

EAST AFR. PROT.

34203

No. 34

Re. Sec. 8

Serial No.

(Subject)

1906

Masters & Servants Ordinance 1906

Judicial Committee showing source of  
each section of -  
As to Sec 1 & 2 see General Instructions  
Meeting of Ordinance of 1906

(Minutes)

Mr. Buckley

H. J. R.

18/9

has Ant. Am.

This Ord. is a compilation of C. of East & West Law  
Roughly speaking, with the exception of secs 6, 7, 21, 22, 24, 25, 26, 27, 28, 29, 30 & 33  
(which are taken from the Treaty) it is an adaptation of the  
C. of East Law

See no legal objection to it and it appears to call  
for no change of importance

Sec 23, the first 5 words have got into a tangle. They should  
run "Not from period or period of."

See 29, the increased penalty is I think all to the good  
There are typographical errors hardly worth noticing  
eg. in Sec 15 "appear" used in many notes to sec 29 "assault"  
Schedule. Form of Bond. Footnote (b). This is taken verbatim from  
the C. of East Law. There is a word "with" in the text  
which is not in the original. See 9 of the C. of East  
Law. It is a necessary addition of the present

Subsequent Papers

25237

checking over the S.B. Crown entire quantity as to  
the amount of the bond and please no less than a certain  
minimum or maximum

This receipt perhaps to be printed out in some form,  
and attention might also be drawn to the mistake  
in Sec 23

J.R. 29/9

With regard to para 2 of the dep we should send out  
several copies of the "General Instructions" intended  
to - - - - - copy for reference but should like  
to have it back - - - - - I suspect copies of  
these instructions are now scarce it will be as  
well to have a number reprinted for this, apply  
now (since the recent Dec) to S. B. and - - -  
all to - - - Africa reg. docs - B.L.A.

J.R.

Sgt. for amon.

at once  
J.R.

1/10

~~The Reading~~  
Mr. Reed

Library have 10 copies of the  
Instructions

Reprint as an office paper, with  
heading altered as I have indicated on  
the accompanying copy

J.R.

11/10

J.R. 11/10

200 copies

Mr. Controller

This is very important

A good deal  
of work is  
being done  
all at present  
of records  
Probably  
has been  
these instructions  
as they have  
recently been  
applicable

Order

It regulates the relations between  
the (master) owners of the (public)  
masters, which is about the 499  
most important question with which  
we have to deal in the Protectorate.

It authorises contracts of service for  
as long as ~~longer~~ three years  
(s 10)

Wages may be paid in kind (s 14)

Breach of contract may be punished  
by 3 mos. imprisonment (s 19 b)

Arrest of officers by a  
servant see punishable with one  
month's hard labour (s 21)

Among these note (2) "if he  
shall without leave, or other law-  
ful cause, absent himself from  
his employer's premises, or other  
place proper & appointed for the  
performance of his work"

s. 24. Punishes the period of imprison-  
ment to be added to the term of  
the contract.

s. 26. Magistrate may order  
a servant to pay compensation

perhaps a donee, several by his  
extraordinary, & the same  
may be inferred in default.

These sections are derived  
from the T. and C. Ord<sup>s</sup> of 1890  
or of the G. Coast Ord<sup>s</sup> of 1893  
They may be, & probably are,  
misapprehension in order to obtain  
reasonable success from the  
members who are assessed to the  
benefits & obligations of various  
below, but in view of the other  
two recently drafted. The objection  
it seemed necessary to call attention  
to them, on this their first  
introduction into the Protectorate

