

EAST AFR. PROT.

3482

3482



Colonial

Date:

Land Laws.

Feb?

Discussion w Sir P. Girouard

at previous Paper.

on certain points

28/8/6
10

W. Fiddes.

I now submit a further draft dealing with the outstanding land questions in the E.A.P. which were discussed with Sir P. Girouard by Colonel Seely on Monday last, the 30th Jan.

A word of caution is necessary. Sir P. Girouard had to leave about half way through the discussion, and had to entrust the representation of his views to Lt Col. Montgomery, lately the Comd of hands in the

1911
3 Feb 8 Feb
49
to further to for Comd of Feb

at subsequent Paper

1/2
1912

Protectorate & Mr. Gower, the consequences
in the hand Dept. These gentlemen
were apparently fully satisfied with
the settlement of the various points
proposed by Colonel Seely. But I fear
that it does not follow that Sir P. Girouard
will be equally satisfied. This has
already been shown by his attitude on
one of the points discussed, viz. that
dealt with in para. 8 of the draft which
I now submit. As I have indicated
in the margin of the draft, Colonel
Seely agreed to a modification of the
decision on this point at Sir P. Girouard's
instance on the following day. I have
therefore thought it advisable to propose
(in para. 12) readiness to consider alterna-
-ative proposals. It will create a difficult
situation if we impose upon Sir P. Girouard
without option, solutions which he has
not yet had a chance of considering,
& which he may think not much of an
improvement on the difficulties which
they are designed to meet. These
remarks apply to paragraphs 7-10

of the draft despatch. He was present up to the point reached in para. 6. 121

I am particularly nervous about para. 9. At first sight there is no more harm in it than in para. 8. But in para. 8. ~~we~~ ^{we} are substituting for a restriction on freehold imposed by the Law of 1902, a less previous restriction; while in para. 9. we are imposing a requirement as to continuous development. Land held under lease ^{on freehold} under the new law which was not contemplated in Lord Elgin's despatch of the 19th of March 1908. It is logical but it will be regarded as a distinct tightening up of the "Elgin" policy, if I may call it so. For my own part, I should ^{for the reasons} prefer to omit para. 9.

[Please see in addition my reply to the S. of S. on page 10, on the enclosed sheet, whether we

not to telegraph to the Pte to
issue no more occupation licences
under the 1909 law]

Pl 3

Pl 3

Mr Colley

Mr Harcourt

I should think that part

of the dft. desp. had better be omitted.

I don't expect Sir P. would complain
bitterly if we went beyond the limits of the
Clyde desp. unless having given him an
opportunity of stating his views: it is certainly
not a difficult matter with the Admiralty.

Also, I agree with Mr Buller with
the latter (in the matter of) that it would be better
not to discuss the occupation licences
before the Admiralty, & to let the
few licences that may issue before the
Gos's arrival to be dealt with
by the Admiralty effect. The latter is
moreover + is of assistance to Gos's difficulties.

Pl 42

I agree with Mr. Fildes on both points.

Page 11 1/2

attach to ^{CO 100} ~~34824~~ ~~28785~~ EAP

122

At yesterday's conference on the
London Ordinance, Sir P. forward asked
if he could have an announcement
of the B. of B.'s decision to produce
on his return to the Pte I submit
a draft despatch accordingly for
consideration. Sir Percy says that
if it is posted on Friday to him, &
our Resident at Aden, it will catch
him. (A duplicate should, however,
be sent to the Pte direct for safety's
sake).

Yes.
H. J. H.

There are many points, discussed
at yesterday's meeting, of a technical
& petty nature, on which it is
impossible to draft at such short
notice a further despatch, or despatches,
can be sent shortly on these points.
There are distinct advantages in
not crowding them into a despatch
which is to be Sir Percy's apologia.

to the disappointed settlers,
which will of course have to be
published.

We must shortly consider what
papers should be given to
Parliament on this question.

HAB

Jan. 31.

H. J. R.

3/11

Col Seely

to Harcourt

W. 3/11

W.
1.2.11

Ought we not to telegraph to
E. A. P. to stop all further
occupation licences till Sir P.
Girouard arrives?

H. 1.2.11

at Read
with idles.

This question occurred to me
as soon as the S. of B.'s
decision on the land position

123
was known. I put it to Sir P.
Girouard but he was very anxious
that nothing should be said to the
O. A. C. and that no intimation
should be given in the P. before he
was heard, and could make known
at once the decision, the reasons
on which it was based, & the concession
(as to applicants since May 1908)
which accompanied it. He feared that
a telegram, which necessarily could
not go into details, would only serve
to alarm the settlers, & would
increase his difficulties on lending.

If no intimation is given
applications for holdings will be
proceeding at a normal rate (or
perhaps even more slowly than usual
pending a pronouncement by the
Govt.) and the situation will not be
seriously prejudiced by three weeks
delay. The Govt. is under pledge to
issue the necessary notification at the

earliest moment practicable after
his arrival.

2/13

Feb. 3

Very much

H. J. 2nd

400
3482
2878
G.A.P.
24



DRAFT.

