

1931

Kenya

No. 17314

SUBJECT

C0533/416

Native Authority Ordinance.

Penalties for refusing to work.

Previous

16303/30.

Subsequent

18024/32.

Extract from a semi-official letter from Sir J. Byrne to

Sir G. Bottomley, dated 15.6.31.

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END

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I am really very worried over two matters which the Secretary of State wants me to push through without delay. One is the ~~But~~ and P. 11 Tax (Widows, and raising the age to 18), and the other, the suggestion to send out a Commissioner to enquire into the allotment of land.

Now

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The question of the enquiry into the allotment of land is still giving my advisers most anxious attention. I do not want to commit myself just yet but in principle the idea is sound, for there ^{are} at present many outstanding problems which appear to be almost insoluble. A comprehensive review and settlement would be an immense advantage. But I anticipate that such an enquiry will ~~throw~~ ^{throw} the country into a blaze at a most undesirable time. There is no knowing where it will lead us to, anathema on top of the enquiry into our economic structure. We must all try and get this country straightened out but too hasty would do far more harm than good.

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16338/30

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Extract from a semi-official letter from Sir C. Bottomley
to Sir J. Byrne, dated 10.7.31.

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As regards land also, we shall await your official views.

You will notice from the record of the evidence of Lord Francis Scott and the others, that the definition of the Highlands had a prominent place in the examination by the Secretary of State. There will no doubt be trouble over the enquiry but it might be better at all events to make a start at a time when there is in fact no European demand for land.

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speech of the noble Lord he will be in a better position to consider the very difficult points which have been raised in relation to the legal status of natives. I hope I have answered most of the questions asked me. I must apologise to your Lordships for not being fully acquainted with all of them, but if your Lordships saw the mass of correspondence and the number of Commissions' Reports and Blue-books on the subject, I feel sure you would have some pity on me.

LORD OLIVIER: My Lords, I am sure we are all deeply grateful to the noble Earl for what we recognise must have been a heavy task, in getting up this subject adequately to give us the comprehensive reply which he has given. At the same time the noble Earl will not think it is any reflection on himself if I express regret that we have not in this House a direct representative of the Colonial Office, because if we had, although he could not have given a better reply, yet we feel it is nice to have somebody whom we can hit back if we do not get a satisfactory reply. I want to thank him very much for the statement he has made, which I am sure noble Lords will join me in doing. With regard to the instructions which have been drawn up for the Commission which is to be sent out to enquire into the land question, they seem to me really to cover the whole ground which it is necessary to cover, and they do cover those special points as to what is to be done for people who have been expropriated. The instructions seem to be thoroughly satisfactory and to give scope for clearing up the difficulty.

With regard to one point, the noble Earl said he could not promise to lay Papers, as I suggested, on the ground that the Kikuyu Central Council had not sent them in through the Governor, and the Council was not recognised by the Governor as representative of the natives. That is a minor point, and if those representations are made to the Commission they will be dealt with. I may say that in that letter no point is really raised which is not raised in the Report of the Select Committee, or in the evidence before the Select Committee. So if the new Commission go thoroughly into their work they will have to deal with all the points raised in the letter, and I shall get as much satisfaction as I can.

Earl Stanhope.

tion as if the noble Earl promised to publish that letter and the reply to it. One point has been raised which is of considerable interest. Lord Passfield took the view, apparently, that there was no restriction in any part of the Colony upon the alienation of the land of the natives. It was a point raised before the Select Committee, to which Lord Stanhope has referred in speaking of certain privileges given to Europeans in the highlands. It is a point which seems to be very vague, having regard to a question put by Lord Passfield to Sir Edward Gregg and Sir Edward Gregg's reply, and I hope it will be cleared up by the proposed Commission. It is a perfectly clear point and one which they will look into in seeing what land is necessary for further extension.

There was, further, the point about forced labour. Lord Cranworth has left the House, but I was going to express my thanks to him for his solicitation about my spiritual welfare. He referred to the question of forced labour, and with regard to that I am sorry to say that I cannot pay the same compliment to Lord Passfield as I would like to have paid, because I think he showed a considerable obscurity in his treatment of the subject. I should like to bring him before a Committee of Conscience of my Party, and to put him through a cross-examination as to what he said. I do not go into the question of forced labour for public works. I am quite satisfied with regard to the present position of forced labour for public works. That has been thoroughly settled; but I say that if you have a man owning property, and you take away his property and tell him that he may not live there unless he works for another man, under an ordinance, that is forced labour.

LORD STANHOPE: That may happen to anybody, even in this country.

LORD OLIVIER: Because a man is bankrupt he loses his property, but when a man says "This is my property," and the Government takes it away from him, and says he shall not live on it unless he works for another man, that is forced labour. I ask leave to withdraw my Motion, because sufficient satisfaction has been given to the House by what the noble Earl has said.

Motion, by leave, withdrawn.

RATING AND VALUATION BILL.

House in Committee (according to Order): Bill reported without amendment.

ISLE OF MAN (CUSTOMS) BILL.

Order of the Day for the Second Reading read.

THE SECRETARY OF STATE FOR AIR (THE MARQUESS OF LONDONDERRY): I beg to move that this Bill be now read a second time.

Moved, That this Bill be now read 2^d—
(The Marquess of Londonderry.)

On Question, Bill read 2^d: Committee negative.

BUSINESS OF THE HOUSE.

THE MARQUESS OF LONDONDERRY: My Lords, I desire to inform you that I am proposing that to-morrow there shall be a Motion to suspend Standing Order No. xxxix, in order that the Tanganyika and Honduras Loans Bill and the Consolidated Fund Bill may be passed through all their stages. I think you will also wish to know that it is proposed we should sit at 11 o'clock. The Royal Commission will take place at 12 o'clock.

LORD PONSONBY OF SHULBRED: As the noble Marquess is aware, we have no objection at all to the suspension of the Standing Order.

House adjourned at twenty minutes past six o'clock.

obtaining your Lordships could not expect me to either discuss or discuss the payments which have been given from time to time in the Courts of Law. Of course, as your Lordships know the Government does not know which the amount of the claims is, I follow the opinions given by the Hon. the Attorney-General in his report on the subject. Some steps have already been taken to deal with the claims of the rights in land.

The noble Lord, Lord Passfield, informed me in the House in 1930 that he was in the habit of going to land for the benefit of native tribes in the Colonies. He has stated that he has been told that the natives are not satisfied with the Ordinance. The Secretary of State has been asked whether than that He is in a position to come on to see the tribes or who has been connected with the Kikuyu. I thought I am sure that the noble Lord, Lord Passfield, would be glad to do that. I am sure that the Commission, if it is set up, will be of great benefit to the natives.

I have read a copy of the noble Lord's report, and I read them to the House. I have been asked by the noble Lord, Lord Olivier. These are the terms of reference.

To consider the claims of the native population in the future, prospective with respect to land whether to be held on tribal or on individual tenure.

To consider the desirability and practicality of setting aside further areas of land for the present or future occupancy of (a) communities, bodies, or individual natives of recognised tribes, and (b) detribalised natives, that is, natives who belong to no tribe or who have severed connection with tribes to which they once belonged.

Your Lordships will see that that deals straight away with the question of the adequacy of native reserves, both for the present moment and for the future, and that it also deals with the position of the detribalised natives which was particularly referred to by the noble Lord, Lord Olivier. The remaining terms of reference are:

3. To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the adequate settlement of such claims whether by legislation or otherwise.

4. To examine claims asserted by natives over land not yet alienated and to make recommendations for the adequate settlement of such claims.

Bart Stanhope.

5. To consider the nature and extent of the rights held by natives under Section 96 of the Crown Lands Ordinance, 1915 (Chapter 140 Revised Laws) and whether better means could be adopted for dealing with such rights in respect of (a) land already alienated, and (b) land alienated in the future.

6. To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

7. To review the working of the Native Lands Trust Ordinance and to consider any administrative difficulties that may already have arisen or can best be met whether by supplemental legislation or otherwise without involving any departure from the principles of the Ordinance.

Your Lordships will agree that those terms of reference cover largely the questions which have been raised today and your Lordships will not, I am sure, expect me to give any information on these matters, which really now become *sub judice*, because obviously, we must await the Report of the Commission which I hope will be set up in the course of a very few days.

The noble Lord, Lord Olivier, raised the question of the constitution of the Central Board. He quoted from the paragraph in the Ordinance which I think showed quite clearly that in the course of time an African or Africans will be appointed to the Central Native Lands Trust Board. At the present moment, although there are no doubt one or more natives who are qualified in many ways to sit on that Board, it is not after all, the only qualification that they should have sufficient education and intelligence; they should also be considered representative by the natives. At present I understand the Governor does not feel that those conditions are fulfilled.

LORD OLIVIER: Were they not fulfilled by the delegates to the Select Committee?

EARL STANHOPE: I understand not, and that therefore he does not feel that the time has arrived to appoint a delegate to that Central Board. Then the noble Lord asked me whether the Secretary of State would be prepared to publish the communications he had received from the Kikuyu Central Council and the replies to that representation. I am afraid the answer is in the negative and for the same reasons as were formerly given

by Lord Passfield, who refused to recognise the Kikuyu Central Council as representative of the natives and also said, as I am sure Lord Olivier would agree, that any representation that comes from a Colony must be forwarded through the Governor. That is a view I am sure the noble Lord would be taken when he held that honourable and distinguished position. The representations made by the Central Council have therefore been sent back to the Governor, who will, no doubt, if he thinks fit, forward them on. Obviously that correspondence could not be published because in so doing the Central Council would be recognised as representing the natives, whereas the previous and the present Secretary of State do not think that body adequately does so.

The noble Lord referred to Reports regarding land tenure in the Kikuyu Province and the North Kavirondo Reserve, both extraordinarily interesting documents. Those of your Lordships who have read those Reports will recognise something of the difficulty of giving title in land. If I remember correctly, it was pointed out that often the boundaries between the land held by one clan and that held by another, or that held by one tribe and that of another, had better be marked out by the growing of trees—in one case six trees—and that these trees should not be grown elsewhere. Picking the position when you have to put that on a map and identify to say in a legal document—here is a title to land, this belongs to this individual and that to that! Obviously it means a very full survey and going into the question of not only who the owners are now, but also they were in the past, I think it has been shown quite clearly by my noble friend, Lord Cranworth that East Africa is not in a financial position at this moment to engage the large number of highly skilled officials that would be necessary for that survey and land register, and although obviously it is a thing that any Government would like to do, I am afraid that in the present circumstances it does not look very hopeful having regard to the financial position of those parts of His Majesty's Dominions.

I think the noble Lord, Lord Cranworth, dealt very fully with the question of forced labour. I understand that the

Governor has himself stated that he wishes to reduce the amount of forced labour, but that if it was cancelled at present it would lead to a good deal of misunderstanding, and that the Chiefs and tribes themselves would very much object to it. There is of course no forced labour on behalf of private individuals. It is either labour on behalf of the Government or on behalf of a tribe in such things as the making of a road or possibly irrigation or drainage. Those are obviously matters to the advantage of the inhabitants themselves and in the present state of large parts of the country it would be obviously advantageous that headmen and possibly Government officials should be given some power to have such work undertaken by natives. It is, I think, generally agreed that that must come to an end, but it is not a matter which, having gone on for very many generations in that part of the world, can be suddenly stopped by a decree.

The noble Lord, Lord Olivier, raised a question regarding missionary schools. I am afraid I am not at present in a position to answer that question. I was not aware that any missionary schools have been closed recently. The question of the land they were granted in respect of their schools is one I will ask the Secretary of State to consider, and I am sure he will take such action as may be found necessary. In regard to grant, I think the noble Lord would agree that where a missionary school does not come up to an adequate standard it should not receive a grant of public money. That would be detrimental to education and to the Colony as a whole. The progress in regard to education in these three Provinces seems to me, from what I have read, to have been very notable and the schools for the training of teachers are one of its remarkable features. Natives are being trained to be able to go out and themselves become teachers in schools. I understand that the need for these schools is clearly proved, that natives are attending in very fair numbers, and they becoming really valuable in other parts of their areas.

I must agree with the noble Lord, Lord Lugard, in what he said as to the transcendent importance of land in these Colonies and I will certainly ask the Secretary of State to consider the matter. I am sure that after the very valuable

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Joint Committee very definitely said unanimously, and without any sort of criticism, that pending the conclusion of this inquiry no further alienation of Crown land from the natives should take place except in exceptional cases with the sanction of the Secretary of State.

I do not want to suggest for a moment that it will be found that the prospective needs of the native population, even on the largest assumption, are such as to compel a permanent reservation of the best of the land which is not yet alienated for them, and for them alone. I do not pretend that at all. But it is quite clear that there ought to be an inquiry at the earliest possible date into what are likely, so far as can now be seen, to be the prospective needs of the future native population, and that no alienation should take place which would prevent those needs being met. The importance of that has been recognised in Southern Rhodesia, where a division of the land has taken place but where a very large area has been reserved for future disposition in case the prospective needs of the native population should turn out to require it. The terrible consequences of not making provision for the prospective needs of the native population are now to be seen in the Union of South Africa. The Union of South Africa will have very serious trouble to undergo in the near future because of this neglect in the past to make provision for the prospective needs of that native population.

I am not competent, and of course I have had no opportunity of preparing myself even if I were competent, to discuss the more serious and ultimate question that the noble Lord, Lord Lugard, has raised with regard to the possible legal title of natives to land which has been for long past in their occupation. As a layman, I do not feel so perfectly sure that the legal decisions that the natives were nothing but tenants at will of the Crown amount to a denial that they have any rights which the Courts can enforce. Even tenants at will may be subject to easements and obligations of one sort and another. I do not think that the decision of the Courts that the natives in those circumstances were nothing but tenants at will of the Crown, necessarily negatived for all time an inquiry into what customary

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obligations there were on the owner which the Crown in its equity would desire to respect. I fancy it would be possible after such an inquiry to establish some machinery for the recognition and maintenance of such customary rights as could then be put on record and recognised. However, whether that can be done or not, I would urge your Lordships to believe that it is very necessary that the question should be cleared up, because of this uncertainty which has been inspired in the native population in a large part of East Africa as to whether they have any legal rights and whether they have any title, which they can protect, in the land of which they are now admittedly in occupation. That ought to be enquired into.

To go back to the remarks of the noble Lord, Lord Olivier, about forced labour, I think, if I may say so, he was rather scoring a logical victory in a matter as to which I fancy there is no dispute about the facts. When the term "forced labour" is used, it is surely meant that the person who is subject to forced labour can be punished for not doing the forced labour which he is called upon to do by the competent authority. In that sense—and that is the sense in which "forced labour" is used in the International Convention to which His Majesty's Government has given its unreserved assent—I do not think there is any forced labour in Kenya at this moment at the hands of white settlers, or indeed in any private enterprise whatsoever. That, at any rate, is what the Government has been assured over and over again. Whatever forced labour exists in the strict sense of the term is, first of all, a certain amount of forced labour for the Government for public purposes, called out by the Local Government, and, secondly, certain forced labour by native custom, which the chiefs are entitled to exact of the people of their several tribes. It is not quite easy to put that down immediately by any legislative act.

His Majesty's Government have come under obligations by this International Convention to take steps to put it down at no distant date—I have forgotten what the term is. So far as I know there is no question between the parties, and there is no difficulty in the Colonial Office as to what is the intention of the Government on this question. I shall be glad if

we can be told whether any steps are being taken, and what has been done. But the noble Lord, Lord Olivier, asserted that because a man has had his land taken away from him and has practically no means of livelihood except by accepting service on onerous terms from a certain employer, it may be the owner of the land on which he was squatting, that is forced labour. Although I entirely agree with the noble Lord that there is an element of force about it, I would remind him that a great many inhabitants, shall we say, of Western Europe have found themselves in the position of having been driven off land and, not having any land, finding themselves under the obligation, in order to live, of accepting employment even from some of those who have taken their land away from them, under conditions which were not always what they liked, though they were compelled to accept those conditions of service. I sincerely trust we do not generally refer to that as forced labour. It is certainly not forced labour in the sense in which that term is used in the International Convention to which the Government have assented.

I should like to emphasise what the noble Lord, Lord Olivier, said about the difficulty in Kenya regarding the schools. It is a misfortune that some of the missionaries have given up carrying on some of their schools. I do not know, and I cannot enquire why, they should have taken that step, but it seems to me to be clear that if they have ceased to keep schools on those particular plots which were undoubtedly ceded to them, in so far as they were really ceded, or which they were given permission to occupy in order that a school should be kept there—if they give up keeping schools, either those plots must revert to the tribe which parted with them or they must not be allowed to be alienated in any way. They must be kept available for reinstating the schools as soon as it is possible to reconstitute them. That is one of the things which I think the Governor ought to look after. I have a great admiration for the missionary bodies, but I do not trust even a missionary body not to turn a disused school into cash in order to carry on its mission if it has an opportunity of doing so. It is quite clear that in equity it ought not to be allowed to turn those school buildings into cash or exchange them for land. They will be

wanted as schools, whether they are carried on by the missionaries or not.

