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REMOVAL OF UNDESIRABLES ETC. FROM THE
TANGANYIKA TERRITORY.

(a) The Governor has the power to remove political offenders under Sections 32-35 of the Tanganyika Order in Council of the 22nd July 1920. (copy attached)

The provisions as to deportation were modelled on, and are almost identical with (mutatis mutandis) Sections 24-27 of the Uganda Order in Council of 1902. They are also generally similar to Sections 24-27 of The East Africa Order in Council of 11th August 1902.

(b) Certain classes of persons can be excluded from the Territory as "prohibited immigrants" under the Tanganyika Immigration Ordinance of 1924 (copy attached). It will be seen that the provisions of section 5 of this Ordinance do not differ greatly from those of the corresponding section of the Kenya Immigration Restriction Ordinance.

Section 5 (f) of the Tanganyika Ordinance follows the wording of the Nyasaland Immigration Restriction Ordinance, 1922. As originally drafted it read "any person whose presence in the Territory the Governor considers to be undesirable"

It was thought, however, that this power was too comprehensive: and the S. of S. decided that the wording of the Nyasaland Ordinance should be adopted.

(c) The Governor has also the power to deport destitute persons under the Destitute Persons Ordinance of 1923 (copy attached).

In September 1927 the acting Governor drew the attention of the Secretary of State to the desirability of the enactment of legislation giving the

(See 27658/20
& previous pp.
for dfts. of
this order)

(See 2363/23-24
for dft
57048/24 for
final Order)

2363/24

the Governor power to deport persons who could not be expelled under the existing laws, but whose moral characters and mode of life made their presence in the Territory undesirable. The S. of S. agreed that such legislation was desirable and asked the Acting Governor to send home a draft Ordinance for consideration. The Acting Governor had raised the question of whether aliens could be deported. In regard to this, the S. of S. pointed out that the provisions of the Imperial Aliens Order 1920 and of the Nigerian Aliens Ordinance No. 52 of 1922 provide precedents for deportation powers against aliens.

No draft of the proposed new legislation has yet been submitted to the Secretary of State for approval.

The
Kenya Bill

THE LIBERTY OF THE
SUBJECT IN INDIA AND

THE Government of India have introduced for the present session of the Assembly the Public Safety Bill, which was defeated in that body by the casting vote of the President, who rightly required that a measure of this importance should receive a clear majority in its favour. The main ground for the opposition given to the measure was the fact that members did not share the Government's apprehensions as to the menace of Bolshevik apostles from England or elsewhere, though they were afraid lest the representatives of far less scarlet schools of thought might be brought within the capacious scope of the Bill by a timid and tyrannical Administration. We do not argue that aspect of the matter at the moment, save to note that the Government of Kenya in introducing and passing their recent Immigration Restriction Bill might have seen the tactical advantage of a cry of Bolshevism as an excuse for a measure of that sort over the silly, irrelevant and insincere plea of economic undesirables that they in fact invoked. As we pointed out earlier and repeat below, it may have that effect, but its major result is infinitely more sinister. We are concerned to note and we imagine it will be noted in England also where the Kenya Bill now awaits Royal Assent, that the Government of India is more amenable to reason and the requirements of public right than is the Administration of Kenya; as originally drafted the Indian, like the Kenya, Bill gave no right of appeal; in Select Committee the Kenya Bill made matters worse by allowing as a final appeal recourse to the Governor in Council, a body far more "political" than any Court can be, and on whose authority, presumably, the denunciation of the victim by a "trusted source" would

Assent is not given. We do not doubt that the recognition by the Government of India of the right of the subject to defence against the encroachments and whims of the bureaucracy will be noted in London in official and unofficial circles alike, but it is the right and duty of those who are to be placed under the intolerable and infinitely elastic tyranny of the Kenya measure to see to it that the principles that are admitted in every other part of the Empire shall be applied here. There is no precedent in any British country or constitution for such a law; no Bill has ever been presented with less justification or attempts to justify it; nor with pleas so irrelevant and insincere and partial; none has contained or conferred powers so comprehensive, so tyrannical or so concealed; none has ever more severely affronted every principle of British administration; it will be a disgrace to the Statute Book of Kenya. The deposition and degradation of the Courts from their proper office and their replacement by what might be political and self-seeking adventurers is a threat to Kenya that we hope the example of India may have averted.

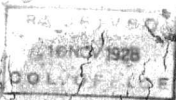
KENYA.

No. 585



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

24th October, 1928.



Sir,

I have the honour to forward herewith two Authenticated copies of an Ordinance intituled "The Immigration Restriction Ordinance, 1928", which passed its third reading in Legislative Council on the 20th of August, and to which I duly assented on the 8th of October, 1928. I also enclose a copy of the Legal Report on the Bill.

2. This Ordinance is designed to strengthen the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition) in two ways.

The first way is by making it perfectly clear that a person who is deemed to be an undesirable immigrant, in consequence of information received from any trusted source, is a prohibited immigrant and may be ordered to leave the country.

This will be achieved by Section 2, which repeals section 5(f) of the Immigration Restriction Ordinance, and replaces it by a section which is stronger and clearer in effect than section 5(f) of the present Ordinance.