WEST AFRICA PROTECTORATE

CONFIDENTIAL

(2149)

Downing Street,
9 Feb. 1911.

Governor

Sir Percy Girouard, K.C.M.G., D.S.O., P.E.

MINUTE.

Mr. Butler. Jan 31

Mr. Read 31

Mr. Fiddes 31

Mr. Just.

Mr. Cox.

Sir C. Lucas.

Sir F. Hopwood.

Col. Seely. 1/2.11.

Lord Cromer.

Mr. Harcourt 1/2.11.

for insertion

and 10640
15990

Sir,

I have the honour to acknowledge the

receipt of your ~~Confidential~~ despatch No. 19

of the 17th of February 1910, in which, after

full consideration of the matter in the Pro-

teCTORATE, you informed my predecessor that

you must unhesitatingly recommend the approval

and promulgation of the Crown Lands Ordinance

4909, which was submitted for his consideration

in Mr Jackson's despatch No. 219 of the 25th of

April 1909.

2. The Ordinance submitted differed in

65-2-11
1891-30 + No 57 in Apr 1895 1 two
+ No 123 in Apr 1895 1

two important respects from the policy laid

down in Lord Elgin's despatch of the 19th

(a) of

of March 1906. The Ordinance contained no

provision for the revision of rents at the

end of the 33rd and 66th years of the 99 years

lease. It was proposed in substitution for

this to increase the initial rents of land *approved*

proposed by Lord Elgin in connection with such

revision. *(The ordinance* also made no provision for the *imposition of a*

graduated land tax. This omission was defended

on the ground that, although excessive accumu-

lations of undeveloped land in the hands of

individuals were admittedly bad for the country,

such accumulations would be prevented under the

Ordinance *as drafted, by the grant of moderate areas* in the first instance and by with-

holding of the right to transfer until suf-

ficient development had taken place.

His predecessor had already formed his conclusions

on the Ordinance and on the policy which he

felt it incumbent on him to pursue, and was

about to communicate with you on the subject

when he received your telegram No. 180 of

the 10th ^{of} September last) in which you requested

that, in view of your approaching visit to

the island, no definite decision should be come

to in the matter pending your arrival.

3. The very important questions involved

have now been discussed with you with ~~the~~

greater care and thoroughness. You have

represented to me, *with much force and* in great detail and with

~~very great~~ ability the objections entertained

by the present European population of the

Protectorate to the main requirements laid

down in Lord Elgin's despatch of the 19th

of March 1906, to which reference is made above.

4. As to the revision of rent during the

term of the lease, I have carefully weighed

the *considerations* ~~objections~~ which you have *stated* explained, and

especially the objection, which I admit has a

~~certain amount of force~~, that the uncertainty

as to future rents *in the absence of a* make it more difficult

to borrow money on mortgage. It will be seen,

however, on reference to paragraphs 4 and 10

to be a real after all is never possible
in practice

of Lord Alton's despatch, that this particular point objection was fully considered before his statement of policy was made. I read nothing of the objections which have been stated of sufficient importance to justify the abandonment of the principle which I am convinced is sound, namely, that the Government should preserve to itself the means of obtaining some share of any future increase in the value of the land. The proposal to increase the initial rates of rent which has been suggested in the Protectorate as an alternative does not appear to me to meet the case. The increases proposed are not substantial, in view of the extreme lowness of the rents originally proposed and I feel that the policy of providing for revision is fairer to the settlers themselves than to stipulate for considerably higher initial rents which might prove a hindrance to development. In any case, the principle that the community is entitled to receive a fair

I have no doubt evidence before me as to the fact that it is difficult to persuade the Government to consider that the revision system is better than the former one.

DRAFT

share of the increased value of the land is not secured by the proposal for an initial increase of rent. It has been suggested in the suggestion that it may be left to the good sense of future generations to protect

the interests of the community by imposing a land tax or by other means. The present ~~for many years~~ of the Protectorate to come the white population will consist almost entirely of the land holding class, and it is hardly to be expected that such a community will voluntarily impose a tax on the land. If the principle of reserving to the State some share of the incremental value of the land is to be adopted, I am persuaded that the principle must be asserted now.

I should quit for, attend to settlement

5. As to the proposal for a graduated land tax, it has been brought to my notice that of the land in the Protectorate fit for white settlement some 4,000 square miles has already been sold or leased, and that it is estimated that

that only about 4,000 square miles still remains for disposal. The present white population of the Highlands is ~~about 2,000~~ ^{stated by you to be 1200}.

It will be seen therefore, that the ideal of a large white population in the Highlands may be seriously prejudiced unless the Government retains some means of restraining undue accumulation of land. The graduated land tax proposed in Lord Elgin's despatch is, in my opinion, well designed to secure this object.

