

1934.

Kenya.

CO 533/442

No. 23040.

SUBJECT

CLOSED
UNTIL

~~XXXXXXXXXX~~

Native Rent and Poll Tax.

Previous

3272/33

See 18153/32.

Subsequent

38088/35

Mr. Malcolm Macdonald has asked that a note should be prepared for him to send to Miss Rathbone in regard to the point made by her, supplementary on the P.Q. file. (N^o 2)

The word "property" in the answer was taken direct from para. 5 of the Governor's despatch No. 12 on 17189. of the 4th of August, 1931.

The whole question of the status of native women in Kenya was thoroughly gone into in that year. The attached print (Colonial No. 65) summarises the correspondence. It will be seen from page 17 of the print that Sir Edward Brigg repudiated the suggestion that the women were slaves.

A copy of the print was sent to Miss Rathbone on the 31st December, 1931, and in acknowledging it she said she had "read it with much interest".

Nos. 36 and 61 on 70005/30 Gen.

I submit a draft for conson.

[Signature]
2/2

The word "property" was not used to imply ownership. If I had a wife I might perhaps refer to her as my "property" but that would not involve slavery. What was meant was that the responsibility for the widow passed to the heir.

If we reply as Mr. Freestone suggests it will excite Miss Rathbone to ask why women don't own property in Kenya so I submit an alternative.

I would not refer to the print either: it might only create more trouble.

Extract of minutes
on 20231/2/24
General
(Slavery - Status of Women)

S.S.G. Hand
2.2.

I think the Hooper's draft will serve. It is very difficult to explain African institutions

institutions without coming up
against European ideas. Every
woman has some man she is
responsible for her and custom
requires various services from
her in return. ^{Inheritance of her dowry} This is as old as
Israel and probably much older.

W.C.P.
2.2.34.

Mr. Malcolm MacDonald decided that he would not write to Miss Rathbone, but, after speaking to her in the House of Commons, he suggested that she should come and see someone here to discuss the particular point in which she is interested.

Miss Rathbone called ^{on Tuesday} ~~today~~ and saw Mr. Freeston and me. The specific point about which she was most exercised was whether, if a widow did not wish to be attached to the heir of her deceased husband, she would receive protection either from the District Officers Court or from the Native Court concerned. She was apprehensive, moreover, that even if such a right to protection existed in theory, in practice widows were unable to exercise it owing to pressure of (male) public opinion in the tribe, or other difficulties ^{which would be met by} a woman appearing before a court as a litigant. On this point Mr. Freeston and I assured Miss Rathbone that a widow who did not wish to be "taken over" by

her

3

her deceased husband's heir would receive protection from the courts, and we reinforced this assurance by reading to her quotations from a memorandum supplied by Archdeacon Owen and by the Government of Tanganyika. In addition, I emphasised that, as far as my own experience in Nyasaland ^{went} African women were by no means backward in laying a complaint before a native court or the white man's court; and that, ^{from} so far as my own experience went, they were not to be deterred from doing so by pressure of male opinion, to the contrary. I added that, insofar as Nyasaland was concerned, the real problem was not that widows were being handed over against their will to their deceased husbands' heirs, but that in a great many cases those heirs were, for economic reasons, disinclined to carry out their obligations under tribal custom and were refusing to become responsible for the widows of their deceased brothers. This meant that the unhappy widow was left with no or very limited means of sustenance, and that the structure of native society was being undermined at a very important point.

Finally, Mr. Freeston and I emphasised that there were no grounds for the suggestion that the status of a widow for whom the deceased husband's heir became responsible was that of a slave, or that she was anyone's property in the legal sense of the word. We emphasised this by referring to relevant passages in Colonial No. 65, of which Miss Rathbone has a copy.

I think that on this point we succeeded in allaying Miss Rathbone's suspicions. She then

proceeded

proceeded to discuss briefly her general attitude to problems connected with women in the Colonies, especially the African Colonies. She is particularly concerned at the fact that although we are contemplating the grant to India of a very large measure of self-government, the position of Indian women, in such vital matters as education, child marriage, and the like, is profoundly unsatisfactory, and has, in her view, become worse in recent years. Miss Rathbone thinks that there is little hope of effecting any remedy in India, since what may be called the "social outlook" of the Indian people has become crystallised, and little advance can therefore be expected from Indians themselves. This is largely due, in Miss Rathbone's opinion, to errors made in the past by the British Administration in India, in that they grossly neglected to deal with urgent problems connected with the position of women in Indian society. She is therefore anxious that we should not lose the opportunity, while, at a time when the structure of society in Africa is still, in a sense, fluid, and susceptible of change, we have full power to effect salutary changes in matters appertaining to the position of women. While she does not doubt the sincerity of the Governments in the reassuring statements which they have made concerning the position of women, she considers that there is a danger in that the matter has been almost wholly reviewed by male officials, who,

with

with the best will in the world, cannot hope to obtain an unbiased view. She put forward, therefore, a very vague suggestion that there should be women officials specially appointed to the Colonial Service to examine and to report on questions connected with the status of women in African society. Mr. Freeston and I naturally did not discuss the matter in any detail, although we pointed out that logically the only satisfactory way in which such female officials could obtain direct insight into native problems would be if they became District Officers. A woman sitting at headquarters dealing only with reports would scarcely achieve the objects which Miss Rathbone had in view. We also pointed out that Governments were unable to do all that they wished to do in matters such as female education and health services owing to financial stringency. It was natural and unavoidable that expenditure on male education should come first.

Miss Rathbone did not press the matter, and I think that we did succeed in giving her an assurance that African Governments (and the Colonial Office) were alive to the importance attached to this question. She mentioned that she was contemplating writing a book on the status of women in Colonial dependencies. We promised that if she felt that she would like to discuss the matter in more detail with Mr. Wade, the Chief Native Commissioner in Kenya, who is at present on leave, we would gladly arrange for an interview at a convenient time.