M.M. 12/10

Yes. I think that they  
have done better to stick  
to the Gold Coast model  
and not the provisions  
from the Transvaal, but  
the law has now been in  
operation for 6 months, and  
I don't know if it stands  
M.M. Oct 25 <sup>into</sup>  
27/10

including  
improvements  
provisions  
arrangements  
circumstances

I am very doubtful if the Ordinance  
should be adopted  
In the first place I see no reason why the  
distinct order in para 4 of the former Ord<sup>s</sup>  
was not observed - and the S. of S. consulted  
before the Ordinance was promulgated. It seems  
to depend entirely on a report of respect  
from the Crown Advocate - of whose ability  
in drafting I am ignorant. The report seems  
to have dated 4 days late than the  
date of the Ordinance itself.  
Para. 6 of the Ordinance says it does  
that laws in history differential treatment of  
nations" and made a reference to T. of S.  
"Merely desirable".  
But locally the Ordinance is worded  
"take provisions" from the laws in force in  
British Africa" and it appears that  
several of the provisions of the law  
of the Transvaal...  
could be in the highest degree...  
that it must have been...  
that they were exacting provisions...  
East Africa" which they did.

desire to see...  
I cannot...  
Ordinance...  
a year distant...  
approx 1

Mr. Justice  
Please let me know  
whether the Masters of Requests  
Law (No 12 of 1880)  
of the Treasury, has lately  
been the subject of discussion  
& whether any of the  
have been...  
...  
(The matter is...)  
MAY 5/11

The Order which was passed during the  
British rule in the T.V. has not been  
repealed that I can discover, nor  
I remember that it has recently  
formed the subject of discussion. The  
...  
...  
...

This rather alters the  
case. If the Treasury  
law was passed during  
the first period of  
British rule, and has  
not recently formed the  
subject of discussion  
there is not the same  
objection to adopting  
provisions from it.

As to the provisions  
themselves, it is possible  
that, if we had been  
consulted beforehand, we  
might have hesitated in  
view of recent discussions,  
to sanction the enactment  
of provisions which were  
not thought open to any  
objection when the  
Gold Coast and Transvaal  
laws were originally  
enacted. But, as the  
law has now been...

operation for 1911 - 2011  
 more than without any  
 objection having been  
 taken to it, Lord Hoffmann  
 may not think it nec-  
 essary to do more than  
 direct that the working of  
 the law should be care-  
 fully watched and that  
 in the future time it  
 will not be dissatisfied

11th Nov 11

But attention should be called  
 to the non-observance of para 4  
 of the general Instructions

WFO  
 12/11

I am sorry that I did not see this  
 when it passed through before I did  
 not know how the mistake occurred;  
 but I accept full responsibility & must  
 regret this awkward hour of business  
 which should have escaped my notice.

There are several provisions in this Order  
 which would be objectionable & might  
 prove objectionable: Most of all "payment in kind"  
 & "I think we should not sanction it"  
 in its present form. I would not

draft 24.203 to the Government  
 Lawless has reply before passing  
 to any decision.

102 18 11

For - Japan - Sadhore & Roy  
 Opinion that this is a doubtful reference

16 11

Mr. Gellor

10/11/11

See Mr. Gellor's minute attached.



with regard to 3 14 of 1874  
I understand that you  
thought that the  
fact that the  
with the object of  
case of relations  
Canada, will when it is thought  
the matter might be allowed to  
make any arrangements which  
would be satisfactory to both  
parties. Apart from this, on  
the general principle, I have  
always been strongly opposed  
to arguments in any thing  
but in such a the  
conclusion could show that  
be always made a point of  
not in such a  
I not in such a

Mr. Read holds Col. Padden

that this step was too important  
for us to grant him anything  
in the nature of a distinction  
from complying with its  
terms, if accordingly he will  
write an answer which as soon as  
he gets back  
There is no need  
to remind him officially

M. S. P.

Wait  
at once.  
H. J. R.  
874



Commissioner's Office

Nairobi,

August 26th 1906.

AFRICA PROTECTORATE.

No. 463.

34203  
REC'D SEP 10

My Lord;

In obedience to the instructions contained in Your Lordship's despatch No. 331 of June 13th, I have the honour to transmit herewith a tabulary statement showing the source of each section of the Masters and Servants Ordinance, 1906.

2. I have the honour to request, with reference to paragraph 3, that I may be furnished with six copies of the "General Instructions respecting the making of Ordinances" of 1902.

