holder may at once enter into occupation in full security. Holders of land should not be dependent upon the Government for their survey but should be free to employ licensed surveyors. And when the survey has been carried out by a private surveyor the fee deposited with the Government should be paid over less a small percentage for expenses as soon as the

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work has been inspected and found satisfactory. It will be necessary that survey fees should be paid into a special suspense account instead of, as at present, being credited to revenue, and I am inviting the concurrence of the Lords Commissioners of the Treasury ^{to} this change in the method of accounting.

20 With regard to the question of granting land to Indians it is not consonant with the views of His Majesty's Government to impose legal restriction on any particular section of the community, but as a matter of administrative convenience grants in the upland areas should not be made to Indians. I entirely concur in your opinion as to allotments to Indians in other parts of the country, as stated in paragraph 3 of your despatch No. 549; and I would ask you to submit proposals in detail for regulating such allotments.

Lowland Areas.

Gov./1227/07/8.

21 I think that it is clear, although the general principles of tenure laid

down for the highlands are applicable to lowland areas, different regulations will be necessary, and I should be glad if you would submit detailed proposals. It will not be necessary to delay the enactment of legislation for the uplands in the meantime, but it would appear advisable to arrive at some definition of the "uplands", and I should be glad to know whether they can be defined by altitude merely.

22 with regard to the means to be adopted for checking excessive accumulations of ~~land in the hands of individuals~~ I suggest the following proposals for your consideration. As the size of holdings is to be proportionate to the quality of the land, total rent should form the basis of taxation. The rent of a maximum normal holding being rather more than £11, £12 might be the limit of exemption. From £12 to £24 annual rental (5,760 to 11,520 acres 4th class land) an

annual surtax of 1% for every 1/3 of rent might be imposed, allowing, in order that the incidence of the tax should not be too sudden, a graduated abatement from £12 to £18, so that on rents from £12 to £13 a tax would be payable on £1, from £13 to £14 on £4, and so on up to £18, after which tax would be payable on the full rent. On rentals above £24 the scale would be as follows:-

- £24 to £36.....1½d.
- £36 to £48.....1½d
- £48 to £60.....1½d.

and so on in the same proportion.

23

In order however to put a further check upon excessive accumulations of land, the tax on holdings of more than 50,000 acres should be four times that indicated above, and power should be given to the government to prohibit absolutely holdings of more than 100,000 acres by a provision to the following effect:-

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D. C. 1937
W. H. ...

... that when an individual in his own name
granted of a lease or through any person
not possessing totally distinct interests
holds more than 100,000 acres, it shall be
open to the Government at any time to compel
him to divest himself of any surplus within
a certain period (say 6 months), and he shall
be liable in default to a penalty (of, say,
£25) for each day during which any surplus
may be retained after the said period has
elapsed".

24 These provisions could not I think
fairly be applied to existing estates unless
the owners elected to ^{come} under the new law, but
a fresh acquisition of land after the coming
into force of the Ordinance should bring the
holder under the law in respect of the whole
of his land.

25 In order not to impair the value of
leasehold titles and securities, care would
have to be taken to provide for some relaxation

DRAFT

Chapter 55

to be placed
a bond for the
title on the land
within two years
after the date of
possession of the
land by virtue
of the application
made for the same.

of any restrictions of this kind in favour of
banks, loan companies, &c. I would suggest
provisions of the Dominion Lands
Act of 1899 (for a copy is retained)
and also to provide that the same shall
be followed. 26. If such restrictions are to
be effective it would be necessary to take
measures to prevent clandestine transfers of
land, &c. requiring that every transfer
should take the form of an assignment.

It is necessary to adopt some mea-
sures to prevent "dummying" and plural applica-
tions, and I recommend the adoption of the
principle of the New Zealand Law (No. 37 of
1892) in the following form:-

"No person shall, by himself or
through any other person for him, be entitled
to acquire, obtain, or hold, either by application
or by transfer, or otherwise in
any manner, any land under any tenure under
this

28

this Ordinance unless it be exclusively for his own use or benefit".

"And no person who at the time of making his application has made any arrangement or agreement to permit any other person to acquire, by purchase or otherwise, the allotment in respect of which his application is made, or any part thereof, or the applicants interest therein, shall become a lessee under this Ordinance."

~~to be fraudulently
obtained occur in the
of fraud. The
to be inserted~~

"Any person who wilfully and fraudulently commits or incites, instigates or employs any other person to commit, any breach of these provisions by obtaining such lands not exclusively for his own use or benefit, shall be liable to a penalty of not less than one hundred pounds nor exceeding five hundred pounds, or to a term of imprisonment not exceeding one year with or without hard labour, and every person aiding or abetting in such a breach shall be liable to the same."

enactment.

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Power of Crown
to make special
grants.

The proposed Ordinance must
reserve power to the Crown to make grants of
land outside the provisions of the Ordinance
in special cases; e.g. to persons who may
be willing to construct railways or other
public works for the benefit of the Protec-
torate.

I have, etc.,

Ug



Sent 5 10 pm

Wm

DRAFT

6 February

Enhance

Sadler

Nairobi

Referring to your draft N° 523

Daggleleaf

MINUTE 1/2

land tenure impossible

Mr Noall 1/2

Mr Read

Mr. Judd

Mr. Anstobus

Mr. Cox

Mr. Lucas

Sir F Hopwood

Mr. Churchill

The Earl of Elgin

for me to embody views
issued

in a telegram hope to
germander

address you by despatch
dated

early in month of March
diplomacy

it was 1/2 to me