Miss

I have since
written the memo
to Mr. Wade
A.P.

x L. Cherry, as long
as

Miss Rathbone also discussed briefly the question of the return for which she has asked showing the minimum age of marriage and age of consent in the Colonial dependencies.

I have minuted separately about this.

(R. Flynn has seen)

M. V. M.
22.2.34.

M. V. M.
26.2.34

? Publy

A. D. D.
27

J. H. L.
27.2

See. It is precisely the sort of question on which I hope for useful information from the "Chatham House" African Research survey.

*No commencing more weight will be placed on the study of the accounts

W. C. D. 27.2.34
alone

N.A. Dept. Circular No 42 of 9th Sept 1933.

Interesting, as showing that the Kenya Govt. is (or was) seriously considering the legal exemption of widows

? Publy

A. D. D.
1/2/34

J. 2-5 same

17/4/34

To Kenya 264 (w/c H on P. & H. 16/6) 16 APR 1934
C. W. W.

3. Womens International League
Gives the views of the Executive Committee regarding the payment of hut tax by widows & protects against certain statements in Lord Moyne's report & also against wording & tone of answers given in H. of C.

4. Mrs. M. Shepherson - 5 Nov. 1934

5. Governor B. 301 9th June 34

Attaches information regarding the burning of the hut of Odessa W. W. W. for non payment of tax & states that the burning of forfeited huts is rarely resorted to & that orders for discontinuance have been issued.

No 3.

In the letter I mentioned that it is not desirable to discuss with the Womens International League the various points raised. The letter was acknowledged. ? Publy.

No 5. This report on information was asked for by the Kenya Govt. in his question in the H. of C. 1/4/34 (See No 4 on the P. & H. file.)

? The substance of the dispatch may be sent to Mr. Bailliford in a letter from the Private Secretary

* The question was asked by Mr. Bailliford for the Kenya Govt.

T.O.

A. D. D. 1/2/34

In the proposed new legislation, a male native "of the apparent age of 16 or over" becomes liable for the payment of hut tax if he is the owner or occupier of a hut, or poll tax, if he is not liable to pay hut tax. Non-native poll tax is payable on attaining the age of 18.

In Tanganyika, the position is the same. In Uganda an adult male native is defined, for poll tax purposes, as a person above the age of 18 years in the opinion of the District

Commissioner. ^{Reason for the increase} The ~~age limit in Uganda~~ ^{age limit in Uganda} are presumably those of finance ~~to one of finance~~.

The reply to Mr. Hutchinson Cockburn as regards the special circumstances in Kenya warranting the continuance of the imposition of taxation at 16, will be found in paragraph 13 of Lord Moyne's report (Cmd. 4093) and in paragraphs 8 to 10 in ^{the} Governor's despatch of the 4th August 1941.

? It will be sufficient to invite Mr. Hutchinson Cockburn's attention to the appropriate paragraphs in Lord Moyne's report. (The papers should be recirculated for consideration of No.10).

C.A. ^{with} 5/10/41

Yes. We don't want to be drawn into complicated controversy with the Rev. H. Cockburn, a Lord Moyne's Report gives an answer which is both short and authoritative.

(Note that Archdeacon Owen is here on leave!)

J.P. ^{with} 6/10

As regards No.11 I agree with the proposed reply. It is, however, the case that Mr. Hemsted, whose experience and knowledge of the native populations of Kenya cannot be gainsaid, did urge that the age limit should be raised to 18 and was supported in this by Canon Burns. Of course, Archdeacon Owen's letter in 19153 mixes up boys, as meaning half-grown male human beings, and "boys" in the African sense of any employed person. It is quite common to have a "boy" with white hair, but there is no need to go into that kind of question with the Reverend Mr. Cockburn. Lord Moyne's Report furnishes a full answer and if the people in Kenya as a rule regard 16 as the entry to man's estate there is no reason why tax should not begin at the same time.

With regard to No.10 I am not quite as happy as I might be. The starting point of the new Ordinance is said to be a decision in the Supreme Court to the effect that under the Ordinance as it stood no woman was liable to pay tax. We have had a lot of bother from time to time about various allegations to the effect that widows and other females in Kenya were called upon to pay tax, and the legal Govt. could not have taken steps to inform the Secretary of State that the High Court held that payment of poll tax by women was justified under the law, is rather more than I can make out. Further, as they must be known perfectly well that this question of taxing widows was liable to be raised at any moment, they might have had the sense to say nothing about introducing amending Ordinances.

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16

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of the leases in accordance with the Crown Advocate's
opinion.

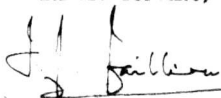
I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,



(In the absence of H.M. Commissioner)

Comm. E. & P. 2718
32269

DRAFT.

R. A. Winward Esq.

Im d/

4 September

MINUTE.

- Mr. ~~Ellis 1/9/0~~
- Mr. ~~Antyobus.~~
- Mr. ~~Cox.~~
- Mr. ~~Lucas.~~
- Mr. ~~Graham.~~
- Sir ~~M. Ommanney~~
- Mr. ~~Churchill.~~
- The Earl of ~~Elgin.~~

PR. Let the letter go by
hand to the address in
18912. The messenger
to ascertain if he is there

Per
 with refer^{ence} to the letter
 from this dept. of the
 31st May I am
 directed by the tail
 of Elgin to inform
 you that he has
 now received from the
 Commr of the E. & P. a
 despatch on the subject of
 certain leases of
 Railway land by
 the Post Office to Messrs
 George & Co. &
 that Elgin regrets
 that owing to some
 misunderstanding
 he has a question last