6. I have considered ~~all~~ the representations which you have made with the fullest desire to give all due weight ~~both~~ to the ~~strength of the opinion of the white settlers~~ who are already resident in the Protectorate and on whose presence and efforts the immediate future of the Protectorate may be said to depend. I recognise the earnestness and sincerity with which you have advocated their views. ~~The fact that those views are~~

run

^{consider} ~~run~~ country to the policy which, as you ^{stated} ~~con-~~ sidered in your despatch of the 17th of February 1910, ^{you consider} would undoubtedly ^{of} ~~be~~ a lasting benefit to the community. ^{The fact} ~~that you never~~ ^{continues} ~~theless~~ ^{is that} ~~advocate~~ ^{in advocating} ~~the policy embodied~~ ^{the adoption of 1909} ~~in the draft Ordinance~~ ^{now under consideration,}

^{believe} ~~you are~~ ^{convinces me that} ~~satisfied~~ that the conditions at present prevailing in the Protectorate are such that in your opinion the advantages which in theory are clearly attendant on the policy laid down by my predecessors in office, are outweighed by the ^{opinion of} ~~practical~~ objections which the white community ~~are~~ to the application of that policy to the East Africa Protectorate. It would have been a great satisfaction to me if I had been able to yield to your strong expression of opinion ^{as to} ~~of~~ the wishes of the white population. I am unable, however, to divest myself of my responsibility as to the future welfare of the Protectorate, and, therefore, being convinced as I have already explained,

at only about 4,000 square miles still
 remains for disposal. The present white
 population of the Highlands is ^{stated by you to be 1200} about 2,000.
 It will be seen therefore, that the idea of a
 large white population in the Highlands may
 be seriously prejudiced unless the Government
 obtains some means of restraining undue
 accumulation of land. The graduated land
 tax proposed in Lord Elgin's despatch is, in
 my opinion, well designed to secure this
 object.

6. I have considered all the representa-
 tions which you have made with the fullest
 desire to give all due weight both to the
 strength of the opinion of the white settlers
 who are already resident in the Protectorate
 and on whose presence and efforts the imme-
 diate future of the Protectorate may be said
 to depend. I recognise the earnestness and
 sincerity with which you have advocated their
 views. The fact that those views apparently

run

^{Under} run ~~country~~ to the policy which, as you ^{stated} ~~con-~~
~~sidered~~ in your despatch of the 17th of
 February 1910, ^{you consider} would undoubtedly prove of
 lasting benefit to the community. ^{The fact} ~~convinces~~
~~that I will nevertheless advocate~~
~~the adoption of the policy embodied~~
~~in the draft Ordinance now under consideration,~~

^{where} ~~convinces~~ me that you are satisfied that the conditions at pre-
 sent prevailing in the Protectorate are such
 that in your opinion the advantages which in
 theory are clearly attendant on the policy
 laid down by my predecessors in office, are
 outweighed by the ^{practical} ~~practical~~ objections which
 the white community ~~are~~ ^{oppose to} the application of
 that policy to the East Africa Protectorate.
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 expression of opinion ^{and to} ~~of~~ the wishes of the
 white population. I am unable, however, to
 divest myself of my responsibility as to the
 future welfare of the Protectorate, and
 therefore being convinced as I have already

explained

explained to you, of the reasonableness and value of the proposals made in Lord Elgin's despatch, I have no alternative but to request that a new Crown Lands Ordinance may be framed embodying the principles of revision of rent and a graduated land tax, as there laid down. I

have to request also that ^{the} revisions as to dumping suggested in paragraph 27 of Lord Elgin's despatch may be embodied in the new Ordinance. I note the opinion which you have expressed that such provisions will be

practically inoperative and can be evaded by recognised legal methods, but I feel nevertheless that it is incumbent on the Government to ~~do~~ ^{impose the legal restriction and to do} all that is possible to make ~~such~~ evasion of it difficult.

7. If at ~~any~~ future date you are able to produce to me ~~any~~ ^{actual} evidence of injury to the prospects of the Protectorate resulting from the application of the policy to which I now request you to revert, I shall of course be

fully

DRAFT

fully prepared to give the ~~most~~ careful consideration to ^{your representations} such evidence. It will, however, ^{be necessary that I should} consider only ^{in so far as possible} to produce ^{such} ~~facts~~ ^{evidence, if at all,} of the kind described when the new law has actually come into operation and its effect can be gauged in practice.

8. You have represented to me that applicants for land since May 1906 are in a somewhat special position and that their case demands separate consideration. On the 7th of May 1906, a Notice was published in the Government Gazette of the Protectorate that all lands available for allotment outside townships would be granted in future on conditions which were practically those prescribed in Lord Elgin's despatch, including revision of rent at the end of the 33rd and 66th years of the lease. I understand that in practice the procedure since that date has been to issue Occupation Licences, the fulfilment of the conditions of which entitled the holder to the grant of a

lease

Compare S. 7
9/397/10

of Lord Elgin's despatch, that this particular ^{point} objection was fully considered before his statement of policy was made. I see nothing ^{in the objection} in the objections which have been stated of sufficient importance to justify the abandonment of the principle which I am convinced is sound, namely, that the Government should preserve to itself the means of obtaining some share of any future increase in the value of the land. The proposal to increase the initial rates of rent which has been suggested in the Protectorate as an alternative does not appear to me to meet the case. The increases proposed are not ^{very} substantial, in view of the extremeness of the rents originally ^{proposed} and I feel that the policy of providing for revision is fairer to the settlers themselves ^{than to stipulate for considerably higher initial rents which might prove a hindrance to development.} In any case the principle that the community is entitled to receive a fair