I have the honour to be,  
With the highest respect,  
My Lord,

Your Lordship's most obedient,  
humble servant,

*J. J. Gallen*

In the absence of H. M. Commissioner.

Principal Secretary of state  
for the Colonies;  
Downing Street,  
London, W.

34203

MASTER AND SERVANTS

SOURCE AND REMARKS.

ORDINANCE 1906.

The Ordinance is founded on the Transvaal Master & Servants Law 1880 (Law No. 13 of 1880) and the Gold Coast Master & Servants Ordinance 1893. (No. 8 of 1893).

Definitions adopted in part from the above laws.

Section 5 of the Gold Coast No. of 1893. The Gold-Coast Ordinance ~~also~~ provides that an oral contract of service shall not be binding for a longer period than six months. In the East Africa Ordinance that period has been reduced to one month as it is considered that a contract for the breach of which a servant is made liable to punishment should not be binding for a longer period than one month unless the terms of the contract shall have been explained to the servant in the manner prescribed in the following section.

Section 6 of the Gold Coast Ordinance.

Section 7 of the Gold Coast Ordinance.

Section 8 of the Gold Coast Ordinance. The East Africa Ordinance provides for the insertion of the duration of the service in a written contract of service, as it is considered that the servant should clearly understand the period for which he engages to serve.

Provision for the levying of fees for service rendered in attesting contract of service.

Section 9 of the Gold Coast Ordinance. The latter part of the above Section limiting the discretion of the Sub-Commissioner as to the amount of the bond to be required of the employer has been omitted as there appears to be no sufficient reason for retaining his discretion, whereas it would be more useful to be applied to the employment of natives for whom the amount of a bond of a substantial nature is not desirable.

MASTER AND SERVANTS

SOURCE AND REMARKS.

ORDINANCE 1906

Section 7 (2). There is no similar provision in the Gold Coast Ordinance but such provision is required to meet the cases (1) of an employer only temporary resident in the Protectorate; (2) and employer who the Sub-Commissioner may consider undesirable financially or otherwise.

Section 8. Section 10 of the Gold Coast Ordinance.

Section 9. Section 11 of the Gold Coast Ordinance. As natives are sometimes engaged in gangs of some hundreds of persons provision is made in the East Africa Ordinance to relieve the attesting Magistrate of necessity of giving each of the employed a duplicate copy of the contract.

Section 10. Section 12 of the Gold Coast Ordinance.

Section 11. Section 13 of the Gold Coast Ordinance.

Section 12. Section 14 of the Gold Coast Ordinance. The section has been altered so as to enable an employer to detain his porters until the termination of his journey.

Section 13. Section 15 of the Gold Coast Ordinance.

Section 14. Section 16 of the Gold Coast Ordinance.

Section 15. Section 17 of the Gold Coast Ordinance. The maximum fine is less than that prescribed by the Gold Coast Ordinance. The imprisonment authorised by the section to be imposed in default of ~~imprisonment~~ payment of the fine is less than that authorised by the Penal Code.

Section 16. Section 27 of the Gold Coast Ordinance. As it is necessary that Magistrates should exercise jurisdiction over Europeans in matters arising out of this Ordinance Magistrates of the third class have been given no jurisdiction over matters arising out of the Ordinance.

Section 17. Proviso enabling Magistrates of the first and second class to exercise jurisdiction over (1) Europeans in matters arising out of this Ordinance; (2) persons temporarily

MASTER AND SERVANTS

SOURCE AND REMARKS

ORDINANCE 1906.