Section 5(f) as it stands at present provides that the entry into the Colony by land or sea of any person being or appearing to be a person deemed by an immigration officer to be an undesirable immigrant, in consequence of information received from any Secretary of State or Colonial Minister, or through diplomatic channels,

Placed in Conf. 24th Oct 1928

THE RIGHT HONORABLE,
LIEUTENANT COLONEL L.C.M.S. SMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,

channels, or any minister of a foreign country, or from any other trusted source, is prohibited.

Doubts have arisen as to the interpretation of the phrase "any other trusted source"; as to whether it means any other trusted source of the same kind as a Secretary of State, a Colonial Minister or any minister of a foreign country, or whether it means information received from any source whatever, including information received from a trusted source in this country.

In order to make it perfectly clear that the information may come from any trusted source of any description, section 5(f) of the Principal Ordinance is proposed to be repealed and replaced by section 2 of this Ordinance.

In order to safeguard from abuse the power given to the Principal Immigration Officer, it is provided that every decision of the Principal Immigration Officer under section 5(f) of the Principal Ordinance (as amended by this Ordinance) shall be subject to the confirmation or otherwise of the Governor in Council.

It is thought highly desirable that this Government should have the power conferred upon it by section 2, more particularly as at the present time a number of undesirables, who have sufficient means to pass the Immigration Authorities, enter the Colony as Conditional Permit Holders and spend their time living on credit and on their wits.

Although these persons are known as undesirables they can, provided they do not surrender themselves as vagrants, or contravene the provisions of the Immigration Restriction Ordinance, obtain the refund

of their deposit at the end of six months. Eventually they get themselves into financial difficulties, surrender themselves as vagrants, and have to be deported at Government expense. Once it is made clear that information from a trusted source means information received from anywhere, including information received from a trusted source within the Colony, information will be able to be given by the Police against this type of undesirable and they will be treated as prohibited immigrants and ordered to leave the country.

The object of Section 5 of the Ordinance, which is an amendment to section 10 of the Immigration Restriction Ordinance, is to prevent nationals of foreign states and British subjects who have been refused a visa for the British Empire, from entering the Colony. This accords with the instructions issued by the Foreign Office, and is a considerably stronger section than the present section, which only requires a person to have a passport or some other document establishing his identity. The effect of this new section will be that undesirables will be kept out of the Colony.

Five printed copies of the Ordinance will be forwarded in due course.

I have the honour to be,

Sir,

Your most obedient, humble servant,

H. T. Martin

GOVERNOR

THE IMMIGRATION RESTRICTION (AMENDMENT)
ORDINANCE, 1928.

L E G A L R E P O R T.

This Bill is designed to strengthen the Immigration Restriction Ordinance (Chapter 162 of the Revised Edition) in two ways.

The first way is by making it perfectly clear that a person who is deemed to be an undesirable immigrant, in consequence of information received from any trusted source, is a prohibited immigrant and may be ordered to leave the country.

This will be achieved by Clause 2, which repeals section 5(f) of the Immigration Restriction Ordinance, and replaces it by a section which is stronger and clearer in effect than section 5(f) of the present Ordinance.

Section 5(f) as it stands at present provides that the entry into the Colony by land or sea of any person being or appearing to be a person deemed by an immigration officer to be an undesirable immigrant, in consequence of information received from any Secretary of State or Colonial Minister, or through diplomatic channels, or any minister of a foreign country, or from any other trusted source, is prohibited.

Doubts have arisen as to the interpretation of the phrase "any other trusted source"; as to whether it means any other trusted source of the same kind as a Secretary of State, a Colonial Minister or any minister of a foreign country, or whether it means information received from any source whatever, including information

received from a trusted source in this country.

In order to make it perfectly clear that the information may come from any trusted source of any description, section 5(f) of the Principal Ordinance is proposed to be repealed and replaced by section of this Bill.

In order to safeguard from abuse the power given to the Principal Immigration Officer, it is provided that every decision of the Principal Immigration Officer under section 5(f) of the Principal Ordinance (as amended by this Bill) shall be subject to the confirmation or otherwise of the Governor in Council.

It is thought highly desirable that this Government should have the power conferred upon it by clause 2, more particularly as at the present time a number of undesirables, who have sufficient means to pass the Immigration Authorities, enter the Colony as Conditional Permit Holders and spend their time living on credit and on their wits.

Although these persons are known as undesirables, they can, provided they do not surrender themselves as vagrants, ^{or} contravene the provisions of the Immigration Restriction Ordinance, obtain the refund of their deposit at the end of six months. Eventually they get themselves into financial difficulties, surrender themselves as vagrants, and have to be deported at Government expense. Once it is made clear that information from a trusted source means information received from anywhere, including information received from a trusted source within the Colony, information will be able to be given by the Police against this type of undesirable and they will be treated as

The object of clause 3 of the Bill, which is an amendment to section 40 of the Immigration Restriction Ordinance, is to prevent nationals of foreign states and British subjects who have been refused a visa for the British Empire, from entering the Colony. This accords with the instructions issued by the Foreign Office, and is a considerably stronger clause than the present section, which only requires a person to have a passport or some other document establishing his identity. The effect of this new clause will be that undesirables will be kept out of the Colony.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.



Nairobi,

6th October, 1928.

ACTING ATTORNEY GENERAL.