I have no clear evidence before me as to what is really possible and I am unable to say that the various objections which have been put forward are 2

DRAFT

share of the increased value of the land is not secured by the proposal for an initial increase of rent. ^{It has been suggested} in the suggestion ^{ed} that it may be left to the good sense of future generations to protect the interests of the community by imposing a land tax or by other means. ^{The present} ~~For many years~~ ^{of the Protectorate} to come the white population will consist almost entirely of the land holding class, ^{is however, opposed to measures designed to secure this effect, and I} and it is hardly to be expected that such a community will voluntarily impose a tax on ^{that the matter can safely be left for future generations.} If the principle of reserving to the State some share of the incremental value of the land is to be adopted, I am persuaded that the principle must be asserted now.

I should quit for, Ottawa 9th of settlement

5. As to the proposal for a graduated land tax, it has been brought to my notice that of the land in the Protectorate fit for white settlement some 4,000 square ^{miles} has already been sold or leased, and that ^{of this}

that only about 4,000 square miles still
remains for disposal. The present white
population of the Highlands is *stated by you to be 1200* about 2,000.

It will be seen therefore that the idea of a
large white population in the Highlands may
be seriously prejudiced unless the Government
retains some means of restraining undue
accumulation of land. The graduated land
tax proposed in Lord Elgin's despatch is, in
my opinion, well designed to secure this
object.

6. I have considered all the representa-
tions which you have made with the fullest
desire to give all due weight ~~both~~ to the
~~strength of the opinion~~ of the white settlers
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and on whose presence and efforts the imme-
diate future of the Protectorate may be said
to depend. I recognize the earnestness and
sincerity with which you have advocated their
views. ~~The fact that those views appeared~~

run

under
run country to the policy which, as you ^{stated} con-
sidered in your despatch of the 17th of
February 1910, ^{was} ~~was~~ undoubtedly
lasting benefit to the community. ^{The fact}
~~that you nevertheless~~ ^{admitted}
me that, in advocating the policy embodied
in the draft Ordinance now under consideration,

believe
embraces as the you are satisfied that the conditions at pre-
sent prevailing in the Protectorate are such
that in your opinion the advantages which in
theory are clearly attendant on the policy
laid down by my predecessors in office, are
outweighed by the ^{practical} practical objections which
the white community ~~are~~ to the application of
that policy to the East Africa Protectorate.
It would have been a great satisfaction to me
if I had been able to yield to your strong
expression of opinion ^{and to} of the wishes of the
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divest myself of my responsibility as to the
future affairs of the Protectorate, and,
therefore, being convinced, as I have already

explained

that only about 4,000 square miles still remains for disposal. The present white population of the Highlands is ~~about 2,000.~~ ^{stated by you to be 1200.}

It will be seen therefore that the ideal of a large white population in the Highlands may be seriously prejudiced unless the Government retains some means of restraining undue accumulation of land. The graduated land tax proposed in Lord Elgin's despatch is, in my opinion, well designed to secure this object.

6. I have considered all the representations which you have made with the fullest desire to give all weight both to the strength of the claims of the white settlers who are already resident in the Protectorate and on whose presence and efforts the immediate future of the Protectorate may be said to depend. I recognised the earnestness and sincerity with which you have advocated their views. The fact that those views were

run

^{under} run counter to the policy which, as you ^{stated} ~~con-~~ sidered in your despatch of the 13th of February 1907, would undoubtedly have been of lasting benefit to the community. ^{The fact} ~~that you never~~ ^{nevertheless} ~~advocate~~ ^{me that,} in advocating the policy embodied in the draft Ordinance now under consideration,

^{believe} convinces me that you are satisfied that the conditions at present prevailing in the Protectorate are such that in your opinion the advantages which in theory are clearly attendant on the policy laid down by my predecessors in office, are outweighed by the ^{opposition to} practical objections which the white community ~~see~~ to the application of that policy to the East Africa Protectorate. It would have been a great satisfaction to me if I had been able to yield to your strong expression of opinion ^{and to} of the wishes of the white population. I am unable, however, to divest myself of my responsibility as to the future welfare of the Protectorate, and, therefore, being convinced, as I have already explained,

explained to you, of the reasonableness and value of the proposals made in Lord Elgin's despatch, I have no alternative but to request that a new Crown Land Ordinance may be framed, embodying the principles of revision of rent and a graduated land tax, as there laid down. I have to request also that ^{the} provisions as to ~~dummying~~ suggested in paragraph 27 of Lord Elgin's despatch may be embodied in the new Ordinance. I note the opinion which you have expressed that such provisions will be practically inoperative and can be evaded by recognised legal methods, but I feel nevertheless that it is incumbent on the Government to ~~impose the legal restriction and to do~~ all that is possible to make such evasion of it difficult.