I will not take up any more time except to say again that I generally support the plea of Lord Lugard for a definite assertion of settlement, in a statement of what is the position with regard to natives in occupation of lands from which they have not voluntarily parted, and consequently I would ask whether some thing cannot be done to expedite the inquiry which I hope has already been started, into the needs, present and prospective, of the natives in Kenya, whether the reserves as well as outside the reserves, for more land, or at the other end a strictly sufficient one, in that must be provided for the needs of these 250,000 so-called squatters on the alienated white lands, because they, too, are increasing in population. They too cannot be compelled to remain there for ever at wages that they will want to swerve off, and they, too, will be a serious difficulty in the future if there is not land available for them to go to.

LORD CRANWORTH. My Lords, like the two noble Lords who have just sat down, I had the privilege of serving on this Select Committee, and I would say that it was a very happy, if lengthy, experience. We approached the subject from many different angles with many different and antagonistic views, and yet we were able to find a very considerable measure of agreement. It is in fact the case that we did only actually divide on two points. I cannot but wish that the noble Lord, Lord Olivier, had seen his way to form one of that body. I think that he would perhaps, as many of us did, have found reason to modify some of the views he held and still holds. I do not think, for instance, he would have come to your Lordships and told you about these dreadful cases of dispossession of land from natives. The Committee were very anxious to thrash that matter out, and they had very much evidence on that point. Naturally the witnesses brought forward what they presumed were the best cases to prove their point. Now this was one case. Application was made by a public utility company—an electrical company—for 80 acres of land which ten years previously to my certain knowledge had never been occupied by natives. They wanted the land for the purposes of an electrical supply for Nairobi, and this is

native land interests." There was a previous decision of the Judicial Committee bearing on this subject, delivered by the noble and learned Viscount, Lord Sumner, in 1918, known as the "Matabele-land case." Recalling that Lord Derby in 1865 and Lord Ripon in 1886 had declared that Great Britain does not claim land rights in a Protectorate, he said that these statements referred to territories in which the existing agreements of Native Chiefs continued and was repeated. Where land is tribal or communal the tribes may on the one hand, he said, be

broken down in the scale of social organisation that the usages and conceptions of rights and duties are not to be reconciled with the institutions and legal ideas of civilised society. On the other hand, there are numerous people whose legal conceptions, though differently developed, are hardly less precise than our own, and are no less comfortable than rights arising under English law.

His conclusion is summed up by deciding that " whoever now owns the unalienated lands the natives do not." The recognition of the rights to hold tribal lands would therefore appear to depend on an opinion as to the degree of civilisation to which the holders had attained. Would not a difficulty arise as to who is to give that opinion on behalf of the Crown? It could hardly be given by the person who proposes to take possession of the land.

These decisions of the Privy Council give to some extent based on the nature of African land tenure as described by Lord Haldane, but we have it on very high authority that in a single province, even in a single tribe, it may vary greatly, and in some cases individual ownership has been established. If information is required as to the nature of African land tenure in any particular district it can best be obtained from institutions engaged in African research. There are at the present time projects—chiefly with the aid of American money—for intensive study of the subject. The term "ownership," for instance, may even in this country be subject to restrictions and easements, and community ownership in Africa is none the less real because it may be qualified as regards the user by concurrent restrictions and obligations. Another term which is frequently used in these decisions is "an act of State," and it is important for the layman to realise what is meant by the

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term. It is clear that an order by the Governor as the King's representative in the exercise of the Royal Prerogative constitutes an act of State but that in practice it should have the covering approval of the Secretary of State. The Ormsby Gore Report states, however, that

"cases have occurred where a Governor, having either not reported his action to the Secretary of State, or has reported it so long afterwards that it was not really practicable to reverse the action he had taken." Mr. Amery, speaking in another place, said that "there had been a feeling that the consent of the Secretary of State had been given from time to time perhaps more readily than might be desirable."

The method by which native land rights can be extinguished seems in West Africa to have taken the less usual form of a Statute instead of an Order-in-Council. In the Northern Nigeria Lands and Native Rights Ordinance of 1911, which, as I believe, drafted at the Colonial Office and enacted by order of the Secretary of State, all lands whether occupied or unoccupied, and all rights over the same

"are declared to be under the control and subject to the disposition of the Governor, and shall be held and administered for the use and common benefit of the people of Northern Nigeria, and no title to the occupation and use of such lands shall be valid without the consent of the Governor."

The lands which were at that time more immediately under consideration—those of the Moslem Emirs and the occupiers enjoyed such title as they might possess under the Maliki Code of the Koranic law, which was the *lex loci*. No exception was made by the Ordinance in regard to town properties, the undisputed private property of individuals, or regarding Wakf lands (namely, religious endowments) if any such existed.

It repeated the previous Statute which had excluded from the definition of "Public Lands" (namely, lands which could be dealt with as Crown Lands) any land in actual occupation under any local law or custom. Surely the rights of these people under Mahomedan law and under the pre-existing Statute were, as the noble and learned Viscount, Lord Sumner, has said, not less enforceable than rights arising under English law? The effect of this enactment was, however, to confiscate all these lands, even though legally occupied by the same family for

generations. In order to obtain a legal title the occupier had to obtain a right of occupancy from the Governor, renewable for seven years (a period too short to plant cocoa or other permanent crops), and subject to a land rent payable to the Government. It may be said that the Governor was by law bound to dispose of the land for the benefit of the people. Such a phrase is capable of wide interpretation, and it does not alter the fact that under the original law an occupier had no legal title unless conferred by the Governor, and could be dispossessed at will without compensation. The people were however ignorant of the fact.

There was an irony in these results, for the intention of the framers of this law, as expressed in the preamble, had been to protect native rights. The strict letter of the law has never, I think, been enforced, and it has since been modified and amended. In Tanganyika, where the Governor made a formal pledge to the natives that communal land occupied in accord with native law would be rent-free and the occupier would be "treated exactly in the same way as if he had a written title such as Europeans have." Such a pledge has, however, been shown to be of little value as a guarantee. The appointment of a Committee to determine how this ordinance could be applied to other parts of West Africa gave rise to wide-spread apprehensions among the natives, and subscriptions were set on foot for deputations to England, and the Committee, after taking an immense amount of evidence, no doubt at considerable cost, was dissolved during the War, and the matter dropped. For in these territories British policy had gone to their extreme, and the various Governments do not, I believe, own a foot of Crown land, unless won by reclamation from the sea-bed.

In the case of Tejani *versus* the Government of Southern Nigeria in 1921 (known as the Apapa case), in which the Privy Council judgment was also delivered by Lord Haldane, it was ruled that native rights in land had been recognized at the time of cession, and also by a local Ordinance, which, for the purpose of regreting title to land acquired by Government recognised the fee simple to be vested in the Chief. The land in question was a treacherous swamp, which had never been inhabited or cultivated, and

had been reclaimed and solidified at very great cost by the Government for a railway terminus, before it could be utilised. The appellant succeeded in his claim for compensation and the public revenue was mulcted in costs. But it would seem to a layman that the native rights had been no less protected in Northern Nigeria until cancelled by the Statute to which I have referred, though rights of ownership, as Lord Haldane says, are undisturbed by change of sovereignty.

I should trespass unduly on your Lordships' patience were I to discuss the apparent anomalies which exist in other Dependencies in Africa—especially in Uganda and Nyasaaland—in regard both to native rights in land, and as to the question of rights in minerals. Your Lordships will agree that the principles governing native interests in land through out the Empire ought to be clearly understood by all who administer our Colonies, but the cases which I have quoted will I think serve to show that there is some confusion in the minds of laymen, and that is the reason why I am asking, as both the Ormsby-Gore and Hilton Young Commissions have already asked, for some definite and clear exposition of British policy, and of the principles to which His Majesty's Government desire to give effect in Africa. The law as it exists has been laid down in these decisions of the Privy Council, the highest and final authority of the Empire. The larger question remains—Does the law and practice conform to the intentions and desires of the British democracy? Should the trustee be able to extinguish the rights of his ward without compensation, with the object in a Protectorate of peacefully extending the British dominions? If we may judge from declarations made from time to time by the Government of the day in White Papers, and by members of every Party in Parliament, including members of the present Government, and from the public Press, it is very doubtful whether it does.

The Times, for instance, in a long leader, observed that the "Swaziland Judgment" calls into consideration that principle of equitable treatment and honest dealing which lies at the root of the British system? Commenting on what it described as "the doubtful interpretation of the Foreign Jurisdiction Act," and the alternative of an act of

to proceed to deal with them. It is at the moment we take account of native laws and customs in these matters and we have been very much struck by the fact that in many cases they are very good indeed. I am quite sure that the King will say that the King is a very good administrator. But we know that the natives are encumbered with all sorts of superstitions and with all sorts of British law and customs.

It is a very important question of fact, and I think that the Government should be asked to consider the system of native law and customs in connection with the administration of the territories. I think that the Government should be asked to consider the system of native law and customs in connection with the administration of the territories.

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in connection with other matters, and I think that the Government should be asked to consider the system of native law and customs in connection with the administration of the territories. I think that the Government should be asked to consider the system of native law and customs in connection with the administration of the territories.

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I think that the Government should be asked to consider the system of native law and customs in connection with the administration of the territories. I think that the Government should be asked to consider the system of native law and customs in connection with the administration of the territories.

ent ability, appoint native members to the Land Board. Such of your Lordships who heard the native representatives of Kenya before the Select Committee would admit, I am quite sure, that those natives—and I am quite confident there are a great many other natives—are absolutely well qualified to sit upon a native Land Board dealing with native affairs, and obviously very much better qualified than most of the people in Kenya who have had to do with native affairs hitherto. I think the time must come when the Secretary of State should insist that the native Land Board should have upon it native representatives.

There is only one other matter that I am going to deal with. There is no definite report upon it, and they ask, in regard to the Report suggested, that a further inquiry should be made into education. This matter to some extent arises in connection with land and it is only so far as it concerns land that I am going to deal with it. The whole question of African education is one that deserves a full debate to itself, and it cannot be properly dealt with today. Complaint is made now that a number of schools have been closed—schools which were founded by the missionaries. The natives say: "We made these grants to the missionaries, not in fee simple we gave them the land to use, for the purpose of schools. The schools have been closed. The missionaries are not now carrying on the schools, although we gave them the land for that purpose and built their schools for them. Now that the schools are not being carried on we ought to have the land and the buildings back again." I think that is good equity. The difficulty appears to have arisen in this way. There seems to have been a sort of triangular quarrel. First, some of the missionaries said: "We do not like your native puberty customs, and will not have your children in school unless you abandon them." The natives said: "Our puberty customs are our own concern. Our children come to your schools to be taught, and we are pleased that you should teach them. Go on doing so." But the missionaries in some cases tried to exorcise a religious censorship, and said: "We will close the schools." On the other side, the Government said: "We do not approve of the curriculum in your schools, and, therefore, we will not give

you the grant." As a result, certainly more than a dozen schools have been closed either with the consent of the missionaries or very much against the consent of the natives; certainly in all cases against the consent of the natives.

The natives granted the land for these schools. They say that they did not give it, but that they granted it for the schools, and, having granted the land for the schools, and the schools being no longer carried on either by the Government or the missionaries, they say the land ought to be restored to them. That is one point in connection with land which arises in regard to the subject of education which I hope will have some attention. I have kept your Lordships longer than I intended to do, but a shorter time than I should have taken had I thought it necessary to buttress my case with further evidence of which I have a whole mass at my command. The evidence goes to prove that those natives were expropriated from their own property, from what under any equitable system would have been recognised as their property. They have been expropriated without compensation, their land taken away from them, and themselves left where they could not get other land, so that they have been compelled to stay upon the land as bonded workers for proprietors. That is an evil which I am quite sure the majority of the Select Committee must recognise. I hope the Government are going to deal with this matter in Kenya and also in Southern Rhodesia. I beg to move.

LORD LUGARD: My Lords, the Motion which stands on the Paper refers primarily to the recommendation made by the Joint Select Committee of Parliament which the noble Lord has just read in to you. The nervousness which was referred to in that recommendation was attributed in the Report of the Parliamentary Commission which visited East Africa under Mr. Ormsby-Gore as long ago as 1924-25 to a feeling of insecurity of tenure, and to expropriations of land on behalf of Europeans. These alienations of land were effected by virtue of principles and policies not peculiar to Kenya, for the justice of which the European settlers were in no way responsible. They quite naturally were anxious to acquire land on the best terms they could. In this connection an article to which prominence

they cannot be exaggerated to any degree would leave the residuum of truth entirely negligible. I simply refer to that statement, which I know has been put in, and part of the correspondence which I shall ask for is any Report which has been received from the Government of Kenya upon it. I do not ask for it to-day, but that is one of the Papers that I must formally for, and I hope that at some time it will be laid, because that will be a very racial demonstration.

I wish to quote some part of the evidence given before the Joint Select Committee. Canon Leakey, speaking of the squatters who have been evicted, entirely supports the statement I have been making. He says (page 251):

"Another can these squatters be told to go back to where they came from. You cannot go back to a place you have never been in before, not as far as all sides. They can go back to the reserves."

He tells the Commission that they do not come from the reserves; they come from European lands. Then he says:

"It seems to me absolutely imperative that before any more land is alienated to whites—"

and this is a point which the Committee took

large portions of Crown land should be set apart for the squatters who will most certainly want to come back to non-European owned land, if not for themselves, probably for their children."

One of the recommendations of the Commission is that no further alienations should be made. I see already in the *East African Standard*, that a motion is to be moved at the Convention of Associations strongly protesting against any such policy, and saying it is ridiculous to raise the question of reserves again. It says a Committee appointed by the Government has said that the reserves are ample, and that ought to settle the matter; and the Convention of Associations apparently intends to press up with the question of further settlement. They say that the Government should not suspend the alienation of fresh lands. That is a point which members of the Select Committee will perhaps remember, was gone into by the Committee, and Sir Humphrey Leggett was asked: "What are the reasons why the white settlers are so anxious for the alienation of further land not to be restricted?" He gave three reasons. The first was that the

Lord Olivier.

Government required revenue. If I were to give the second and third reasons I should be told that I spoke bitterly and cynically, but I should like to refer to members of the Select Committee for the reasons which were given for the settlers in Kenya desiring their alienation of lands, because it throws a light on such resolutions as are now put forward, traversing that proposal that no further alienation should be made. The reference to Sir Humphrey Leggett's reason will be found in his evidence. I hope that no protest whatever will be paid to that effect, if the protest is made, and that the necessary procedure of suspending the alienation will be adhered to.

Further, in support of what I have been saying, Sir Humphrey Leggett's evidence is at page 353 of the evidence. Mr. Maxwell, the Chief Native Commissioner, entirely endorses the statement that many natives have been evicted or have been compelled to remain as squatters upon their own lands. He says there is a great congestion in part of the Kiambu native reserve, and the native reserves of the Bunyoni and the Maragoli are very overcrowded, and he attributes it largely to the same cause as Canon Leakey had attributed it to—Chief Koinange Mbatia, who gave evidence before the Commission, was very definite on the point. He repeats the point that was made before the Grimsby Gore Commission, that the British Government did not fight the natives and occupy the land as the result of conquest, but that they made treaties with the natives to protect them and to take care of them and their property. He therefore asks that the Government may buy some of the European farms and restore them to the natives who have not sufficient land. It is a fact, he says, that many natives are roaming about without a place to live in. Some land was sold to Europeans while the natives were still residing on it, but these native residents are now called squatters and must work for the present European owners, otherwise they will be driven away from what was their own land.

Here is a very special case which has been raised several times within my knowledge. It is stated that Chief Koinange says that in the Kiambu district from about 1911 to 1914 native land called "Gihaka"—that is, native land under native law—was taken by the

Government and sold to Europeans. The Government promised the natives that it would compensate them to the amount of Rs.50,550 for the land, but they have still not yet been paid. That same claim is made in the petition from the Central Native Association—that there was a pledge to pay Rs.50,000 for certain land and that this has not been paid. I hope that some definite inquiry will be made by the Colonial Office into that assertion which is made by the Chief and by the Association. Chief Koinange goes into sundry other matters of jurisdiction and so on, with which I do not want to deal. But I do want to deal with this point which he makes, that there has been an actual eviction from the land of natives who had a very well-ordered and established native system of land tenure, which, if you examine it, is a very reasonable and sensible scheme of jurisprudence administered by its own officers.

The Chief says that the trouble is that a number of the actual clans who were land-owning families had their land alienated over their heads, with them on the land, and eventually pressure was brought to bear on them to make them leave it. That is why they have had to go away, far from their own country, as squatters. Chief Koinange says that it is not the Government who are there at the moment who are responsible for this, but it was the Government which was in the country at the time when Mr. Ainsworth and Mr. Hobbly were the Commissioners. But the situation remains because no native has any native title in Kenya. The land has been granted by the Crown, on leases of 999 years to Europeans, free of encumbrances. The Europeans have taken the ground from the Government free of all equitable claims of occupants and free of all encumbrances whatever. If a European buys land and there are these natives upon it, the land is absolutely his land, but there are these native squatters on the land. He may allow them to live upon his land, but he may not treat them as fixed tenants. He may give them as a favour a certain amount of land to cultivate, but he may only do so upon that beneficent principle which General Hertzog is anxious to establish all over South Africa—that the native may only be there as a labour tenant under a legal obligation to labour on it for 180 days a year, subject to legal penal-

ties of fine or imprisonment if he does not comply with that obligation of 180 days labour a year.