	within their jurisdiction notwithstanding that the matter complained of <del>or</del> arose in some other district.
tion 18.	Section 28 of the Gold Coast Ordinance.
tion 19 (1).	Section 29 (1) of the Gold Coast Ordinance. Section 19 (1) (c) is an additional provision rendered necessary by reason of the later sections of the Ordinance.
tion 19 (2) & (3).	Section 29 (2) & (3) of the Gold Coast Ordinance.
tion 20.	Section 30 of the Gold Coast Ordinance. A "cane" being substituted for a "Birch" as the instrument of punishment.
tion 21.	Chapter V Section 3 of the Transvaal Master & Servants Law 1880. The acts or instances of misconduct No 6 & 7 of the Transvaal Law have been omitted in the East Africa Ordinance. The maximum fine is fixed at one month's wages which in the majority of cases is less than that sanctioned by the Transvaal Law.
tion 22.	Chapter V Section 4 of the Transvaal Law. The latter part of the above section and the following section dealing with second and subsequent conviction have not been adopted.
tion 23.	Chapter V Section 7 of the Transvaal Law.
tion 24.	Chapter V Section 10 of the Transvaal Law.
tion 25.	Chapter V Section 11 of the Transvaal Law.
tion 26.	Chapter V Section 12 of the Transvaal Law.
tion 27.	Section 29 (a) of the Gold Coast Ordinance. Three months imprisonment being substituted for the six prescribed by that section.
tion 28.	Chapter V Section 15 of the Transvaal Law the words "without undue delay" being

MASTER AND SERVANTS  
ORDINANCE 1902.

SOURCE AND REMARKS.

substituted for "within one month" as in some cases it may be impossible for a master to lay his complaint before a Magistrate within one month.

Section 29.

Chapter V Sections 21, 22 & 23 of the Transvaal Law.  
The maximum fine which may be imposed under the East Africa Ordinance is considerably heavier than that prescribed by the Transvaal Ordinance.  
It is however submitted that both in the interest of the native employee and of the employer of labour the Court should have power to impose a substantial fine on unscrupulous employers who by dishonest neglect to pay their employees discourage the native from engaging themselves in service.

Section 30.

Section 39<sup>1</sup> of the Gold Coast Ordinance.

Section 31.

Chapter V Section 32 of the Transvaal Law.

Section 32.

Section 32 of the Gold Coast Ordinance.

Section 33.

Chapter V Section 25 of the Transvaal Law. The words "frivolous or vexatious" have been substituted for the words "without reasonable or probable cause" to accord with similar provisions in the Indian Procedure Code.

Section 34.

Section 34 of the Gold Coast Ordinance.

Section 35.

Saving a clause as regards ~~the~~ offences otherwise punishable.

Section 36.

Saving as to contracts of porters governed by the Native Porters & Labour Regulations 1902.

Section 37.

Section 40 of the Gold Coast Ordinance.

Section 38.

Section 41 of the Gold Coast Ordinance.

Section 39.

Section 42 of the Gold Coast Ordinance.

Section 40.

Repealing section.



grounds, & also in furtherance  
of the the specific Instructions  
for the making of Ordinances  
to which your order, which  
has been submitted to  
me before enactment  
with a full statement of  
the policy embodied in  
the Ordinance & the grounds  
for its adoption, instead  
of being, as was actually  
the case, submitted after  
enactment with a compressed  
only by an order of request  
from the Crown Advocate  
dealing, inadequately,  
with the purely legal  
aspects of the law enact-  
ment.

3. The Instructions lay  
down that in most  
cases it is advisable  
that the P. O. should be

consulted before an Ordinance  
is promulgated" and,  
further, they mention  
among the cases in  
which such a reference  
is specially desirable  
"laws involving political  
questions e.g. a law for  
the transition or other  
differentiated treatment  
of natives."

4. It is true that s. 4(b)  
permits legislation  
without previous refer-  
ence when a law of  
any Colony of normal  
character is adapted to  
meet ordinary government  
purposes in the Protectorate.  
But whether, as was  
probably the intention,  
the words of normal charac-  
ter are taken as  
qualifying the word  
"law", or whether  
they are regarded as  
qualifying the word

6. *Dr. J. M. Lewis*

*about the Order.*

*can be allowed to remain  
in operation, I must*

*request that you will  
furnish me with a*

*full report on the con-  
ditions which render*

*such provisions necessary,  
and upon the general*

*policy & scope of the*

*Order.*