*Compare S. 7
9/30/10*

7. If at ~~any~~ future date you are able to produce to me ~~any~~ actual evidence of injury to the prospects of the Protectorate resulting from the application of the policy to which I now request you to revert, I shall of course be

fully

DRAFT

fully prepared to give the most careful consideration to ^{any representation} such evidence. It will, however, be ^{as far as} possible to produce ^{evidence of the kind} of the kind described when the new law has actually come into operation and its effect can be gauged in practice.

8. You have represented to me that applicants for land since May 1908 are in a somewhat special position and that their case demands separate consideration. On the 7th of May 1908, a Notice was published in the Government Gazette of the Protectorate that all lands available for allotment outside townships would be granted in future on conditions which were practically those prescribed in Lord Elgin's despatch, including revision of rent at the end of the 33rd and 66th years of the lease. I understand that in practice the procedure since that date has been to issue Occupation Licences, the fulfilment of the conditions of which entitled the holder to the grant of a

lease

explained to you, of the reasonableness and value of the proposals made in Lord Elgin's despatch, I have no alternative but to request that a new Crown Land Ordinance may be framed, embodying the principles of revision of rent and a graduated land tax, as there laid down. I have to request also that ^{the} provisions as to ~~duffing~~ suggested in paragraph 27 of Lord Elgin's despatch may be embodied in the new Ordinance. I note the opinion which you have expressed that such provisions will be practically inoperative and can be evaded by recognised legal methods, but I feel nevertheless that it is incumbent on the Government to ~~enforce the legal restriction and to do~~ all that is possible to make such evasion ~~of it~~ difficult.

7. If at any future date you are able to produce to me ~~any~~ ^{convincing} evidence as to the prospects of the Protectorate resulting from the application of the policy to which I now request you to revert, I shall of course be

fully

DRAFT.

fully prepared to give the most careful consideration to ^{your representations} ~~such evidence~~. It will, however, I consider, only be possible to produce ^{the} ~~the~~ evidence ^{for it} of the kind described when the new law has actually come into operation and its effect can be gauged in practice.

8. You have represented to me that applicants for land since May 1908 are in a somewhat special position and that their case demands separate consideration. On the 7th of May 1908, a Notice was published in the Government Gazette of the Protectorate that all lands available for allotment outside townships would be granted in future on conditions which were practically those prescribed in Lord Elgin's despatch, including revision of rent at the end of the 33rd and 66th years of the lease. I understand that in practice the procedure since that date has been to issue Occupation Licences, the fulfilment of the conditions of which entitled the holder to the grant of a

lease

*See para 5.7
9/397/10*

explained to you of the reasonableness and value of the proposals made in Lord Elgin's despatch, I have no alternative but to request that a new Crown Land Ordinance may be framed embodying the principles of revision of rent and a graduated land tax, as there laid down. I have to request also that ^{the} provisions as to dummying suggested in paragraph 27 of Lord Elgin's despatch may be embodied in the new Ordinance. I note the opinion which you have expressed that such provisions will be practically inoperative and can be evaded by recognised legal methods, but I feel nevertheless that it is incumbent on the Government to ~~do~~ ^{remove the legal restriction and to do} all that is possible to make such evasion of it difficult.

If at any future date you are able to produce to me any actual evidence of injury to the prospects of the Protectorate resulting from the application of the policy to which I now request you to revert, I shall of course be

fully

*See para 5.7
9/30/10*

DRAFT

fully prepared to give the most careful consideration ^{in consultation} to ~~any proposals~~. It will, however, ^{having met I will} I consider, only be ^{worth} ~~worth~~ the pains to produce ^{evidence, if at all,} of the kind described when the new law has actually come into operation and its effect can be gauged in practice.

B. You have represented to me that applicants for land since May 1906 are in a somewhat special position and that their case demands separate consideration. On the 7th of May 1906, a Notice was published in the Government Gazette of the Protectorate that all lands available for allotment outside townships would be granted in future on conditions which were practically those prescribed in Lord Elgin's despatch, including revision of rent at the end of the 3rd and 6th years of the lease. I understand that in practice the procedure since that date has been to issue Occupation Licences, the fulfilment of the conditions of which entitled the holder to the grant of a

lease

lease under such conditions as might be prescribed by law at the time at which the lease ^{should be} ~~was~~ ^{that the Treasury did} ~~crashed out~~ referring specifically to the Notice ~~dated~~ the 7th of May 1906. I immediately after the issue of the Notice, as I understand the question of the new lands Ordinance was keenly debated through out the Protectorate, and in April 1909 the Ordinance which I have discussed in the previous paragraphs of this despatch was submitted to the Secretary of State. You have represented to me that ^{a considerable number of} ~~certainly all~~ the applicants for land since the date at which the Ordinance ^{of 1907} was passed by the Legislative Council, that is, approximately, March 1907, and probably those who applied for land between 7th of May 1906 and March 1907, were fully under the impression that leases would eventually be granted to them on the terms laid down in the Ordinance submitted for the Secretary of State's approval. The unavoidable