If he is on Crown land he may be able to graze his cattle on payment of so much per head per beast. If he is on the land of a settler, as appears from the evidence, he may in some cases run cattle on that land which is subject to no encumbrances. The settler allows the native who comes back to his old cultivation to run cattle on that land on the condition of the settler himself having all the milk for his dairy. That is why I refer to this statement in the Select Committee's Report that they were satisfied that there was no ground established for any suggestion of forced labour for Europeans in Kenya. But if you take a man's land and give it away to somebody else, and he has to go away from it, and there is no place for him to go to because he cannot buy land as the Government has made no provision for him buying land, and if you say to him: "You may stay where you are and grow maize and potatoes or run your cattle upon the land on condition that you work for the man to whom the land has been given on 180 days a year at wages of about 4d. a day or, perhaps, 4d. a day and rations," I ask noble Lords on the Government Front Bench, I ask the noble Lord, Lord Cranworth, this question: Do they consider, if you take away a man's land and give him no alternative to living on that land except that he shall work for the new owner for 180 days a year, is that or is it not forced labour? It is a perfect equivocation when you have taken away people's land and have not provided them with compensation or with anywhere else to go to, and say to them: "You may stay on that land, but it is on condition of your labouring under penal sanction for the present owner of that land," to contend that that is not forced labour. That is one of the things I want further pursued.

I do not think I need elaborate my case further upon that. I have here many quotations showing that great numbers of natives have been evicted from their land in this manner. What I want to ask the Government is, what is the position in Kenya, in Nyasaland and so on, of natives in regard to the land, and what is the principle on which they are going

by the British South Africa Company and other British corporations, the British South Africa Company holding 277,294 acres in Tanganyika District of Northern Rhodesia and the North Chartered Exploration Company a further 200,000 acres in the East Tanganyika District, Northern Rhodesia. Seeing that the Joint Select Committee dealt with the whole question of East Africa, I hope that any inquiry will also cover the native rights in the other parts of East Africa to which I have referred. Sir Edward Hilton Young referred—

"On such estates on both Proprietorship and the rights of resident natives, the main object should be decided in uniform principles, the main object being to secure residence and to give them as firm a title in the occupancy as possible in the areas covered. I would like to know whether any action has been taken by the Colonial Office upon that recommendation of the Hilton Young Commission, now about three years old.

The point of the matter which I am raising is rubbed in by the representation made by the Kikuyu Native Association to the Urnsby Gore Commission in 1924, in these terms—

"When the white man first came we did not understand that we were to be deprived of any of our land, nor that they had really come to stay. A small piece of land here and there was sold to a few of the first pioneers and to one or two missions voluntarily by its owners in the form of the British East Africa Company. When the British Government took over the administration of the country we were still unaware that our possession of the land would be questioned or challenged."

"Then from about the year 1902 increasing numbers of white men arrived and portions of the land began to be given out to Evumbi, Lumera, Kikuyu, Mwanthi, about Nairobi and at Nyeri and beyond had been disposed of in this way. These lands were not bought from their Kikuyu owners, and any compensation they received for land actually under cultivation only, and that at an extremely small rate per acre, was quite inadequate. The natives on these lands either became squatters, or on what had been their own land or on what had of them to-day are squatters on the European estates and many have become wanderers moving from one estate to another."

Very shortly after that Report was published, I raised the point in this House, and I asked about these people whose land had been taken away from them

Lord Olivier.

through alienation to European settlers. I was put off by such answers as that there were no natives in the places settled, because the Masai has cleared them all off. I have never been able to get anything more definite than that statement at that time. It was sometimes said that no natives were there because of severe drought. I raised the question as early as 1925, and asked the Government what they were going to do about it. I raised the same question again when the Rhodesian Land Commission reported. I asked the Government what are you going to do about the natives who used to have land on the farms granted to British settlers, and whom the Crown are now charging rent for holdings which were formerly their own freeholds. I never got any satisfactory answer. There the matter rested until about three years ago, 1928 or 1929, when I raised the question again in this House, and I again got no satisfactory answer because Lord Lugard, who was answering for the Colonial Office, had not been briefed upon the subject, and simply stated generally that he had the assurance of the Governor of Kenya that full provision was made for all the needs of the natives, present and future, in the Colonies. I had to be content that that covered what he called the needs, and I called the claims, of the natives, but it did not satisfy me. I had, however, no further evidence to go on.

One of the results of this Select Committee, and of closer investigation made by the Government of Kenya into native land rights, is that we have very strong evidence fully supporting all the claims made since 1924 of the stealing away of native lands and granting them to Europeans. That is the point that I wish to bring to a head and to ask the Government what they are going to do about it. Some part of the extracts of evidence I will read to your Lordships. There is a very valuable and useful Report drawn up under the directions of the Kenya Government on native land tenure in useful documents and show an elaborate and very reasonable and complete system of law, with regard to which the Commissioners themselves say—

"Throughout the Kikuyu province it is a common thing to find individuals cultivating and sometimes living on land belonging to another clan or sub-clan. This is more

common in the Kiambu district, there where by reason of the fact that there are a great many individuals who once were members of land-owning sub-clans but whose whole holdings of land (secured by native law) were alienated to Europeans and who could not acquire new holdings, since they could not move on beyond the reserve boundaries into unoccupied forest land."

I will read a further paragraph, Paragraph 5—

There are far more men in one particular district, the Kiambu district, occupying permissively and without native right land on the holdings of other men who have a tribal right because a very large number of native holdings were alienated to Europeans in the days before reserve boundaries were fixed, and then a great many natives who had rights on the holding of their clan in the land alienated suddenly found themselves homeless and with no land on which they could cultivate in their own right.

So that it is perfectly clear that neither the drought nor the Masai have entirely cleared these districts. Paragraph 24 says that when the present boundaries of the native reserves overcropping has been caused and the disturbance caused by European settlement has undoubtedly increased the difficulty. Some clans claim that the whole of their holdings were lost to them by being alienated by Government to the settlers.

It appears from these very interesting Reports that natives dispossessed from their property in their own clan holdings, which are their own individual or family property, cannot acquire, or have very great difficulty in acquiring, similar rights in the holdings of any other clan or sub-clan. They can only get land to cultivate on sufferance and as a favour. They are called Ahoi, which is the plural of Muhoi. A Muhoi means an "asker"—one who comes to another and asks permission to cultivate part of his land, and obtains it purely on the basis of friendship. The negotiation begins quite in the manner of civilised communities on the basis of standing a drink. The Muhoi takes beer to the man whom he wishes to ask for such permission; the latter, if agreeable, consults the other elders of his clan or sub-clan, and if they consent he shows the Muhoi where to cultivate. Very often a man cannot get sufficient land space for his cultivation from one individual, but becomes the Muhoi of several people concurrently.

He cannot acquire any higher right by purchase unless it is offered to him. It is

a great insult to offer a native proprietor to buy land of him even if he is a member of the same clan. Presumably such an offer would be held to indicate a suggestion that the land-owner was hard on. We can remember when it was considered a breach of good manners on the part of wealthy Americans to offer money to the proprietor of an ancient English estate. The Kikuyu has still that primitive notion of etiquette.

In early days, however, the Report says, a Muhoi could generate a fortune was rich enough, manage to find a willing seller. Nowadays, however, there are fewer offers to sell land, and so Ahoi tend to stay on indefinitely as such. A Muhoi cannot build on the land allowed him for cultivation without special permission, which requires the consent of the clan or sub-clan. Further on in the Danoretti district and in the neighbouring Kiambu districts thousands of Kikuyu families were dispossessed by the grant of their lands to Europeans, and it is now impossible for them to obtain by purchase lands for cultivation or for building houses for themselves elsewhere.

That is very much more substantial evidence, it is an absolutely irrefutable statement of the grievances which I have been trying to bring before your Lordships for many years than I have ever had before, and I feel sure that such important statements as were brought before the Joint Select Committee must have impressed them when they made that recommendation that a very thorough and searching inquiry should be made into the adequacy of land provided for natives.

Now I go further and I say a memorandum has been submitted to the Colonial Office by the Kikuyu Central Association. I have it here. A list has been compiled of the number of persons who have been expropriated from land in Kenya alienated to Europeans. I would only say that this list has been drawn up with a view to substantiating the general statements made. This list specifies eighty-two distinct expropriations of clan holdings, which are named, affecting 7,839 individuals and their families in different settlements, and a total area of 88,740 acres. That is a document which purely must be inquired into in connection with the land inquiry. I am not prepared to say that some of the statements may not be exaggerated, but

HOUSE OF LORDS.

[From Minutes of March 22.]

SPEAKER OF THE HOUSE.

The LORD CHANCELLOR acquainted the House that His Majesty had (by Commission) revoked certain Letters Patent and had appointed the Duke of Devonshire, the Marquess of Reading, the Lord Granard (*E. Granard*), the Earl of Clarendon, the Earl of Lucan, the Viscount Hutchinson (*E. Donoughmore*), the Earl of Onslow, the Earl of Plymouth, the Viscount Mersey, the Viscount Sumner, the Viscount Hailsham, the Viscount Sankey, the Lord Denman, the Lord Hylton, the Lord Stanmore, the Lord Oglebrooke, the Lord Buckmaster, the Lord Hanworth, the Lord Marley, the Chairman of Committees for the time being, and any person who shall have been Chairman of Committees, Speakers of the House in the absence of the Lord Chancellor: The said Commission was read.

CONSOLIDATION BILLS.

Message from the Commons that they concur in the Resolution of this House, communicated to them on Tuesday the 10th instant, on the subject of Consolidation Bills, as desired by this House.

The LORD CHANCELLOR acquainted the House, that the Clerk of the Parliament had laid upon the Table the Certificates from the Examiners that the further Standing Orders applicable to the following Bills have been complied with:

Rochdale Corporation,
Sheffield Corporation,
South Wales Electric Power

That the Certificate that the Standing Orders have not been complied with in respect of the Petition for Additional Provision in the following Bill:

Mid South York Utility.

The same were ordered to lie on the Table.

LONDON LOCAL AUTHORITIES
(SUPERANNUATION) TEMPORARY
PROVISIONS BILL. [H.L.]

Reported, with Amendments.

DONCASTER EXTENSION BILL.

[H.L.]

The Order made on Wednesday, the 16th instant, appointing certain Lords the Select Committee to consider the Bill, discharged.

BLACKPOOL IMPROVEMENT BILL.

[H.L.]

Read 3^d, and passed, and sent to the Commons.

BENEFICES (DIOCESAN BOARDS OF
PATRONAGE) MEASURE, 1932.

Text of the Measure: Laid before the House (pursuant to Act) and to be printed.

THE CHATHAM AND DISTRICT
TRACTION ACT, 1929, MODIFICA-
TION ORDER, 1932.

Laid before the House (pursuant to Act) and referred to the Special Orders Committee.

ILKLEY ELECTRICITY (EXTEN-
SION) ORDER, 1932.

NANTWICH GAS ORDER, 1932.

Report from the Special Orders Committee, That the Petition has been presented praying to be heard against the Special Orders, and that there is nothing in these Orders to which they think it necessary to call the attention of the House: Read, and ordered to lie on the Table.

HARROGATE GAS ORDER, 1932.

Report from the Special Orders Committee, That no Petition has been presented praying to be heard against the Special Order, that they have received and considered a Report from the Board of Trade upon the Order, and that there is nothing in this Order to which they think it necessary to call the attention of the House: Read, and ordered to lie on the Table.

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PARLIAM. DEB.

DEBATES.

HOUSE OF LORDS.

WEDNESDAY, 23RD MARCH, 1932

Vol. 83.—No. 33.

OFFICIAL REPORT.

[UNREVISED]



COLONIAL OFFICE LIBRARY.

Motion for the Creation and Education Bill—Committee.	FILE COPY	PLEASE RETURN
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Use of Man (Customs) Bill—Second Reading.
Business—Statement by the Marquess of Londonderry.

No proofs of the Daily Reports are sent. Any corrections which Peers desire to suggest in the report of their speeches for the Bound Volume should be indicated in this Daily Report, and the copy of the Daily Report containing the corrections suggested must be received by the Editor of Debates, House of Lords, within fourteen days of the Debate.

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of (a) communities, bodies, or individual natives of recognised tribes and (b) detribalised natives, that is natives who belong to no tribe or who have severed connection with tribes to which they once belonged.

- (v) To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1925.

11. Your Lordship has asked for my recommendations as to the personnel of the proposed Commission: I recommend that it shall consist of a Chairman with the Chief Native Commissioner and the Commissioner of Lands; and I suggest that Sir Morris Carter be asked if he will undertake the duties of Chairman.

12. The preliminary work in connection with the Commission will be heavy and for this purpose I propose to detail Mr. S.H. Fazan, O.B.E., District Commissioner, to be Secretary to the Commission. Mr. Fazan, as Your Lordship is aware from the Kikuyu Land Tenure Report, has devoted much time and attention to the subject and he is moreover familiar with the area and the people from which most of the major problems under consideration arise.

I have the honour to be,

My Lord,

Your Lordship's most obedient,

humble servant,


BRIGADIER-GENERAL.

G O V E R N O R.

Reserve.

8. The legal rights of natives who are resident, or whose forefathers resided, on land which has for years been alienated to Non-natives are very obscure and I agree with Your Lordship that legislation is necessary to clarify the position, and that probably the best solution to this particular problem might be an arrangement under which the Kikuyu through the representatives of the tribe agree to surrender whatever rights their members might claim to alienated land for a certain consideration. This course might mean the surrender of valuable forest land but I am quite willing that the terms of reference of the proposed Commission should include consideration of this aspect of the problem.

9. I agree also that problems of individual tenure and of provision of land for detribalised natives should receive consideration, as also the definition of the Highlands.

10. I therefore suggest terms of reference as follows:-

- (i) To consider what if any specific additions should be provided for by legislation to the Native Reserves as declared by Government Notice No. 394 of 1926 and confirmed by the Native Lands Trust Ordinance 1930.
- (ii) To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the disposal of such claims whether by legislation or otherwise.
- (iii) To examine claims asserted by natives over land not yet alienated and to make recommendations for the disposal of such claims.
- (iv) To consider the desirability and practicability of setting aside areas of land for the occupancy of.....

*2/10/31
J. H. K. M. M.*

I believe no reliable scientific data on which to gauge the possible or probable increases in such populations; they may be static or their increase may be limited and their present Reserves may be excessive for their legitimate requirements. I am satisfied that in the main generous provision has been made for existing populations and that as a general policy these populations must be expected by more modern methods of agriculture to accommodate themselves to the geographical limits which have already been determined.

6. This does not mean that I am convinced that no additions should in any case be made to existing Reserves. On the contrary I believe that there are certain proposed additions which merit careful consideration and I shall welcome such consideration by the Commission if it is appointed.

7. It is however pertinent to observe that in accordance with Section 2(2) of the Native Lands Trust Ordinance the Governor is empowered "with the approval of Legislative Council, from time to time to reserve for the use and benefit of the native tribes of the Colony such further areas of Crown Land as in his opinion may be required for their maintenance and support".

This means presumably that the Governor has no power to reserve land which is not so "required", and I imagine that proof of this fact to the Governor's satisfaction may in some cases present considerable difficulties. A Governor for example might find it difficult to say that the Railway Mile Zone, to which reference is made in paragraph 14 of Your Lordship's despatch, is "required" for the "maintenance and support" of the Masai (whose Reserve is 14,000 square miles in extent) although there may be other very good reasons for the addition of this zone to the Reserve

- (c) provision of land for detribalised natives:
- (d) a definition of the "Highlands":
- (e) native rights to occupancy, -
 - (i) on land alienated to Non-natives, and
 - (ii) on unalienated land.
- (f) specific additions to certain Reserves:
- (g) arrangements under which claims of natives to alienated land might be surrendered in consideration of additions to their Reserve:
- (h) legislation to remove the present doubts as to the legal position.

4. With regard to (a) the adequacy of Native Reserves, the agreement arrived at in 1926, subsequently confirmed by the Native Lands Trust Ordinance, was the outcome of protracted and detailed investigation extending over a number of years and I should hesitate to agree to a suggestion that this consideration was not generally adequate and the results generally just. Any suggestion of the kind would, I am confident unnecessarily inflame unofficial opinion and I should therefore be reluctant to agree that the general adequacy of Native Reserves should be one of the terms of reference to the Commission. Apart from this consideration it is the fact that the Reserves of the two largest Provinces - the Nyanza and Kikuyu - cannot be materially increased without either dispossessing the non-native occupants of neighbouring areas or surrendering areas of valuable forest land. The former course Your Lordship has admitted to be impracticable and the latter course is manifestly undesirable.

5. I doubt moreover if it is anyhow possible to estimate on any basis that would command general acceptance the future needs of any native population for there are
I believe

Further there is no doubt that the prominence given to the evidence of the native witnesses before the Joint Committee has aroused lively hopes in the breasts of the Kikuyu at any rate on the question of land, and it will ultimately strengthen the hands of the local administration, if they are made to understand that their claims are to be examined by a competent and impartial authority. From the above it will be seen that my acquiescence in the appointment of a Commission has been actuated very largely, if not exclusively, by factors outside Kenya and largely outside the control of the Kenya Government, in which the deliberations of the Joint Committee have played a most important part. In these circumstances I believe the best way to minimise local opposition to the appointment of such a Commission would be, were such a course possible, to arrange that a recommendation for its appointment should be incorporated in the Joint Committee's Report. Failing this, for I appreciate both Your Lordship's position in the matter and the fact that such a recommendation might not be considered strictly within the Joint Committee's terms of reference, I suggest that the appointment should be announced as having been made by Your Lordship as the best method of setting at rest the doubts publicly expressed before the Joint Committee as to the policy pursued by the Government of Kenya in respect of native land.

5. The subjects which Your Lordship suggests for consideration may be summarised as follows:-

- (a) the adequacy of the Reserves for the present and future needs of the native populations;
- (b) provision for individual native holdings outside the Reserves;

(c) provision

Corro

37

KENYA.

No. 109

CONFIDENTIAL.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
24 AUG 1931
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5^h AUGUST, 1931.

My Lord,

I have the honour to acknowledge the receipt of Your Lordship's confidential despatch of the 30th April on the subject of a proposal to appoint a Commission to enquire into certain problems arising from native interests in and native rights to land in Kenya and to make recommendations for their solution.

I am in agreement with Your Lordship that the problems which demand solution are of great gravity, complexity and difficulty and I share Your Lordship's opinion that probably the best way to deal with them would be by means of a Commission of Enquiry.

2. I must confess, however, that I have arrived at this decision only after considerable hesitation and with some reluctance for reasons which should, I think, be before Your Lordship before any final decision is taken. In the first place I need hardly say that the appointment of such a Commission will inevitably arouse considerable opposition from the Elected Members of Legislative Council who, as I shall explain in greater detail in a later paragraph of this despatch, regard the question of the Native Reserves to have been finally closed with the passing of the Native Lands Trust

Ordinance.....

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

General Conf on 17/8/31 27 Oct 1931

896/A

one of the most productive parts of the Continent. The development for Administration and social and economic services which has been possible in Kenya in the interest of the welfare as much

of white settlers and agriculture if the views of Lord Passfield, vague and general as they are, become a part of the policy of Kenya. In the Memorandum on Native Policy issued last year, the Government had laid for the

Dpl, Nakuru, Eldoret, Tanga, and Dar-es-Salaam

E MOTOR MART and Exchange, Ltd.



FRIDAY, JULY 17, 1931.

been accepted. He has also agreed that if any land is required for Native needs the people concerned shall and must be consulted. So far so good. But his unnecessary and voluntary reference to the subject must leave an uneasy suspicion of a threat to the security of settlement until a definite and unequivocal pledge is given by the Imperial Government that it will respect its word. Land policy events in Kenya should be carefully watched.

Extract from Personal Confidential Letter from
to J. Byrne to S. Wilson, dated 11/11/31

85

safely be allowed to act, at least until the position becomes clearer.

I should be very grateful if the "Powers that be" would have a talk with Moore before he leaves about the recommendation made in paragraph 105 (ii) of the Joint Committee report. I have no doubt whatever that an investigation of this nature is absolutely necessary, and I have also no doubt that it will raise a storm here. The initiative must therefore come from H.M. Government based on the recommendation of the Committee. A strong and independent Chairman will be required and an endeavour must then be made to remove once and for all the many anomalies and injustices which are a constant irritant to good relationship between some of the native tribes and the Government.

X X X X X

Recd. File 13/11/32

5.

34

EXTRACT from a letter from Sir Joseph A. Byrne to Sir S. Wilson, dated 11th November, 1931.

X X X X X X

As you are aware, the 1932 Budget is a makeshift and an emergency Budget. As soon as possible after the New Year we must try and get the financial position examined and put on a sounder basis in time for the preparation of the 1933 Estimates. I want now to drop my request for a Financial Expert and to ask H.M. Government to implement without delay the recommendation made by the Joint Committee 105(1) of their report. With reference to paragraph in paragraph 87 of the report, please do what you can to prevent too hasty action. In this connection I would refer you to my personal letter to Lord Passfield dated the 9th June and to his reply dated the 14th August.

There was a Committee in being when I came here appointed to examine the provincial system with a view to seeing whether greater decentralisation with fewer Provinces would not lead to efficiency. Linked up with this is the re-organisation of the Secretariat which will have considerable bearing on the administration of Native Affairs. Moore was Chairman of this Committee but we found that it was useless to proceed with the investigation until the Closser Union Report was published. As soon as Moore returns I want to re-assemble the Committee with the instruction that they should submit their recommendations with the least possible delay. For the time being therefore would you please leave me alone and not send me a "fundi" from Fiji or Tanganyika. Native affairs in this Territory are very complicated and it would take a new man a year or two to get even a slight grasp of the problems. Wade is doing admirably and can safely

In reply to questions Mr. Moore

expressed the view that Mr. L.S. Leakey would not do. He had made himself thoroughly unpopular by giving private evidence to the Committee (which has become known) instead of making his criticisms openly. Further, although his knowledge of the Kikuyu is unique it is really limited to that tribe, and he would be apt to judge things from that standpoint alone. The present representative of the natives on the Legislative Council is ^{Canon} ~~Captain~~ Burns, but Mr. Moore pointed out that ~~he would~~ ^{he was not representative in the strict sense} ~~not really representative~~ ^{of the natives}, and he ~~did not think~~ ^{thought} he would be a suitable appointment to the Commission.

x He is not an
Leakey & Leakey
Leakey's acting.

x In Leakey's
Evidence
was sufficient
to show the
Leakey's acting

~~It was noted that the terms of~~
It was noted that the terms of reference suggested by the Governor includes the definition of the highlands area. They also cover native claims to land ^{unalienated} ~~not yet alienated~~, but do not specifically refer to tenure within the reserves. Mr. Moore thought, however, this point being similar, ~~was not~~ ^{was not} covered by the investigations of the claims without the reserves ~~as a guide as regards claims~~ ^{as a guide as regards claims} ~~of individual tenure within the reserves.~~

x I have struck this out because, although I certainly asked if Dr. F. had heard anything from the Kikuyu & Maasai, I was in the general talk about native claims in the reserves & not in relation to the Survey of P.

is therefore cleared up, and the way is ^{open} clear for a public despatch to the Governor directing that such a Committee should be appointed to enquire not only into the needs of the natives, but also the other points covered by the terms of reference suggested by the Governor which are based on the subjects suggested for consideration in the Secretary of State's despatch of the 30th April last.

14 on 10333/30.

(It may be mentioned here that the draft confidential despatch relating to the report as a whole says in regard to this matter that the Secretary of State entirely agrees with the recommendation of the Committee in favour of a full and authoritative enquiry ⁱⁿ ~~and~~ to the land ^{reserves} ~~enquiries~~, and that he proposes to deal with this matter in due course in a separate despatch.) *The despatch would no doubt be accompanied by a letter from Sir David saying that Mr Moore has been consulted.* Mr. Moore explained that his brief was

really to emphasise the Governor's view that the initiative for this enquiry should come from His Majesty's Government and should be based on the recommendation of the Committee.

The Governor's wishes will be met by the action suggested; ~~that~~ ^{no doubt} the proposed despatch ^{of course} should be couched in such terms that the Governor will have an opportunity of expressing further views in regard to details if he should so wish.

As regards the personnel of the proposed Commission the Governor had recommended that it should consist of a Chairman, with ^{As} Chief Native Commissioner and the Commissioner of Local Government, Lands and Settlement, and he suggested that Sir Morris Carter who undertook the Southern Rhodesia enquiry should be asked to act as Chairman. As Secretary he proposed Mr. S.H. Fagan, District Commissioner.

NOTE OF A DISCUSSION REGARDING THE PROPOSED COMMISSION OF ENQUIRY INTO THE LAND QUESTION IN KENYA ON THE 15TH DECEMBER, 1951.

PRESENT:-

Sir C. Bottomley.

Mr. H. M. M. Moore (Colonial Secretary)

Mr. H. T. Allen.

This discussion took place as a result of a request by Sir J. Byrne that the recommendation made by the Joint Committee in regard to the land enquiry might be talked over with Mr. Moore before he leaves England.

(3) Sir C. Bottomley pointed out that in the Governor's despatch of the 5th August he argued against including within the terms of the enquiry the question of the adequacy of the native reserves, and the terms of reference suggested in paragraph 10 of that despatch do not include this point. On the other hand, the recommendation of the Joint Committee in paragraph 105(ii) is definitely for an enquiry into the needs of the natives, both present and prospective, and in paragraph 71 they also emphasise the necessity for keeping in view the question of the future needs. There was therefore a direct conflict between the Committee's recommendations, and the views expressed by Sir J. Byrne in August, but it is clear from his letter to Sir S. Wilson of the 11th November (for extract see No. 5 on this file) that ^{Sir Byrne} he is prepared to agree to an investigation of the nature recommended by the Joint Committee, though he has no doubt that it will raise a storm locally. That difficulty

Res shows amendments of terms suggested by the Governor
as discussed with Mr C. Bottawley

Final amendments subsequently made for concision.

DRAFT TERMS OF REFERENCE.

X

1. To consider what, if any, ~~specific~~ ^{specific} additions should be provided for by legislation to the Native Reserves as declared by Government Notice No. 394 of 1920 and confirmed by the Native Lands Trust Ordinance, 1930 ^{in order to meet any difficulties which may already have arisen}

2. To consider the needs of the native population present and prospective ^{with} respect ^{to} land within and without ^{the} reserves held on ~~either~~ tribal or individual tenure ~~and to make recommendations for the~~

3. To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the ^{adequate settlement} disposal of such claims whether by legislation or otherwise.

4. To consider the nature and extent of the rights, if any, held by natives under Section 86 of the Crown Lands Ordinance, 1915 (Chapter 140

Revised Laws) ^{and whether other means come to mind for dealing with such rights in respect of land also}

5. To examine claims asserted over land not yet alienated and to make recommendations for the ^{adequate settlement} disposal of such claims.

6. To consider the desirability and practicability of setting aside ^{present or future} areas of land for the ^{future} occupancy of

(a) communities, bodies, or individual natives of recognised tribes and (b) detribalised natives, that is natives who belong to no tribe or who have severed connection with tribes to which they once belonged.

6. To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

~~omit~~
Omitted as this is
well covered by the
was not part of the
Governor to deal with
Other concrete cases
with reference to
particular New
needs which
has not been
included

adequate settlement

sent

alienated (the)
land alienated
in the future

adequate settlement

This is the Governor's
an order of
which may
be accepted
1/1/30

Rec shows amendments of terms suggested by the Governor as discussed with Mr. Chatterley

Final amendments subsequently made for revision.

DRAFT TERMS OF REFERENCE.

-xe
Omitted as this is
half cases of
was not part of
Governor to deal with
Other separate cases
with a view to
giving the
'needs' which
has now been
included

[1. To consider what, if any, specific additions should be provided for by legislation to the Native Reserves as declared by Government Notice No. 394 of 1926 and confirmed by the Native Lands Trust Ordinance, 1930 *in order to meet any difficulties which may already have arisen*

[2. To consider the needs of the native population present and prospective ^{will} in respect ^{to} land ^{to} within and without ^{the} reserves ^{to} held on ~~the~~ tribal or individual tenure. *whether to be*

[3. To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the ^{adequate settlement} disposal of such claims whether by legislation or otherwise.

New

[5. To consider the nature and extent of the rights, ~~if any~~, held by natives under section 86 of the Crown Lands Ordinance, 1915 (Chapter 137 of the Revised Laws) *and whether better means can be devised for dealing with such rights in respect of land alienated*

[6. To examine claims asserted over land not yet alienated and to make recommendations for the ^{adequate settlement} disposal of such claims.

[6.2 To consider the desirability and practicability ^{further} of setting aside ^{present or future} areas of land for the occupancy of (a) communities, bodies, or individual natives of recognised tribes and (b) detribalised natives, that is natives who belong to no tribe or who have severed connection with tribes to which they once belonged.

[6. To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

alternatives (b) law alienated in the future

This is the Governor's own work and I suppose may be accepted 1930

DRAFT TERMS OF REFERENCE.

1. To consider the needs of the native population, present and prospective, with respect to land whether to be held on tribal or on individual tenure.
2. To consider the desirability and practicability of setting aside further areas of land for the present or future occupancy of (a) communities, bodies, or individual natives of recognised tribes, and (b) detribalised natives, that is, natives who belong to no tribe or who have severed connection with tribes to which they once belonged.
3. To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the adequate settlement of such claims whether by legislation or otherwise.
4. To examine claims asserted ~~over~~ land not yet alienated and to make recommendations for the adequate settlement of such claims.
5. To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance, 1915 (Chapter 140 Revised Laws) and whether better means could be adopted for dealing with such rights in respect of (a) land already alienated, and (b) land alienated in the future.
6. To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

Jan 1923

g.f.

g.

by natives

*Jan 12 1923
Past. 11. 1233/3*

g.f.

7. Heron E? from no. 11.

neither officials nor partisans and that if it is possible to secure services of two fair minded local men it would encourage co-operation in difficult administrative problem which is much to be desired and would be preferable to appointment of outsiders without knowledge of local conditions. He wishes me to suggest that you might be prepared to recommend F.O.B. Wilson as one member, and although he is an ex-official (Rupert

to the other:

Hemsted has occurred to us as possibility, if any difficulty in finding ~~two~~ ^{a second} thoroughly suitable ^{non-official} members locally.

Please telegraph as soon as possible whether you agree to proposed modifications of terms of reference and also your views as to personnel. When decisions reached on these points Secretary of State proposes to send public despatch as to appointment of Commission. *End. Sec.*

One. To consider the needs of the native population, present and prospective, with respect to land whether to be held on tribal or on individual tenure (inserting)

Two as in your (iv) "further" before "areas" and "present or future" before "occupancy."

Three and Four as in your (ii) and (iii)

Substituting in each case "adequate settlement" for "disposal".

Five. To consider the nature and extent

of the rights held by natives under section

86 of Crown Lands Ordinance 1915 (Chapter 140

Revised Laws) and whether better means could be

adopted for dealing with such rights in respect

of ⁽²⁾ ~~land~~ Land already alienated ^{(b) land alienated} in the future.

Six. As in your (v).

As regards personnel the Secretary of State agrees to Carter as Chairman if he is willing to serve and to Fazan as Secretary.

But as regards other members while he recognises that

your suggestions are the result of very careful

consideration he thinks that they should be

neither

X.17312/31 Kenya.

875
6

*Codes & Sec
8.0/1/13*

13 JAN 14

C. O.

Mr. Allen. 9/1

Mr.

Mr.

Mr. Tomlinson.

Sir O. Bottomley. 11.1.

(5)

Sir J. Shuckburgh.

Sir G. Grindle.

+ Permt. U.S. of S. 12.1.32

+ Parly. U.S. of S. 13.1.32

+ Secretary of State. On 12/1/34

for consen. v minutes.

DRAFT. Telegram.

Governor Nairobi.

Para 10

Private and Personal.

Following from Wilson begins:

Your letter 11th November Land Enquiry.

Moore has been consulted as suggested

and Secretary of State agrees that

initiative should come from H.M.G.

based on recommendation of Joint

Committee. It will of course be necessary

to include in terms of reference enquiry

into needs of natives present and pros-

pective in view of recommendations in

paragraphs 71 and 105 (ii) of report.

Subject to this and certain other

modifications the Secretary of State is

prepared to agree generally to the terms

of reference suggested in paragraph 10 of

your confidential despatch of 5th August

No. 109 and it is suggested that revised

terms should be as follows:

One

** For economy the revised terms are shown as amendments to the Secretary's terms for convenience of consideration. I put up a complete copy of the terms of reference as now proposed.*

In the meantime I consider that the question of compensation arising from the issue of a mining lease should be dealt with administratively on the same lines as compensation in respect of other private land.

x

x

x

Original filed on
17319/21 Kenya

973

Extract from despatch from the Governor of Kenya
No. 665 of the 20th November 1931.

x

x

x

I feel, therefore, that excision of land from Native reserves for mining purposes is a different footing from other excisions, and that the arguments which have been advanced in support of the present legal provisions do not apply with the same force to this kind of excision. There is, further, very little distinction, to my mind, between paying into Local Native Council funds a lump sum compensation paid by a mining-leasee and paying in stand preria and rent realised by the sale of land in some other part of the country; and it is abundantly clear that in very many cases it is physically impossible to add adjacent land to a Reserve.

I have, therefore, to propose for your approval that at some convenient date an amending Ordinance be introduced to incorporate a provision on these lines. An amendment to the Ordinance is already necessary since there are a number of minor boundary amendments which require to be made to Native Reserve boundaries, such as the exchange with the Masai of the Kanangop Circumcision area, but which cannot be effectively made without an amendment to the Ordinance.

In

72/10

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 19th January, 1932. Received in the Colonial Office at 4.2 p.m. on 19th January, 1932.

PRIVATE AND PERSONAL.