delay

which has taken place in the consideration of the Ordinance in this country being first to your application to the Government and your desire to form ^{an} ~~an~~ opinion on the question in the Protectorate, and then to the further abandonment necessitated by your visit to this country, must, I admit, have assisted to confirm the holders of Occupation Licences in the Protectorate in the belief that the leases granted to them would ultimately ^{would} be on the terms prescribed by the ~~draft~~ Ordinance of 1907. I am advised that, in view of the Notice of the 7th of May 1906, they could have no legal claim to leases on such terms, and that the Government would be within its rights in granting leases on the terms laid down in the Notice. But, in all the circumstances, I am prepared to recognise the exceptional nature of the position, and to approve of all applications ~~for Occupation Licences may have been made~~ for land between the 7th of May 1906 and the ^{date} ~~date~~ of your arrival in the Protectorate on

Conf. Lecky advised to recommend the concession to the S. P.
I think we should make this concession as early as possible
12/4

*your
 May*

may be practicable to issue a fresh
Notice of Rules,

your return from your present visit to this
country being granted ~~forms as to the~~

*to follow the
of the terms of the original
licences, on the
conditions as to the
period of the lease
and so on*

rent contemplated in the ~~draft~~ Crown Lands
Ordinance of 1909, which I now request you to

~~redraft~~
~~reissue~~
~~in the form of a notice~~
~~made under the provisions of the~~

and finally concerning interpretation. This
concession is of course conditional on the

Notice of the 5th of May 1908 being reaffirmed
~~immediately~~ *at the earliest moment & practicable after* your arrival in the Protectorate,

either by being reissued ~~as a notice~~ *in the form of Rules* made under
the Crown Lands Ordinance of 1902, or in such

other legally binding manner as your advisers
may suggest; and it will be understood that all

land grants thereafter will be ~~given~~ *made* on the
prescribed terms as to revision of rents,

graduated land tax, etc. There are many other
points on which it will be necessary to con-

sideration, both as to the ~~revised~~
terms of the new Ordinance and as to the

position of holders of land under the Crown

Lands

DRAFT

Lands Ordinance 1902 and Rules made thereunder,
in matters of freehold and transfer. The dis-
cussion of these further questions will run
to considerable length, and I have considered
it desirable not to postpone, for the purpose
of dealing with ~~them~~ *such points in this despatch,* an announcement on the
main lines of policy which the settlers will
no doubt expect immediately on your return.

A despatch covering the further points referred
to will be sent as soon as possible. In the
meantime it is not advisable that the new
Ordinance should be introduced, though no doubt
progress can be made with the revision of the
terms of the Ordinance of 1909 in the light
of my decision to adhere to the policy laid
down in Lord Elgin's despatch. In the interval
between the date of your arrival and the coming
into operation of the new Ordinance I must
rely upon you to safeguard the position by
clear and unmistakable notices as to the terms
upon which grants are made, in the

*(There is an Asiatic
difficulty, under which
it be met)*

suggested

stated in the preceding paragraph.

— etc.,

You are at liberty to
make this despatch public
if you so desire.

I have —

L. Lincoln

P.O. E.A.P.
3482



mark this dep. confidential as it is not suited for publication, on several grounds, & the dep. has already saved 3000 as a private paper. It is not public property & should be treated as such.

DRAFT

EAST AFRICA PROTECTORATE
CONFIDENTIAL

Downing Street,
8 February, 1911.

Governor
Sir Percy Girouard, K.C.M.G., D.S.O., R.E.

MINUTE.

Mr. Butler. Feb. 3 Sir,

Mr. ~~Butler~~

Mr. Fiddes.

Mr. Just.

Mr. Cox.

Sir C. Lucas.

~~Sir F. Hopwood.~~

Col. Seely, has seen 6/2

Lord Cromer

Mr. Harcourt (d. 7.2) relating to the holding of land under the Crown Lands Ordinance of 1902 and the Rules made thereunder which you raised during your recent visit to this country.

See minutes

In continuation of my despatch No. 49

of the 3rd of February, I have the honour to address you further on certain points connected with the revision of the Crown Lands Ordinance 1909, and on the subject of certain questions relating to the holding of land under the Crown Lands Ordinance of 1902 and the Rules made thereunder which you raised during your recent visit to this country.

In consequence of my decision to adhere to the policy laid down in Lord Elgin's

despatch

disorder of the 19th of March 1908 it will
Calculation of rents proposed in sec. 38 of the 1909 Ordinance and to
be necessary to revert to the initial rents

~~of laws~~ proposed by Lord Elgin in connection
system of
with the revision of rents under Section 38
~~of the Ordinance of 1909~~. As a consequential
amendment it will be necessary to alter the
expenditure on improvements expressed as a
multiple of the annual rent in Sections 46,
50, and 51 of the Ordinance.

3. As the post of Commissioner of Lands
has now been abolished, it will be necessary
to substitute "Land Officer" for "Commissioner
of Lands" throughout the Ordinance, and some
re-adjustment of the duties which it was
~~originally~~ proposed to devolve upon the
Commissioner may be necessary.