1058

Reference to your Private and Personal telegram 13th January. Following for Wilson. Begins. No objection to your revised Terms of Reference though numbers 3 and 5 appear to some extent to overlap as claims contemplated under No.3 arise in most cases from section 86 of Chapter 140. I suggest addition of a further term as follows: "to review working of Native Lands Trust Ordinance and to make recommendations as to any amendments which may appear to be required". In this connection please see my despatch No.665 of the 20th November last on the subject of mining in Native Reserves. There is also difficulty in connection with townships in Native Reserves and as to exchanges of land however advantageous such exchanges may be to the natives concerned. As to personnel while I appreciate your views I think that it would be difficult if not impossible to find two fairminded and unprejudiced local men whose recommendations would command confidence. I therefore recommend that Carter be asked to serve as a one-man Commission with Fazan as Secretary. Ends.

See extract filed as No 9

107A

● TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 19th January, 1932. Received in the Colonial Office at 4.2 p.m. on 19th January, 1932.

PRIVATE AND PERSONAL.

Reference to your Private and Personal telegram 13th January. Following for Wilson. Begins. No objection to your revised Terms of Reference though numbers 3 and 5 appear to some extent to overlap as claims contemplated under No.3 arise in most cases from section 86 of Chapter 140. I suggest addition of a further term as follows: "to review working of Native Lands Trust Ordinance and to make recommendations as to any amendments which may appear to be required". In this connection please see my despatch No. 105 of the 20th November last on the subject of mining in Native Reserves. There is also difficulty in connection with townships in Native Reserves and as to exchanges of land however advantageous such exchanges may be to the natives concerned. As to personnel while I appreciate your views I think that it would be difficult if not impossible to find two fairminded and unprejudiced local men whose recommendations would command confidence. I therefore recommend that Carter be asked to serve as a one-man Commission with Fazan as Secretary. Ends.

Recd. 26/1/32

220

otherwise without involving any departure

from the principles of the Ordinance unquote

do you agree. Ands.

Recer.

otherwise without involving any departure
from the principles of the Ordinance unquote
do you agree. ands.

Recer.

701

24 JAN 32

Handwritten: Coded sent
Jan 8. of 26/1/32

C. O.

File 17312

Mr. *H. Allen 22/1*

Mr.

Mr.

Mr. Tomlinson.

X Sir C. Bottomley, 22.1.

Sir J. Shuckburgh.

Sir G. Grindle.

+ Permt. U.S. of S. *25/1/32*

Parly. U.S. of S.

X Secretary of State *25/1/32*

DRAFT.

Tel. cons.
v. minutes.

Governor

Nairobi

Handwritten: As indicated in my previous telegram the
2. The...
The...
6/1/32

Handwritten: April 13

Private and Personal.

Following from Wilson. Begins.

Your telegram 19th January Land

Commission Secretary of State regrets

that he cannot accept your proposal

of Carter as one man Commission as he

considers it essential to have two

other members. If you feel that you

cannot agree to names suggested in my

previous telegram Secretary of State

would be glad if you would make fresh

suggestions. As regards further term

of reference following wording is

quote

considered preferable / To review the

working of the Native Lands Trust

Ordinance and to consider how any

administrative difficulties that may

already have arisen can best be met

whether by supplemental legislation or

otherwise.

701

26
37

Handwritten: 8. of 26/1/32

C. O.

File 17312

Mr. *H. P. Allen 22/1*

Mr.

Mr.

Mr. Tomlinson.

X Sir C. Bottomley. 22.1.

Sir J. Shuckburgh.

Sir G. Grindle.

+ Permt. U.S. of S. *25/1/32*

Parly. U.S. of S.

X Secretary of State *25/1/32*

DRAFT.

Tel. cons.
v. minutes.

Governor

Nairobi

As indicated in my previous telegram they

Print 13

Private and Personal.

Following from Wilson. Begins.

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cannot agree to names suggested in my

previous telegram Secretary of State

would be glad if you would make fresh

suggestions. As regards further terms

of reference following wording is

quoted

considered preferable / To review the

working of the Native Lands Trust

Ordinance and to consider how any

administrative difficulties that may

already have arisen can best be met

whether by supplemental legislation or

otherwise

this letter is strict

confidence, as we are anxious

to avoid any premature publicity.

Probably the first announcement

Even the correspondence we

will be in Parliament, and that

have had with the Governor

will cover the names of the

or the subject of this

transmission we will

recommendation of the Joint

Committee has been private and

personal - not official.

*I am doubtful
about releasing this
H.A.*

.....

James ...

BY TOMLEY.

are in a position to accept such an invitation and would be willing to take on the work.

It was ⁵ contemplated that two other Commissioners would be associated with you in the enquiry, but no names have yet been decided upon. I enclose a copy of ~~the~~ terms of reference which have been drawn up provisionally, but although they have not yet been ~~officially~~ ^{finally} settled, it seems improbable that any material alteration will be made in them. ↑

I should be much obliged if you would let me have a reply to put before the Secretary of State.

I must ask you to treat

I also enclose copies of
 Chap 140, Revised Laws
 of the White Paper L 423
 which are ^{mentioned} referred to
 in the draft terms of
 reference.

C. O.

Mr. Allen

30.1.32.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

* Sir C. Bottomley. 1-2-32 for

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

For Sir C. Bottomley's signature.

Downing Street,

17th Jan 1932.

Dear Mr. Carter,

DRAFT. Carter

William K.C.
SIR MORRIS CARTER / K.C.E.

(Shawcross, Room 295 to ascertain latest address from Carter)

1/6 HM Carter by
Morris Home
'Dunstable'
K.C.S.

Report

Verms & Reference

Chap 140 Kenya Laws

* White Paper 1923 to (C.O. 1922)

* Copy herewith which includes that additional term in the form refers to the Dept in 1921

* Memo entitled 'Indians in Kenya'

I don't know whether you have seen the Report of the Joint Select Committee of Parliament on Closer Union in East Africa, but as there is a point arising out of it on which the Secretary of State has asked me to write to you, I enclose a copy.

The particular point is the recommendation in paragraph 105 (ii) of the Report that "a full and authoritative enquiry should be undertaken immediately into the needs of the native population, present and prospective, with respect

13
167

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 1st February, 1932. Received in the Colonial Office at 3.19 p.m. on 1st February, 1932.

Private and Personal 1st February. Following for Wilson begins.

Ans. W. P. S. 13 Feb. 32. No 11

Your private and personal telegram 26th January. After long discussion in the Executive Council this morning it was unanimously agreed that One Man Commission appeared to be only solution.

Very many names were considered but in each case objections were raised on the score of bias or local interest. Also considerable doubt was expressed in view of controversial nature of enquiry whether individuals in question would consent to sit. Hemsted has consented to and would be admirable choice provided balanced by a representative of Settler Community who as I have stated is difficult to find. Perhaps the Secretary of State would be prepared to reconsider his decision if not I will do my best to find someone.

LS 66

Downing Street,

6th February, 1932.

Dear Mr. ...

I have your letter of the 4th of February and I am very glad to see that you would be willing to accept an invitation to be Chairman of the Land Committee in Kenya.

We will bear in mind your wish to be informed as soon as possible of the date at which you would be asked to leave England. At the moment, the arrangements for the selection of the other members of the Committee are not going quite according to plan, and it may be a week or two before we can say anything definite.

Yours sincerely,

W. M. ...

SIR WILLIAM MORRIS CARTER, C.B.E.

14565

Sir S. Wilson.

The Allen summary

I enclose Sir William Morris
Carter's reply to my letter about the
Land Committee, with a copy of my
acknowledgment.

The papers are in circulation
on the question of the local members of
the Committee.

W.C.B.

6th February, 1932.

Draft Hqeen

64/16
A

Collected
11:5 am 13:43

To Jaramas, Kenya
Jellany from Wilson. ^{Ref []} Private

Personal of your telegram of

1st February of I have shown to

Sec of State who is still strongly

of opinion that Commission

should must be composed of three of

Carter is ready to serve as

Chairman if invited and accordingly

to you Hammett is ready to be

member of. Surely it would be

possible to get some other local

man to serve as member who

would not be ruled out on

score of bias or local interest of

If no settler considered suitable

is there no member of the

commercial community who

would fill the bill. ends

* cl. Secret

M-L

12/2

March 17

63/17

ORIGINAL decode

of a telegram from the Gov. Kenya

Dated 1 March 1952

Received in the

Colonial

Office at

2.1 p.m.

on 1 March

Decoded

by M.A.W.

Decyphered

No 16

Private & Personal. Following for Wilson. Begins. Yr. tel. 13 Feb. .

In view of the strong opinion expressed by the Sec. of State, I left

instrns. that during my absence in the ~~KRAMLIER~~ Northern Frontier the question

of personnel shd. be further explored. In my tel. 1st Feb. I have

already expressed agreement with choice of HEMSTED and in the circs.

I thought it desirable to specially consult Lord Francis Scott as to

reprve. of Settlers' Community to balance any suggestion that

Hemsted would have an offl. bias. He strongly recommends Wilson

& in all the circs. I withdraw my prev. objp. & will approach him in

the matter on his arrival. It is possible but unlikely that he may be

elected to represent UKAMBA Constituency the polling date for which

is 31st March and in the event of his election matter would have to

be reconsidered as it is questionable whether a member of the Council

shd. serve on such a Committee. Ends. BYRNE

and 18

official letter making ^{you} a formal offer of the chairmanship of the Committee, but it may be that we shall not know until as late as the 22nd of March whether or not the Secretary of State is in a position to authorise a public announcement. Obviously, however, it is proper to let you know what is pending, and I hope you won't mind our proceeding on the assumption that your name may be given out as Chairman of the Commission if and when the announcement is made.

I am sending this letter in duplicate to Dunstable and to Jersey, as I do not know what your movements have been since I last wrote to you.

Yours sincerely

W. C. TOMLEY.

C. O.

Mr. H. T. Allen 1933 atance

Mr.

Mr.

Mr. Parkinson

Mr. Tomlinson

Mr. C. Hollis

Mr. J. Shackburgh

Permt. U.S. of S.

Early U.S. of S.

Secretary of State.

DRAFT TELEGRAM.

GOVERNOR,

NAIROBI.

*in answer from the
1933 in C. O. atance
has been in S.
W. C. Tomley 1933
25/3*

1933/31
Kenya

18
62

Coden sent

4.10 pm
15/3/32
W.C.

Private and Personal.

Following from Wilson begins

(17) Your telegram 1st March

In view of motion in House of Lords

23rd March relating to recommendations

of Joint Committee especially in regard

to land it would be convenient to S. of

S. to be able to authorise

announcement as to composition of

proposed Land Commission on that

occasion

S. of S. therefore anxious that

you should if possible sufficiently

in advance of date mentioned reply

and further as to Wilson also whether you

agree to amended terms of reference

suggested in my telegram of 16th

ends.

(11)

Definite reply as to

Wilson which is most

desirable if possible

End

Loce

C. O.

Mr. Allen. 15/3

Oto. for Sir C. Bottomley's signature.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

K Sir C. Bottomley. 15-3 f

Sir J. Shuckburgh.

Permt. U.S. of S.

Party, U.S. of S.

Secretary of State.

DOWNING STREET,

16 March, 1932.

Dear Morris Carter

I hoped when I wrote to you on the 6th February that it would be possible in the course of a fortnight or so to let you have something more definite with regard to the proposed Land Commission in Kenya. Unfortunately the matter has developed less rapidly than I thought would be the case, but it is, however, now possible that the Secretary of State may wish an early public announcement made in regard to the Commission, and the first opportunity of doing so may be a debate which is coming off in the House of Lords on the 23rd March. I am sorry it is not possible to arrange

DRAFT.
WILLIAM
SIR MORRIS CARTER. C.M.

Carson:

(Two copies to be made both for Sir C. Bottomley's signature - one to go to the Dundalk address & one to the Jersey address)

19⁶¹

17312/32 Kenya

20⁶⁰

G. O.

Mr. *H. Hill 9/13*

Mr. *Atwell*

Mr. *Parkinson*

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Party, U.S. of S.

Secretary of State.

Telegram

boxed sent 11-15/32 19/3/32

Marked Immediate

DRAFT.

Governor

Nairobi

Private and personal ^{begin}

Following from Wilson

My telegram of 15th March

Land Commission

Secretary of State would be

glad of immediate answer

as to outstanding ^{item}

of reference and to learn

whether he may ~~act~~

*Sir J. L. L. has
seen ~~you~~
Sir Wilson
see after 19.3.32
despatch*

A
12

59
21

ORIGINAL

Decode

of a telegram from the

Governor's Deputy
Kenya

Dated 19 Mar. 1951

Received in the

Colonial

Office at 2-20p

on 19 Mar.

Decoded

Decyphered

by Whistler

Private and personal. Following for
 Wilson begins Your tel. of 15th Mar. Amended
 terms of reference suggested in your
 telegram of 26th January, agreed to have
 approached Wilson who is ready to
 submit to result of poll as explained
 in my tel. of 1st March. Ends.

Gov's Deputy

ready to see subject to result of

LONDON

C. O.

22
Cable sent 58
12.15 P.M.
21/3/32
[Signature]

Mr. *McKinnon* 21.3

PRIVATE AND PERSONAL.

Mr.

Your Private and Personal telegram

Mr.

Mr. Tomlinson.

19th March. Following from Wilson begins:

① Sir C. Bottomley.

Cannot understand why if elected

Sir J. Shuckburgh.

Sir G. Grindle.

to Legislative Council F.O.B. Wilson should

Permt. U.S. of S.

Parly. U.S. of S.

be precluded from serving on Land Commission.

Secretary of State.

DRAFT.

Please telegraph explanation immediately

Gov.

as I should like Government spokesman

Wardle's
by [unclear]
Dr. [unclear]
on
instructions of
[unclear]

to announce composition of Commission

in course of debate House of Lords on

Wednesday 23rd. Ends.

with the S. of S.

Sir J. Lubbock

agrees.

Lyons

21.3.32

*4.3.32 not forward
was the [unclear]
H.M. [unclear]*

DEPT. OF LANDS

1. To consider the needs of the native population, present and prospective, with respect to land whether to be held on tribal or on individual tenure.
2. To consider the desirability and practicability of setting aside further areas of land for the present or future occupancy of (a) communities, hordes, or individual natives of recognised tribes, and (b) detribalised natives, that is, natives who belong to no tribe or who have severed connection with tribes to which they once belonged.
3. To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the adequate settlement of such claims whether by legislation or otherwise.
4. To examine claims asserted ^{by natives} over land not yet alienated and to make recommendations for the adequate settlement of such claims.
5. To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance, 1916 (Chapter 140 Revised Laws) and whether better means could be adopted for dealing with such rights in respect of (a) land already alienated, and (b) land alienated in the future.
6. To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.
7. To review the working of the Native Lands Trust Ordinance and to consider how any administrative difficulties that may already have arisen can best be met whether by supplemental legislation or otherwise without involving any departure from the principles of the Ordinance.

A
12

56
23

ORIGINAL Decode

of a telegram from the Deputy Governor

Colonial Kenya

Date: 22nd March 1932 Received in the Office at 10. 25. a.m. of 22nd March 1932

Decoded by L.D.

~~XXXXXXXXXX~~

Private and Personal

Following for Wilson begins. Your telegram of 21st March Wilson if elected will presumably be bound to support declared policy of settlers towards any modification in existing boundary of native reserve. Please see Kenya air mail despatch No. 62. of 6th February in which Lord Francis Scott records his opinion as a member of the Executive Council that any modification in the existing boundary or reservation of additional land in highlands for the natives would constitute breach of faith with the settlers community. In view of the above and highly controversial issue likely to be raised both in Kenya and at home it has always been endeavour of the Governor as reflected in recent telegraphic correspondence not to appoint to Commissions any one whose impartiality might be however unreasonable impugned on political grounds. Time insufficient to sound Wilson I have reason to believe that he himself recognises force of these arguments as he expressed complete agreement with proviso when accepting the appointment. ends.

27001/32
E.H.

Committee not yet finally

settled ○ You may publish

K/1731732

24

Nenya

To go to 23 Ward Coast road

O.O.

Mr. *W. H. McE* 22/10

Mr.

Mr.

Mr. Tomlinson.

Sir C. Bottomley 22.3

Sir J. Shuckburgh.

Sir G. Orindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

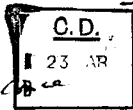
Immediate

DRAFT. Telegram

Governor

Nairobi

Carson



11.0 P.M.

23/3/32

No 59

In accordance with
recommendation in
para 10 of (ii) of report
of Joint Select Committee

I have ^{that} ~~recommendation~~ decided ~~to~~

approve ^{the} Commission
shown to set up
to enquire into land
questions in Kenya

with following terms
of reference begins

After next terms of
reference as in
attached sheets ends

I understand that this
is in accordance with the
S.M.'s views as to the
debate - it being understood
to be a personal

56 York Terrace,
London. N.W.1.
March 17th 1932.

Dear Lord Olivier,

Lord Lugard tells me that you are taking charge in the House of Lords of the native land matters arising out of the recommendations of the Joint Committee on Closer Union in East Africa.

I am a Provincial Commissioner in Tanganyika, and was seconded for about three years by Sir Donald Cameron to take charge of an enquiry into native land rights and futures, and the intrusion of non-natives into tribal territories generally. I submitted several Reports which have been published, though I do not suppose that you have ever seen them. I had more or less finished with Tanganyika Territory when my Survey was closed down a year ago owing to lack of funds. I returned to ordinary Provincial duty until I left for the leave which has brought me to England.

It was generally expected in Tanganyika that, if the recommendations of the Joint Committee were adopted, I should be put in charge of the land enquiry, as I very much want to be.

If you have the time to spare, may I call on you to discuss this important matter, which you have, I know, very much at heart? I can bring with me any Reports or papers which you may like to see.

Yours faithfully,

J. J. Lagshaw

54
56 York Terrace,
London. N.W.1.
March 17th 1932.

Dear Lord Olivier,

Lord Lugard tells me that you are taking charge in the House of Lords of the native land matters arising out of the recommendations of the Joint Committee on Closer Union in East Africa.

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If you have the time to spare, may I call on you to discuss this important matter, which you have, I know, very much at heart? I can bring with me any Reports or papers which you may like to see.

Yours faithfully,

J. J. Lagshaw

OLD HALL,
RAMSDEN,
CHARLBURY.

18th March 1932.

Dear Wilson,

I do not know anything of the writer of the enclosed letter, Mr Bagshawe. I have told him that I hope he will be able to have his qualifications for assisting in any enquiry that may be made into the question of native land rights brought to the notice of the Colonial Office, but that I am not in a position to express any opinion about them. However I send you his letter to be noted by whoever has the matter in hand,

yours sincerely,
Oliver

OLD HALL,

RAMSDEN,

CHARLBURY.

18th March 1932.

Dear Wilson,

I do not know anything of the writer of the enclosed letter, Mr. Bagshawe. I have told him that I hope he will be able to have his qualifications for assisting in any enquiry that may be made into the question of native land rights brought to the notice of the Colonial Office, but that I am not in a position to express any opinion about them. However I send you his letter to be noted by whoever has the matter in hand,

yours sincerely,

Oliver

Dr. C. Pattonley.

As I am going to be
away until Thursday, would
you please deal with this:
At any rate acknowledge.

Who is this man Bradford
& why does he write to find
Oliver?

B.H.B.

21.3.32

Sir C. Bartonley.

As I am going to be
away until Thursday, would
you please deal with this:
at any rate acknowledge.

Who is this man before
& why does he write to find
blames?

J.H.E.

21.3.32

Downing Street,

22 March, 1932.

Dear Lord Olivier,

Sir ^{James} Wilson was on the point of going away when he received your letter of the 17th March, and he asked me to acknowledge it on his behalf.

Mr. Bagshawe is, as he says, a Provincial Commissioner in Tanganyika, and his work on the native land question there is quite admirable.

I am not at all sure from his letter whether he realises that the recommendations of the Joint Committee ^{on this point} concerned Kenya only, but I am seeing that a note of his wishes is made here.

Yours sincerely,

Handwritten signature

THE RIGHT HONOURABLE
LORD OLIVIER, K.C.M.G.

Sir S. Wilson:

... written to Lord Olivier as in the
attached file.

As a professional lawyer, it is not clear to
Lord Olivier that in writing my bill, I was in any way
misled first of the information which he got from Lord
Lugart that Lord Olivier was "taking charge in the
House of Lords in the native land matters." Mr.
Bayslawe may not have realised that Lord Olivier's
charge was that of a potential critic of the
Government.

W.S.
23.3.32

(Tagart, E.S.B.)

*Between
Admiral and [unclear]*

with, and he has an unhappy knack of irritating unofficial members of Council. I could not recommend him for a Colonial Secretaryship as I do not think that he would help to smooth over difficulties, and that qualification is becoming more and more important. He might do well as an Administrator of a small territory, and promotion to such an appointment and responsibility might mellow him. If I had the responsibility of deciding I should feel inclined to take the risk on account of his unquestionable ability. He is now 50 years of age, and I should say quite fit physically."

TAGART, F.S.R., C.B.E. Born October, 1877.
Widower, one child.

Education. Bath College, 1886-1898; Christa College
Cambridge, 1896-1899.

Professional Qualifications. B.A., Barrister at Law
(Lincolns inn) 1912.

Colonial Service. Appointed Assistant Collector,
Northern Rhodesia, 1901; Native Commissioner, 1902;
Assistant Magistrate, 1903; acted as magistrate for
various periods between 1905 and 1913; Assistant Legal
Adviser, 1913; Acting Mining Commissioner, 1915; District
Commissioner and Magistrate, 1915; Acting Judge of the
High Court, March to June, 1922; Secretary for Native
Affairs, 1924. Acting Chief Secretary, June to November
1925. Retired 1929. Since his retirement Mr. Tagart
has been giving instruction in the Chinyanja language
at the Tropical African Administrative Services Course at
Oxford and Cambridge Universities.

Pension. £920.

Conf. Reports Reports. Gov. Stanley:- "A very able and competent
officer who would, I think, always rise to his
opportunities. He has wide experience of native
administration in this territory and approached native
questions with sound and sympathetic judgment. He has
also a good knowledge of law. I recommend him strongly
for promotion."

Conf. Report
4/1/26. Gov. Stanley:- "Further experience of Mr. Tagart
and his work fully confirms me in the views expressed in
my report of him last year. He acted as Chief Secretary
in addition to his other duties. He holds his opinions
strongly, but he is pleasant and reasonable in his
relations with his colleagues. To me his help in all
native work has been invaluable, I should be very sorry
to lose him, but I consider him well fitted for promotion
and I strongly recommend him for promotion."

Conf. Report
26/12/27. Gov. Maxwell:- "I am in agreement with the views
expressed by Sir Herbert Stanley in his reports on this
officer. He is an able officer; he would have been still
more able had the whole of his experience not been
confined to one territory."

Extract from
s.o. letter
to Sir C.
Bottomley.
25/4/28. Gov. Maxwell:- "He is unquestionably an able man
of rather peculiar temperament. I think he would have
done well had it been possible for him to be transferred
to another territory some years ago; as it is he has got
into a rut. Personally I have found him a pleasant
colleague and a man who will carry out my policy even when
as sometimes happens, our views do not coincide. I
prefer a man of that type and force of character to one
who will suppress his own opinion in discussion. Others
however have found him a somewhat difficult man to work

Married. Alibon, B.C., B.C. ... 1924.

Education. Blackheath School; Bunde School to 1911;
Jesus College, Cambridge to 1914.

Military Service. Second Lieutenant, 1st Rifle
Battalion, 1914; Served with the British Expeditionary Force
1914-1918; Prisoner of War in Germany. Served in the 3rd
Afghan War, North West Frontier, 1919-1920; November 1919;
Aide-de-camp to General Officer Commanding, Kabul,
November 1919 - February 1920.

Colonial and other Service. Assistant District Officer,
Nasiriyah, Iraq, 1920; A.D.C., 1921, Administrative
Inspector, 1923; Deputy Director of Development, Palestine
1924. To be retrenched in July, 1926.

Salary. £2400 plus a gratification allowance of £150 plus
£270 approximate cost of living allowance.

Letter from
Mr K. Cornwallis
Major Young
25.6.30.

Reports. "Mr. Kitching has been in the administration
in Iraq for over ten years and for the greater part of this
time has been stationed in the liwas of Nasiriyah and
Diwaniyah. These two liwas were probably the most trouble-
some areas in Iraq for the first few years after the
establishment of the Iraq Government. The administration
was rudimentary; the tribes were under very slight control
and were constantly fighting between each other or against
Government; the Iraqi officials were for the most part
inexperienced or ineffective. The task of introducing
settled administration was a most difficult and delicate one
and required qualities of firmness, judgment and patience to
a high degree. Although Mr. Kitching, in his capacity as an
Administrative Inspector had no executive powers, he
nevertheless dominated the situation and the credit for the
changes which took place is mainly due to him. As an
Administrative Inspector, he is very thorough and hardworking.
He has an intimate knowledge of tribal conditions and has
made a special study of land problems. He has spent long
periods in the Ministry of the Interior. I consider him one
of the best of the Administrative Inspectors and can very
strongly recommend him for any administrative post."

25.6.30.

High Commissioner Humphrys:- "I ... cordially endorse
the opinion of Sir Kinahan Cornwallis on the qualifications
of Mr. Kitching It would, in my opinion, be most
unfortunate if his services were lost to the public service..."

A report submitted on Mr. Kitching by Sir K. Cornwallis
after his services had terminated stated that his efficiency
was outstanding and his general conduct excellent.

31.12.31.

High Commissioner Wauchope:- "I recommend that
if possible other employment may be found for him in the
Colonial Service."



46
25.

Correspondence with Mr Bagshaw

Particulars of Service of
Mr Kitching
Mr Tagant

26⁴⁵

Telegram from the Governor of Kenya to the Secretary
of State for the Colonies. 1st April, 1932.

No 23

Private and personal. Further to my telegram of 22nd
March Wilson has not been elected to Legislative Council
there is therefore now no local objection to publication
of personnel of Land Commission.

4. In consideration of your services you would be paid from Kenya Government funds a fee of 100 guineas, plus subsistence allowance at the rate of £2.10s. per diem while in the Colony and 5/- per diem while on board ship. First-class return passages ^{would} ~~will~~ be provided between Great Britain and East Africa, and free local transport while you are in the Colony.

I have spoken to Mr. Bush, who thinks this is reasonable as an offer.
AD

5. It ^{would} ~~will~~ be convenient that the work of the Commission should begin not later than the 1st July. Steamers are due to sail from this country for Mombasa on the 19th May and on the 3rd June.

b. I am to enquire whether you are willing to accept Sir Philip Cunliffe-Lister's invitation on the terms outlined, and if so, by what date you would be prepared to embark for Kenya.

I am, etc.,

(Signed) W. C. BOTTOMLEY.

to propose, therefore, that you should receive from the Kenya Government in lieu of the fee and subsistence allowances specified in the 4th paragraph of my letter under reference, an inclusive allowance of £4. 14. 6d. per diem for such period as you are absent from the United Kingdom in connection with ^{the} Commission's work.

I am to request that you will be so good as to include an acknowledgment of the receipt of this letter in your reply to the letter from this Office

of the 4th April.

The S of S proposes to publish in the name of the Commission the terms of reference as well as possible.

etc.

(Signed) W. C. BOTTOMLEY.

C. O.

Mr. Freeston 2/4

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

X Sir C. Bottomley 6/4 p

Sir J. Shackleton

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

17312/32 Kenya.

C. O.
R 4-APP
D L C

Downing Street,

4 April, 1932.

Sir,

I am etc. to state that he has decided to invite you to accept the chairmanship of the Commission to undertake the enquiry into land questions in Kenya which was recommended by the Joint Select Committee of Parliament on Closer Union in East Africa in paragraph 105 (II) of their Report.

2. The terms of reference of the Commission will be as follows:

[Insert terms as in No. 24]

3. The Secretary of State proposes to appoint as fellow members of the Commission

Captain Frank B. Wilson of Ulu, Kenya.
Mr. Rupert William Hemstad, O.B.E., late Senior Commissioner of the Kenya Government Service.

Mr. S. H. Tasson, O.B.E., will be appointed

DRAFT.

Sir William Murray Carter, C.B.E.
~~SIR W. MURRAY CARTER, C.B.E.~~

[In addition see 15/4]

copy to S of S 20/6 13 A 1932

27
44
Mr
1932

17312/31/Kanya.

C. O.

DA - MW

Mr. Freeston. *6/4*

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley. *6-4*

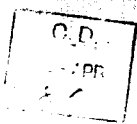
Sir J. Shuckburgh.

+ ~~Permt. U.S. of S.~~ *File*

Parly. U.S. of S. *6.4.32*

Secretary of State.

MW



DOWNING STREET,

9 April 1932.

Sir,

I am directed by Secretary

Sir Philip Cunliffe-Lister to refer

to the letter from this Office

of the 4th April, and to your

subsequent conversation with Sir

Robert Hamilton on the subject of

the Chairmanship of the Kenya Land

Commission.

The Secretary of State

understands that it would be in

accordance with your wishes that

your remuneration should be determined

on a basis analogous to that which

was agreed upon when you acted as

chairman of the Lands Commission in

1925, and of the Uganda Cotton

Commission in 1929.

He directs me

DRAFT.

SIR WILLIAM MORRIS CARTER,
C.B.E.

Copy to Box 286 13 Apr. 1932

legislation or otherwise.

4. To examine claims asserted by natives over land not yet alienated and to make recommendations for the adequate settlement of such claims.

5. To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance, 1915 (Chapter 140 Revised Laws) and whether better means could be adopted for dealing with such rights in respect of (a) land already alienated, and (b) land alienated in the future.

6. To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

7. To review the working of the Native Lands Trust Ordinance and to consider how many administrative difficulties that may already have arisen can best be met whether by supplemental legislation or otherwise without involving any departure from the principles of the Ordinance.

It is anticipated that the Commission will begin its work in Kenya not later than the 1st July.

COLONIAL OFFICE.

11th April, 1932.

C.O. 533
416
Public R. 77/101
C.S.H. E. LONDON

20 A 40

The Secretary of State for the Colonies has appointed a Commission to undertake the enquiry into land questions in Kenya, which was recommended by the Joint Select Committee of Parliament on Closer Union in East Africa in paragraph 105(II) of their Report. The personnel of the Commission is as follows:-

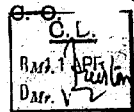
- Chairman. Sir William Morris Carter, C.B.E., late Chief Justice of Tanganyika Territory.
- Members. Captain Frank O'B. Wilson, of Ulu, Kenya.
Mr. Rupert William Hemsted, O.B.E., late Senior Commissioner in the Kenya Government Service.
- Secretary. Mr. S.H. Fazan, O.B.E. of the Kenya Administrative Service.

The terms of reference of the Commission will be:-

1. To consider the needs of the native population, present and prospective, with respect to land whether to be held on tribal or on individual tenure.
2. To consider the desirability and practicability of setting aside further areas of land for the present or future occupancy of (a) communities, bodies, or individual natives of recognised tribes, and (b) detribalised natives, that is, natives who belong to no tribe or who have severed connection with tribes to which they once belonged.
3. To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the adequate settlement of such claims whether by legislation

you to provide Sir Davis Carter
with a first-class passage, at the expense
of the Kenya Government funds,
from the U.K. to Mombasa by
the steamer due to sail on the
3rd June

Sir Davis will receive
from the Kenya Govt an allowance
of 4½ guineas per diem for such
period as he is absent from the
U.K. in connection with the
work of the Commission. The receipt
of this allowance will not affect the
pension which he draws from the
Africa Govt.



Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh

Sir G. Grindle

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

DRAFT. Tel.

Gov. Nairobi

17/5/32
Kenya

Coded & sent

4.28 pm 11/4/32

4

No. 74 Land Enquiry Commission

Announcement will be made in

tomorrow's press that I

have appointed Carter (Chairman)

Wilson and Henshall (Members)

F. A. N. (Secretary) terms

of reference as in my tel

23rd March 32 date of

commencement about 1st July

Carter sails 3rd June.

26/

5 dlt

39
30

C. O.

17312/51

3-2-16

Mr. Justice 10/4/32
Mr.
Mr.

Kenya

Mr. Tomlinson.

Sir C. Dottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

13 APR 1932

DRAFT.

CA

Gentlemen

I am to inform
you that Sir William Morris
Carte, CBE, late Chief
Justice of Tanganyika Territory,
has accepted appointment as
Chairman of a Commission
of Enquiry into land
question in Kenya.
I am to request

where present address is
25 Upper Berkeley St.
Portman Square W.1.

5 dft

receipt of this allowance will not affect the pensions
which he draws from the East African Governments.

I am,

Gentlemen,

Your most obedient servant,

(Signed) L. B. FREESTON.

13 April 1932

17312/31.

Gentlemen,

I am directed by Secretary Sir Philip Cunliffe-Lister to inform you that Sir William Morris Carter, C.B.E., late Chief Justice of Tanganyika Territory, whose present address is 25, Upper Berkeley Street, Portman Square, W.1., has accepted appointment as Chairman of a Commission of Enquiry into land questions in Kenya.

2. I am to request you to provide Sir Morris Carter with a first class passage at the expense of Kenya Government funds, from the United Kingdom to Mombasa by the steamer due to sail on the 3rd June.

3. Sir Morris will receive from the Kenya Government an allowance of four and a half guineas per diem for such period as he is absent from the United Kingdom in connection with the work of the Commission.

The receipt

THE CROWN AGENTS
FOR THE COLONIES.

Commission of Enquiry. In each
of the cases cited, Sir William
was awarded an allowance at the
rate of £5-5-0 per diem.

[See N^o 76.85
in his file

W. R. BUNLI

C. O.

17312/31

34^c 36

Mr. Austin 14/4/32

Kenya

Mr.

Mr.

Mr. Tomlinson.

Sir C. Bottomley

Sir J. Shuckburgh

Sir G. Grindle

Permt. U.S. of S

Partly of

Secretary of State

5/5

18 APR. 1932

DRAFT.

Kenya

No. 286

Gen.