4. In Sections 30 (b), 50, and 56 of the
Ordinance of 1909 there are *reference to*
to Asiatics which are in the *the nature of* *of as*
imposition of disabilities. The present

H. G. ...

wording of Section 46 (e) ^{also} ~~originally~~ amounts to
~~the imposition of a disability on~~
~~a direct mention of Asiatics~~. In paragraph 20
of his despatch of the 19th of March 1908
Lord Elgin stated that it was not consistent

with the views of His Majesty's Government to
impose legal restrictions on any particular
section of the community, but that, as a matter
of administrative convenience, grants of land

in the ^{upland} ~~Upper land~~ area should not be made to
~~Indians~~ ~~native~~. I adhere to that statement, and I
fear that I must therefore request that all
specific mention of Asiatics by way of dis-
abilities ^{shall} ~~should~~ be excised from the Ordinance.

Some other means must be found of carrying
out the administratively convenient policy of
not allowing land in the Highlands to come
into the hands of Asiatics, and it occurs to
me that this might be done if all transfers of
lands held under the Ordinance ^{shall be} ~~were made~~
subject to veto on the part of the Governor,
such

*With regard to original grants, it
rest with the Govt to
determine whether
a particular application
shall be entertained
or not. It is wrong
to transfer it
might be possible to
enact that*

such veto to be exercised within a specified
 time, say three months, after notice has been
 given that the transfer ^{is about} ~~is due to~~ take place
 or has actually taken place. You will no
 doubt be able to ~~advise the~~ ~~board of in-~~
~~form~~ ^{explain to} the community why such a right of
 veto is desirable, and ^{to} ~~of~~ point out to them
 that this stipulation does not necessitate
 application for the Governor's approval of
 transfer before transfer actually takes
 place, ^{in the case} as under the Crown Lands Ordinance of
 1902, Section 73 of the Ordinance of 1909
 provides for the appointment of trustees in
 the case of land dedicated to the use and
 support of the members of any native tribe.

My predecessor explained to you in his
 Confidential despatch of the 21st of May last,
 in connection with your proposals as to the
 grant, that His Majesty's Government could
 not approve of ^{private} policy of appointing trustees

As the original grant of land is in the hands of the Government it rests with them to determine whether any particular applications shall be entertained or not.

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Native Reserves,
 in which ~~it~~ could be vested, the safeguarding
 of Native Reserves on the ground that the
 Government could not divest themselves of
^{ultimate} responsibility in the matter and that
 the appointment of such trustees was therefore
~~unnecessary~~ and would ^{serve no} ~~serve~~ no useful purpose.
 The view of His Majesty's Government on this
 subject remains unchanged, and I have ~~therefore~~
 to request that the provisions as to the ap-
 pointment of trustees for Native Reserves may
 be omitted from the Ordinance.

6. You have enquired whether the small
 holdings not exceeding 320 acres contemplated
 in Section 64 of the Ordinance of 1909 must
 be applied for and taken up ^{as} ~~and~~ a separate
 and complete transaction, or whether a settler
 may be allowed to lease land under the Ordinance
 and acquire freehold up to the ^{amount} ~~grant~~ of 320
 acres of such land subsequently. I am pre-
 pared to approve of the latter course being

followed

No 160 in A.J. No. 951.

followed provided that the option of freehold is exercised within a specified time, say five years from the date on which the lease is granted.

7. Under the Crown Lands Ordinance of 1902 the transfer of land held under lease from the Government can only be effected with the previous assent of the Governor.

You have informed me that it is felt in the Protectorate that, in cases in which due

development has taken place, there should be greater liberty of transfer. I am prepared

to concur in this view, and to agree that, in any case falling under the Ordinance of

1902 in which development has taken place

to not less than the extent contemplated for occupation licences under the Ordinance

of 1902, transfer may be permitted without prior reference to the Governor, provided

that notice of the transfer shall be given

to the Gov^t as soon as it is arranged and that the transfer

shall
will

shall

(be subject to the Governor's veto, such veto being exercised within a specified time, say three months, after notice of the transfer has been given. This will obviate the ^{necessity of} prior reference to the Government, which in earlier days was a hardship in certain cases, but will at the same time leave room for the Governor to intervene if there are any circumstances in the particular case which in his opinion render the transfer undesirable.

8. You have pointed out the hardship involved by the power reserved to the Government by Section 9 (1) of the Crown Lands Ordinance of 1902, to forfeit land sold under the provisions of that Ordinance on the ground of failure on the part of the holder to occupy and develop such land, and have represented that this provision is a serious encroachment upon the privileges of freehold and involves a considerable diminution of the value of such freehold. I am inclined to agree with you in

thinking

his provision may bear
thinking that it is hardly consistent to
hardly in certain cases
propose to grant freehold and at the same
time to retain the right of forfeiture of the
land. I am advised, however, that such a con-
tingent freehold is not unknown in other Colonies,

and I am unwilling to part entirely with the
power which this section gives of ensuring
that land is being (continuously) put to the
use for which originally it was granted in
the first instance and that adequate develop-
ment is carried on. I am prepared, however,
in deference to your opinion, to waive the
right of forfeiture conferred by Section 9 (1)
of the Ordinance of 1902 in the cases under
consideration, provided that it is enacted instead that,

in the event of failure to occupy and develop
freehold land as contemplated in Section 9 (1)
of the law of 1902, power is reserved to the
Governor to impose a special annual tax upon
the holding in question.