Sir

With ref. to my let^r of the 9th April on the subject of the Land Enquiry Commission I have pleasure to transmit to

you a copy of correspondence with Sir William Morris Carter C.B.E. regarding his appointment

as Chairman of the Commission

2. You will observe from

Sir Cecil Bottomley's letter of the 9th April that Sir William Carter's remuneration has been based upon the allowances which he received as Chairman of the previous

To Sir W. Morris Carter 4 April
" " (27) " 8
" " (29) " 10
From " (29) " 10 April
To " (29) " 10 April

Copy of this, with encl., to go on Sir W. Morris Carter's file (1994 J.A.) C.B. to R. 14/4/32. 5/5/32

DET/DH.

(26 words)

2519

35

19394.

DECODE OF TELEGRAM.

(COPIES
CIRCULATED)

From Government of India, Department
of Education, Health and Lands, to
Secretary of State for India.

Dated New Delhi, 6th April, 1932.

Received 4.35 p.m., 6th April, 1932.

365-08. Telegram from East African Indian
Congress mentions the appointment of Land
Commission in Kenya. This, we presume, is in
connection with recommendation contained in
paragraph 105 (ii) of the Report of the Joint
Select Committee. We shall be glad to be informed
urgently of personnel of the Committee, scope of
its investigations and probable date of arrival
in East Africa.

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Economic & Overseas Department,
India Office, London, S.W. 1.

and the following reference quoted—

E. & O. 2519/1932

Telephone:—

Victoria 8820. I.O. Ext. No. _____

Telegrams:—

Botatandum, London.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

9th April 1932.

Sir,

Dated 6th April 1932.

I am directed by the Secretary of State for India to transmit, for the information of the Secretary of State for the Colonies, copy of a telegram received from the Government of India relating to the proposed appointment of a Commission to enquire into certain matters connected with land tenure in Kenya. A copy of the debate in the House of Lords of the 23rd March in which the appointment of the Commission was foreshadowed by the Government spokesman was sent to the Government of India by the mail of the 24th March.

2. The Secretary of State would be glad if any later information on the subject, in particular as regards the matters referred to in the last sentence of the telegram, could be supplied as early as possible for transmission to the Government of India.

I am, Sir,
Your obedient Servant,

E. Turner

The Under Secretary of State,
Colonial Office.

12 APR. 1932

Recd

35
34
351A

Carter, late Chief Justice of Tanganyika Territory, has accepted the Chairmanship of the Commission, of which the other Members are Capt. F. O'Brien Wilson, a member of the unofficial European community in Kenya, and Mr. R. W. Hersted, late of the Kenya Govt. Service. Mr. S. H. Bayan, O.B.E. is being appointed Secretary of the Commission.

3. The terms of reference are those quoted by Lord Stairhope in the House of Lords on the 23rd March. It is noted that a copy of the Official Report has already been transmitted to the Govt. of India.

4. It is anticipated that the Commission will begin its work in Kenya about the

1st July 1952

(Signed) L. B. ERCESTON

1751/31
Kwaya.

W.A. 36
33

C. O.

Mr. *Frederick* *W. J.*

Mr.

Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Patry. U.S. of S.

Secretary of State.

C. O.
R 11 APR
D

12 APR 1932

Sir

I am so to ack. the
rec. of yr. letter of the 9th April
(E and O 2519/1932) and to
state for the info of Secy
Sir Samuel Hoare that the
has now appointed a Commission
to enquire into land question
in Kwaya as recommended
by the Joint Committee of Parliament
in para. 105 (a) of their Report
on China Union, in East
Africa
Sir William Hoare

DRAFT.

The U.S. ps.
10.

Telegraph:
50 CITTIZNRV, CHURTON, LONDON.
Telephone:
VICTORIA 6065

The Anti-Slavery and Aborigines Protection Society

In which are incorporated the British and Foreign Anti-Slavery Society and the Aborigines Protection Society.)

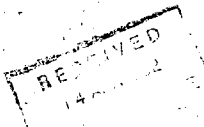
Hon. Secretary:
Travers Buxton, M.A.

Parliamentary Secretary:
John H. Harris.

DENISON HOUSE,

296, VAUXHALL BRIDGE ROAD,
LONDON, S.W.1.

(CLOSE TO VICTORIA STATIONS)



13th April, 1932.

To:-

The Under-Secretary of State,
Colonial Office,
Downing Street,
S.W.1.

14/4/32
P.C.

Sir,

On behalf of the Committee of this Society, we desire to express to the Secretary of State the high appreciation which is felt by its members at the decision of His Majesty's Government to appoint a Commission to enquire into the needs of the native population of Kenya in regard to land, and their rights and claims to it, into the adequacy of the Native Reserves, the working of the Native Lands Trust Ordinance, and other questions relating to land, in accordance with the recommendation of the Joint Parliamentary Committee.

We have the honour to be, Sir,

Your obedient Servants,

Travers Buxton
Hon. Secretary.

John H. Harris
Parliamentary Secretary.

Recd 16 APR 1932

LAND IN KENYA

The African Demand for Title-Deeds

To the Editor of the Manchester Guardian.
 "Sir—May I be allowed to make some comments in connection with the debate in the House of Lords which was reported in your issue of March 24? Lord Olivier, in his courageous speech, pointed out the real cause of native discontent in Africa and especially in Kenya. Lord Olivier pointed out that one of the results of the recent Select Committee is that we now have "very strong evidence fully supporting all the claims made since 1924 of the stealing away of native lands and granting them to Europeans." This land was stolen from 1892 onwards from Africans, sometimes through ignorance and sometimes by trickery, without compensation and without considering what would become of the Africans so evicted.

By means of certain judgments given in British and Kenya courts of law, the Africans suddenly became aware of the fact that by our "peacefully extending British dominion" (as Lord Haldane once expressed it) all the land of Kenya had passed into the hands of the British Crown. Africans became merely tenants-at-will of the Crown on land which, by all their own laws, was their own property from time immemorial. The Government sold or gave these lands to the white settlers, and the natives thereafter became either homeless and wandering labourers or squatters working under semi-slavery conditions on the lands which once were their own property.

For many years Kenya Africans, especially the Kikuyu, have been asking the Kenya Government and the Colonial Office to restore their lands. In 1919 the Kenya Government promised the Kikuyu that their title to land should be recognised by the Government and that title-deeds were to be issued to the Kikuyu landowners immediately. After waiting for title-deeds for some time we found that the promise so made was simply mere words. When the Ormsby Gore Commission came out the Kikuyu people put their claim before them, and the same promise was repeated but without any result. Again in 1928 the Hilton Young Commission came out, and the result was just as before. These and other promises have led the Kikuyu and other East-Africans not to believe in promises.

As Lord Olivier pointed out in the House of Lords, my association has prepared a statement to the Colonial Office with full details of certain of our claims to land and other grievances, such as lack of education for our boys and girls, and lack of direct representation on the Legislative Council and many legal disabilities.

And now what Africans want is not promises but deeds which will prove the justice of British rule. We are therefore thankful that the present British Government is arranging to send out a Land Commission with very wide terms of reference. And we do see all those who are friends of Africans and who wish to see contented people in Kenya to see that long-standing injustice is dealt with in the best future and in particular that Africans in Kenya are assured of their right to their own lands.

May I conclude with two quotations from Lord Lugard's speech in the House of Lords last Wednesday. "If this question of land is neglected or ignored now you will have occasion to regret it in the future. And African tribes are ready to sacrifice their lives in defence of their land, but they cannot stand up against aeroplanes and modern weapons."—Contd.

J. KANAKA, General Secretary of the Kikuyu Central Association.
 Woodbrooke Settlement, Selly Oak, Birmingham, March 29, 1932.

AFRICAN NATIVE LAND RIGHTS

An Important New Departure

By Lord Olivier.

The announcement made by Lord Stanhope in the House of Lords last Wednesday promised, for the first time, an endeavour on the part of the British Government to redress an injustice to millions of African natives, attention to which has been ineffectually demanded for many years past. The Joint Select Committee of Parliament on Closer Union in East Africa, which reported last October, recommended that a full and authoritative inquiry should be undertaken immediately into the needs of the native population, present and prospective, with respect to land within or without native reserves. Lord Stanhope repeated the promise made in the House of Commons by Sir Philip Cunliffe-Lister that a Commission should be appointed for that purpose. But he was able to inform Parliament that the reference to the Commission is to go a good deal farther than that, and will deal with a long-burning question. Not specifically referred to by the Select Committee, requiring them "to determine the nature and extent of claims asserted by natives over land allotted to non-natives, and to make recommendations for the adequate settlement of such claims, whether by legislation or otherwise," and "to examine claims asserted by natives over land not yet allotted and to make recommendations for the adequate settlement of such claims."

In the course of the debate Lord Lugard made an comprehensive review of the results of the application of British law to native land rights in African annexed or "protected" territories. First, in a nutshell, the effect of the judgments of the Privy Council in regard to that whole matter is that African natives have no legally recognizable rights of property in their own lands at all. The classical pronouncement upon the subject is that of Lord Sumner, "The action before the Privy Council between the Crown and the British South Africa Company with regard to land rights in Southern Rhodesia, namely, that 'whoever now owns the unalienated lands, the natives do not.' So far as concerned the 'alienated' lands, namely those which had been sold by the company to European settlers, the native occupants were already being dealt with as having no rights whatsoever in their ancestral tribal holdings; as in the case all over South Africa, except within the limited native reserves.

This pronouncement was not merely a statement of law; it corresponded with and justified the practice of the British South Africa Company, adopted from them and continued by the Southern Rhodesia Government, of requiring all natives who remain on their own former lands outside of reserves to pay rents to the Europeans who had bought those lands from the company or the Government, and in other unalienated districts to pay rent for them to the Government.

Security Demanded

Attention was called by the Ombudsman Commission of 1924 to a corresponding iniquity in regard to lands in Kenya. Representatives of the natives protested to that Commission that when they made treaties accepting the protection of the British Crown they made no concession of rights over their land and all the year 1902 were unaware that their ownership of their land would be questioned or challenged. Even after that date areas of land, for white men, and the natives of them had either to become squatters on what had been by native law their own property or move off elsewhere. Further, the Kenya Government passed a law that no native might "squat" on any white settler's land except as a bonded labourer under an obligation, enforceable by fine or imprisonment, to work for 180 days in the year for the European occupier of the land. Attention was called to this scandal in Parliament, and the Colonial Office made no move in regard to it. The Hilton Young Commission, reporting in 1928, again called attention to this iniquity as affecting native rights all over East Africa, including Northern Rhodesia, Nyasaland, and Tanganyika—"a matter which should be decided on uniform principles, the main object being to secure the title of the natives to the land in the reserves and to give them, as far as rights of occupancy as possible in the area covered by the concessions." The point was again pressed in Parliament, but the Colonial Office remained unmoved in regard to it. When the same question of the appropriation of native land in Kenya was further raised in the House of Lords the spokesman for that Department disposed of the matter by assuring the House that the Governor of Kenya was satisfied that full provision was made for all the needs of the natives, present and future, in the colony.

Since that date, however, further evidence has accumulated on the basis of official admissions which cannot be disposed of as the fictions of irresponsible advisers. Lord Lugard, in his last speech in debate, quoted 32,000 as the estimated number of dispossessed Africans settled in the very centre of European settlement, and an article by a local writer declaring that the number of such squatters greatly exceeds the registered

number and is "a growing danger to the future of European settlement." The agricultural census of Kenya (1920) puts the number of such landless natives at 100,000 (besides the men's families). Further, we have now two valuable reports of inquiries into native land tenure in Kavirondo and Kikuyu which expressly state that Kikuyu and Riambo Districts are overcrowded owing to the presence in them of thousands of landless natives who formerly had their holdings of land under tribal law on properties now alienated to Europeans. It is not feasible for these expropriated people whose rights were defined and secured by their own tribal laws, to get land on the holdings of tribes or clans settled elsewhere. They have either to cultivate on sufferance on the properties of other natives in the reserves or to work for Europeans as bonded labourers. If they are allowed to keep cattle on settlers' lands they are frequently required to give the milk to the settler. If on the Crown lands, formerly their tribal grazing grounds, they have to pay rent to the Government. These facts were confirmed by witnesses before the Joint Select Committee.

The reference to the Commission includes the further important direction "to define the area (in Kenya) generally known as the Highlands, within which persons of European descent are to have a privileged position, in accordance with the White Paper of 1923." This reference may, it is to be hoped, lead to a settlement of the question whether or not natives of Kenya are to be allowed to own lands in the highlands which were their former homes or be driven into less healthy and fertile parts of the country unless they are prepared to remain as bonded labourers. In connection with this point, it is interesting to observe that, in giving evidence before the Select Committee, the late Governor of Kenya, Sir Edward Frigg, expressed the view that there was no legal restriction or anything else to prevent natives of Africa from buying freeholds in those highlands.

It is to be hoped that the findings of the Commission may be as simple as Sir Edward Hilton Young desired to the case of expropriated natives elsewhere in East Africa. As regards the 1,000,000 natives to whom Lord Lugard referred as reduced to the position of squatters on alienated lands in South Africa, it is, I fear, less possible to hope for so favourable a prospect. General Hartog proposes to settle their business on the lines of the Kenya Squatters Law by placing them all under obligation of law to work as labourers for their expropriators.

The African and His Land

A commission is to be appointed to inquire into the land problems of Kenya. This announcement, made in the House of Lords last week, should do much to satisfy those who were anxious that the "full and authoritative inquiry into the needs of this 'native population' recommended by the Joint Committee on Closer Union in East Africa should be undertaken without delay. Lord Stanhope was not yet able to give the names of the members of the Commission, but from the large number of those with expert knowledge of East African affairs it should be an easy matter to select one of great authority. The sphere of the inquiry is to be extremely wide. As Lord Olivier points out in the article which we publish to-day, the terms of reference go beyond those specifically suggested by the report of the Joint Committee. There is no reason why this Commission should not lay the foundations of a land policy in general, and of native land tenure in particular, which will serve the needs of Kenya for many years to come. The present position is certainly unsatisfactory and unjust. By a series of legal decisions the indigenous inhabitants of Kenya are apparently in the extraordinary position of having no rights in their land which the white man's courts will recognise. This was the conclusion of the Ormsby-Gore Commission. The assumption of the courts, and that upon which the relevant decisions of the Judicial Committee of the Privy Council have been based, is that in those parts of Africa where Great Britain has extended her dominion the native title in land can be extinguished at will. Even though a pledge has been given that native rights will be preserved, such a pledge, so it was held in the Swaziland Case of 1926, can be withdrawn or annulled by Order in Council. Lord Sumner in a previous case in 1919 had held that these rights might stand if the native legal ideas were sufficiently "civilised" to be taken into account by English law. In the immediate case under review he apparently decided that they were not, for his judgment was that "whoever now owns the unalienated lands, the natives do not." This precedent has held. In Kenya, natives on unalienated land are merely tenants at will of the Crown, liable to be dispossessed at any moment by order of the Governor, with the approval of the Secretary of State—an approval which, as Mr. Amery once remarked, was occasionally too readily given.

This state of the law has had very definite and very harsh consequences. The process of crowding out the native has continued. Land is sold by the Government to white settlers—over the heads of the native "owners." The native is then forced to make a choice. He can remain as a "squatter" on his former estate, paying a labour rent as a bonded labourer for his white successor. Or he can leave his holding and try to obtain land to cultivate on the ground of some other tribe. This is rarely practicable, but even if he is

with no secure title. The great majority of these dispossessed natives remain as "squatters" on the lands of Europeans simply because they have nowhere else to go. And the settlers themselves, even though they are ready to keep the native for the value of his labour, are beginning to see that the large increase in the numbers of these "squatters" has its dangers. "Canst they go to the native reserves which have been set apart for them?" This in some quarters is the favourite suggestion. It is true that there are reserves, and an attempt has been made by the Land Trust Ordinance to give the natives in them a secure legal title. But whether or not Mr. Thomas was justified in describing the Ordinance as "eye-wash" it is reasonably certain that the reserves are not large enough for the natives who wish to use them. The Chief Native Commissioner has stated that a large number of them are greatly overcrowded. It is apparent that there is no way out of Kenya native problems by a simple reliance on existing instruments. Some other methods must be found.

All these questions will be examined by the Commission. It may be that further native areas should be set aside. The Commission is charged with the duty of considering whether reserves are needed, either for the use of compact tribes or for dispossessed natives. It has also to determine the nature of the claims of those who have been dispossessed of their holdings and to suggest methods of "adequate settlement" of their claims. This last provision will probably arouse controversy and opposition. Kenya has shared in the economic depression, and the European settlers are not likely to be pleased with the prospect of doing out compensation for their Government's land-grabbing, whether in cash or in kind. Especially if the provision is to be retrospective and to compensate for past injustices as well as preventing future ones. But a continuation of the present policy of alienation with little or no compensation cannot be defended. The injustice which has been done cannot be altogether undone, but it can be palliated, and safeguards can be erected against the future. An equitable settlement of native grievances must in the end be in the best interests of the whites themselves. To let things slide any longer would be short-sighted as well as wrong. We have accepted the League Covenant with its assertion of a "trust for civilisation" for "peoples not yet able to stand by themselves." We have accepted the principle of trusteeship in Africa and elsewhere. It would be a curious trustee, as Lord Lugard pointed out in last Wednesday's debate, who considered himself at liberty to dispose of the property of his ward without, or even against, his wish. There is room in Kenya for both natives and new-comers. But a manner of life and a means of living—must be found which will be fair to both.

estate. This can be used for the advantage of the Empire and its citizens and subjects. I regret that it is not likely to be used in this case unless some addition can be made to the personnel of the Commission.