[This paragraph is
not dropped as
originally arranged,
but as I understand
- stand Col. Seely
wishes it to be
dropped after a
final talk with
Sir P. Finlayson
on the morning
the day following
our conference.]
J.P.B.

DRAFT

[I have put in this
paragraph as
originally arranged
at the conference
but please see the
minute, in which
I have suggested
that it might be
wise to take it
out.]
J.P.B.

Omit?
No.
Should omit?
Yes, Omit
J.P.

I consider, further, that this prin-
ciple should be applied to the land held under
the new Ordinance, and that the same should
under an occupation licence of the development
necessary to secure the grant of a lease should
or his assignees
not dispense the lessee from all further
obligation to develop his holding. It will be
remembered that a provision of this nature is
already included in Section 30 of the Ordinance
of 1902 with regard to farm plots.

9.2. You raised also the question of the
assignment of the right to freehold a por-
tion of land leased under the Ordinance of
1902 and the rules made thereunder. This ques-
tion has arisen specifically in the case of
the farm acquired by Mr Chillingworth, which
forms the subject of Mr Managh's despatch
No. 19 of the 9th of January last and previous
correspondence. I understand from you that,
in leases granted under the Ordinance of 1902

(1910)

John 3820
the

the right is given to freehold up to 1,000 acres of the area leased. This right is not conferred by the terms of the Crown Lands Ordinance of 1902, (Section 4 of which only provides that not more than 1,000 acres shall be sold in one lot without the approval of the Secretary of State), nor, so far as I can trace, any of the rules made under that Ordinance. It is not specifically conferred by the lease acquired by Mr Chillingworth, namely that originally granted to Mr Bright dated the 15th of July 1907, a copy of which was enclosed in Mr ^{Mason's} ~~Manford's~~ despatch of the 9th of January. I should be glad to be informed, in the first instance, on what the alleged right to freehold up to 1,000 acres in leases ^{granted} under the Ordinance of 1902 is based. Subject to your being able to satisfy me upon this point, my view of the matter is as follows: Under the law of 1902 the assignment of leases is forbidden

*[Mr Barber has
I have examined
ad the rules &
can find nothing
J.F.B.]*

except

except with the previous assent of the Governor. Where transfer has taken place with the ~~assent~~ assent of the Governor and without there being attached to such assent any reservation or modification of the privileges conferred by the lease, I am advised that all such privileges must be held to have passed to the assignee. You have informed me that there ~~has been~~ considerable doubt in the Protectorate as to the legal position in the matter, and have suggested that, in order to make the position clear, you should issue a notice requiring all leasees under the Crown Lands Ordinance of 1902 or their assignees to exercise any outstanding option of acquiring freehold within a period of, say, five years from the date of issue of the notice. Provided that you are advised that such a course is not barred by the terms on which the leases have been granted and that the issue of a notice will be sufficiently

binding

6

(b) the new points noted in paragraphs 3-6 of this despatch in connection with the 1909 Ordinance

binding. I approve of the issue of a notice to this effect. (You will remember that I have already suggested above a provision of this

similar kind of time

nature in connection with the acquisition of freehold up to 320 acres under the new Ordinance)

If, however, you are advised that the notice suggested would constitute an ~~encroachment~~

infringement

of the rights of lessees or their assigns under the Ordinance of 1902, it is open to you

to withhold your approval of the transfer of leases granted under that Ordinance except

on such conditions as to the exercise of the option to freehold (supposing such option

to be still unexercised in respect of the particular lease) as you may deem reasonable.

10 A 16: The views which I have now expressed will no doubt enable you to proceed at once with the revision of the Ordinance of 1909

for submitt

and the submission for my approval of a new Ordinance embodying ~~both~~

(a)

the alterations which it is necessary to make in consequence of my decision to adhere to the policy of my

predecessors

DRAFT.

predecessors in the matter of land tenure in the Protectorate, and ~~the~~ ^(H.C.) all points connected

with land held under the Ordinance of 1902 and the rules thereunder as it may be deemed advisable to deal with by Ordinance rather

than by rule or notice. In the event of your deciding to deal with any of the ~~latter~~

last named

questions by rule, you will no doubt take care that the new Lands Ordinance is so framed as to

admit of your making ~~it~~ ^{under} any rules ~~that~~ ^{which} may be necessary ^{for this purpose} in this connection. With regard

to these latter points, again as distinct from the alterations of the Ordinance of 1900, I

H. H.

wish it to be understood that I shall not be unwilling to consider any representations

on the matters dealt with in this despatch

which you may have to make, if, after consulting your advisers in the Protectorate, you consider

that any of the suggestions which I have made for meeting difficulties and removing hardships

are impracticable or can be improved upon.

I have, etc.,
(Signed) L. HARCOURT