I write as one who has spent a life-time in the study of land problems, who has no direct personal interest in Kenya or its land, but who desires to see all the land systems of the British Empire developed to secure the full economic use of the land itself, and the fullest economic and social development of the peoples who depend upon it for a livelihood.

The development of systems of use and control, or ownership of land is likely to play a great part in the future of the colonies and protectorates, and I believe it is desirable that all the resources of knowledge and powers of investigation and interpretation should be used whenever these problems arise. In the appointment of the Commission I feel there is an expression of a view of methods dealing with land problems which is nearly a quarter of a century out of date.

I am, Sir,

Yours faithfully,

Arthur W. Kelly

? *Professor of Economics
at the University of
Wales*

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I am, Sir,

Yours faithfully,

Arthur W. Ashley

? *Conference of Economic
Agric. Univ. Council
Wales*

or rules they have held in mind in their previous work. On the other hand the British Empire has resources in men with other experiences and training, whose views of the problems to be considered would certainly extend and deepen the investigations the Commission is charged to make, and whose association with its work would increase the authority of the report and its recommendations.

I refer in particular to persons

(a) Having knowledge and understanding of native land laws and customs, unprejudiced by detailed comparisons of these with the principles of land laws as developed in Great Britain or in Northern Europe;

(b) Having knowledge and understanding of technical and economic problems of the use of land for agricultural and pastoral purposes, and without being in any way attached to any particular "interest" in its use.

May I suggest, if it is not too late, that two such persons might with great advantage be attached to the Commission if only as Assessors.

There is a vast and growing knowledge of the economics of the use and control of land which is not encompassed by the widest knowledge of law and administration of justice, or of political administration, and which is not commonly within the compass of one person who has been mainly concerned with the immediate administration of a private estate.

26
(4)

Rhydyfrian,
Rhydfelin,
Aberystwyth, Wales.

April 21, 1952.

To the Right Honourable

Sir Philip Cunliffe-Lister, G.B.E., M.C., M.P.,

Secretary of State for the Colonies,

Downing Street, S.W.1.

Sir,

As one intimately concerned with the study of all kinds of problems of the ownership, control, and use of land I have read with great interest the announcement of the appointment of the Commission of Enquiry into the land problems in Kenya Colony and the terms of reference. If I may say so, the terms of reference appear to me to be admirable. And if I cannot say the same of the constitution of the Commission it is not because of any prejudice or suspicion of the individuals concerned, for I have no doubt that in their respective spheres they have proved to be able and conscientious. But at this time the effect of the restriction of appointments to persons representing law and justice, political administration, and landowning, is to ignore some of the available resources in personnel, and almost inevitably to weaken the authority of the report and its recommendations. However able and unprejudiced representatives of these interests, and in fact the actual members of the Commission, may be, their views are bound to be limited to some extent by their previous training and experience and by the principles

/ or

recd. 9 May 1952

view of the knowledge and experience of the Bench but of all the members of the Bench and of the officers.

Your obedient servant,

24
L. L.

9th May, 1964.

Dear Sir,

I am pleased by Sir Philip Cuscliffe-Lister to acknowledge the receipt of your letter of the 31st of April with regard to the constitution of the Commission which has been appointed to enquire into land questions in Kenya.

Sir Philip Cuscliffe-Lister is obliged to you for your letter, but the personnel of the Commission was decided upon after the fullest consideration, and he does not see his way to enlarging it in the manner which you suggest.

Sir William Morris-Carter, late Chief Justice of Tanganyika Territory, has been selected as Chairman of the Commission, and by common consent he is eminently fitted for the duties which he will have to perform, in

Yours
view

Professor Arthur E. Ashby.

Report of East Africa Commission 1925 (Cmd. 2387)

Report of the Commission on Closer Union, 1929.
(Cmd. 3234).

Report of the Joint Select Committee on Closer
Union in East Africa, 1931, with Evidence
and Appendices (3 Volumes).

Memorandum on Native Policy in East Africa, 1930.
(Cmd. 3573)

Official Report of House Debate, March 23rd.
(Hansard Vol. 38, No. 33)

Official Report of Commons Debates April 22nd.
(Hansard Vol. 264, No. 79)

Report of Committee on Native Land Tenure in)
the Northern Kavirondo) published
Report of Committee on Native Land Tenure in) in
Kikuyu Province) Kenya.

The Commissions of Enquiry Ordinance (Chapter 25 of
Laws of Kenya).

462

DOWNING STREET.

1 May, 1932.

Dear Sir Morris,

The documents shown on the attached list are being sent to you under separate cover today. We propose to send a copy of the list to the Governor of Kenya so that he may ensure that your fellow Commissioners are similarly equipped in advance.

The parcel also contains a copy of your Southern Rhodesia Land Commission's report and of the reports of the Committee appointed to consider Native Land Settlement in parts of Uganda in 1914. You will see from the first paragraph of the Uganda Report that reference is made to various earlier reports from 1906 onwards, but that these have not been printed. If you care to indicate which of these further documents you would like to see, we will do our best to find typed copies.

Yours sincerely,

C.H.

P.S. I have just heard that Lord Sanderson's motion on Wednesday is not likely to come up before 4.30 p.m.

SIR W.M. CARTER, C.B.E.

Sent
See
No. 1 on
15117/2/13

Report of East Africa Commission 1925 (Cmd.2367)

Report of the Commission on Closer Union, 1929.
(Cmd. 3234)

Report of the Joint Select Committee on Closer
Union in East Africa, 1931, with Evidence
and Appendices (3 Volumes)

Memorandum on Native Policy in East Africa, 1930.
(Cmd. 3573)

Official Report of Lorus Debate, March 23rd.
(Hansard Vol. 83, No.33)

Official Report of Commons Debate, April 28nd.
(Hansard Vol. 264, No.79)

Report of Committee on Native Land Tenure in
the Northern Kavirondo } published

Report of Committee on Native Land Tenure in
Kikuyu Province } in
Kenya.

The Commissions of Enquiry Ordinance (Chapter 85 of
Laws of Kenya).

Government would recognise the importance of providing the staff necessary for facilitating the Commission's labours.

This note, which calls for no reply, is merely to let you know of the requests which Sir Morris will probably put forward on his arrival.

Yours sincerely,

47 A

DOWNING STREET,

20 May, 1932

16125

Dear Moore,

Sir Morris Carter, who sails for Kenya early in June, has just been in to see us and has asked that Government's attention may be invited to the following three points:-

- (a) He very much hopes that a good shorthand-Typist may be found locally for attachment to the Commission.
- (b) He asks whether the free transport which he is to receive in the Colony includes the provision of a car for his personal use in Nairobi.
- (c) He dislikes the prospect of staying at a club or hotel and wonders whether Government has a small unoccupied house which could be made available for him during his visit.

We gave no undertaking on any point but said, as regards (a), that we felt sure that

Government

H. M. E. Moore, Esq., C. M. G.

Chairman of the Kenya Land Commission.

2. I am to request that you
withhold
pay E.S. Harris the equivalent

of four and a half quines
per diem for the period June 3rd
to June 30th inclusive.

W. E. ALLEN

Chairman of the Kenya Land Commission

2. I am to request that you
withhold
pay to Sir Horrie the equivalent

of two and a half guineas
per diem for the period June 3rd
to June 30th inclusive.

W. ALLEN

4819

C. O.

17312/32

P. O. 24
MAY

Mr.
Mr.

Frederick 23/5/32

Kenya

~~SS~~

- Mr. Parkinson
- Mr. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

25 MAY 1932

~~SA~~

DRAFT.

Gentlemen

CA

321

Copy to Ser. 398 A/1 27 MAY 1932

W. refer to the letter from
 this office of the 13th April. I
 am in to state that the
 approval of the ~~was achieved~~
 by Sir Wm Morris Carter, of
 an advance from Kenya for
 account of the allowances to
 which he will be entitled as

Copy to Ser. 398 A/1

C. O.

Mr.
Mr.

Heaton 23/5/32

17312/32

Kenya

4819
C.D.
MAY
24

- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permit. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

25 MAY 1932

~~CA~~

DRAFT.

CA

Gentlemen

W. refer to the letter from
 this office of the 13th April. I
 am sorry to state that he
 approves of the same ~~on account~~
 to Sir W^m Morris Carter, of
 an advance from Kenya ~~by~~
 on account of
 funds, of the allowances to
 which he will be entitled as

32)

27 MAY 1932

Copy to Sir 398 A/1

Copy to Sir 398 A/1

C. O.

17312/32

4819

C. O.
MAY 24

Mr. *Heaton 23/5/32*

Kenya

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Party. U.S. of S.

Secretary of State.

~~55~~

25 MAY 1932

DRAFT.

CA

Quarter

32)

Copy to Gov. 398 A/1 27 MAY 1932

Copy to Gov. L.F.

W. refer to the letter from
this Office of the 13th April. I
am in. to state that he
approval of the ~~was~~
to Sir W^m Morris Carter of
an advance from Kenya
accounts of the allowances to
which he will be entitled as

DESTROYED UNDER STATUTE

W. Morris Carter - 4/1/32

47A, To the Moore
44 J. CA. — 2 MAY 1932

Act. receipt of 46.

208712

H4 To 301 397 (1/c 48) A/1.27 MA. 1932

See now 18117/32

W. Morris
Carter

Handwritten scribbles and marks on the left side of the page.

Handwritten mark resembling a stylized 'J' or 'L'.

39 Elizabethan Maintenance Question 2/15/32
40 " " 3/12/32
41 " " 3/12/32

39 - 41. Reinstated for record.

Mr. Ashby (C.A.) — 1874/32.

ROYED UNDER STATUTE via do all he can in regard to
Standing accommodation

Mr. Ashby was telephoned to say that

Letter written after all, not going

Put by
A. Ashby
21/4/32

11/

43. Mr. Arthur Ashby — 2/14/32

Refer to the constitution of the Commission
& suggests the addition of two persons
as members

Since this letter was received a Motion
has been put down in the House of Lords dealing
inter alia with the composition of the Land
Commission. That motion approaches the matter
from a different angle, i.e. the appointment
of European and African members to represent
native interests.

Additions to the Commission will add
substantially to the expense: that is a
material consideration having regard to the
financial position of Kenya, but it is
scarcely one that can be used as an argument.

The reply might, perhaps, take the form
of a letter signed by the Private Secretary
saying that the Secretary of State is obliged
to Mr. Ashby for his letter but that the
personnel

personnel of the Commission was decided upon
after the fullest consideration and the Secretary
of State does not see his way to enlarging it in
the manner which Mr. Ashby suggests.

J.M. Allen

27/4/32

Wed. 28.4.32

I think that the proposed reply may now
be regarded as covered by the decisions taken in
connection with the Loras debate of the 4th May,
and I submit draft accordingly.

in 1517 PC.

J.M. Allen

5/5/32

G.H.G.

7.5.32

I. J. agreed, but suggested an additional
sentence about the Chairman's experience. I have
added one accordingly. E. Ashby

44 J. Prof. Ashby - 43 and - 9 May 1932

known as

ROYED UNDER STATUTE
45 Sir W. Morris Carter — 2/6 — 1/6/32
Expenses that he ticked a admission to
the Lord's on 2/6/32 - a ask for Blue Book
on Kenya Land Questions.

46 To Sir W. Morris Carter — 2/6 — 2/6/32
by Blue Book, Reports etc. (1945/46)

I have given Mr. Beckett. Platt the draft Press
Notice, which he will release on hearing
from Dept. that Sir W. Carter has
replied

Dr. Beckett
8/4

28 L to Wm Carter con - 9 April 1932

Receipt - will send 3rd form
After hearing, after speaking to Sir C. Pottbury.
Mr. Beckett. Platt will release the announcement
this evening for publication tomorrow morning

Dr. Beckett
11/4 after

29A. PRESS notice - dated 11/4/32

To Sir Wm Carter 74 - 11/4/32

To Bossé - 13 APR 1932

DESTROYED UNDER STATUTE

L.A. - 13 APR 1932

Sir Wm. Carter - 29 and -

DESTROYED UNDER STATUTE

34 To Gov 286 (w/cs 27, 28, 29 & 30) 13 APR 1932

Notes
made
7.55

17312/31. Kenya
(Land Commission)

35 India Office 9/4/32
The Com. has been from Govt of India
asking for the following parties of the
Land Commission - personnel, scope of
investigation & probable date of arrival
in East Africa.

Dr. Beckett
11/4 after

36 To India Office - (35. 1932) - 12/4/32

37 Anti-Slavery & Aborigines Protection Soc. 13/4/32
Express appreciation of Sir G's decision
to appoint this Commission

This has been acknowledged by postcard

? Party

Dr. Beckett
14/4

The postcard does not mention the
S.A. and I think that in this
case it will be best to follow it
up by a formal letter of thanks.
Such a letter will certainly be
expected.

14/4/32

Dr. Beckett

38 To Anti-Slavery & Socy - 37 and - 16 APR 1932

Dr. Beckett

27 To Sir W. M. Carter - con - 4.4.32

Sir C. Bottomley.

Sir William Morris Carter saw Sir Robert Hamilton this morning, and it was agreed, as regards his remuneration, that he should receive 4½ guineas per diem for the period of his absence from the United Kingdom; i. e., 10 per cent less than what he was paid when he served as chairman of the Southern Rhodesia Lands enquiry and the Uganda cotton enquiry.

I submit a draft to Sir W. Morris Carter confirming this; a copy of this letter, and of No. 27 should in due course go to the Governor.

Sir Morris afterwards had a talk with you; he agrees to the date suggested for opening the Commission's work, and it was arranged that he should see Mr. Allen in regard to the documentary material to be supplied to him, etc.

The way is now clear for a public announcement, and in case the Secretary of State should wish it to be made to the House I submit a draft question and answer. We must telegraph to Kenya concurrently; (they have already had authority to publish the terms of reference; see No. 24.)

*Yes - & Mr. Beckett
Platt should see the
a communication will
not be required if the
announcement is
made in the House.*

*W. M. Carter
6/4
X. This is correct, & the date was not
finally agreed until (before Sir W. M. Carter
came up to me) I had obtained Sir
S. Wilson's concurrence. It is a very
poor arrangement & credit for Kenya
pense.*

W. M. Carter 6.4.32

*Dec of State
(through Sir R. Hamilton).*

*If you decide to announce in
the House, I think the draft 2 & 4
will meet the case. We must
however tell Kenya when we
are going to do it.*

J. H. C.

6.4.32

*W. M. C.
7.4.32*

The Secretary of State has decided not to arrange for a Question and Answer in the House; but, as you will see, he has added a sentence to the new letter to Sir W. Morris Carter, to the effect that he proposes to publish the personnel of the Commission and the Terms of Reference as soon as possible.

? You will arrange for this with Mr. Beckett Platt when Sir W. Morris Carter formerly acknowledges this letter and that of the 4th of April.

J. H. C.

6.4.32

W. M. Carter

14/12
 26 Gov. Kenya — Tel. *private personal*
 Further to my telegram of 22 March.
 Wilson has not been elected to
 Leg. Cmt. There is therefore now no
 local objection to publication of
 personnel of Land Commission.

Sir C. Bottomley:

Before any public announcement is made, it seems desirable to settle—

- (a) the remuneration of the Chairman;
- (b) the date of the commencement of the Commissioner's work in East Africa.

Nothing has hitherto been said to Sir Morris Carter on either point.

(a) Mr. Allen has ascertained that Sir M. Carter received 5 guineas per diem plus free passages and local transport when he was Chairman of the Southern Rhodesia Land Commission in 1925. He was given similar terms as Chairman of the Uganda Cotton Commission in 1929. His pension was not abated in either case.

Apart from passages and transport Lord Moyne is receiving nothing but a subsistence allowance of £2.10s. per diem in East Africa, and 5/- per diem on the journey. Mr. Roger Gibb is being paid the equivalent of his salary (at £3500 per annum), plus similar subsistence allowances. Sir M. Carter's East African pensions amount to £1402.10s. per annum.

In view of this, the fall in the cost of living since 1929 and Kenya's present penury, it seems reasonable to suggest that he should undertake the Land Commission for a fee of not more than 100 guineas, plus subsistence allowances, at the rates approved for Lord Moyne and Mr. Gibb.

This

This will prove cheaper to the Kenya Government than 5 guineas a day, if, as is certain, the enquiry lasts more than 39 days.

(The remuneration of Captain F.O.B.

Wilson and Mr. Hemsted, and of the Secretary, can well be left to the local Government's discretion.)

(b) Date. This will ^{partly} depend on Sir M. Carter's convenience. It should be pointed out, however, that Lord Moyne's enquiry is not expected to terminate before the end of April. Mr. B. Gibb is due to arrive at Mombasa on May 23th; his mission relates principally to the K.U.K.F., but he will no doubt make some demand upon the Kenya Government staff. In the absence of any special reason for urgency, it would seem convenient that the Land Commission enquiry should open about the beginning of July. I submit a draft letter offering the appointment to Sir M. Carter; (it will be seen from No. 19A that Sir Morris will be in London from the 5th April onwards), and of the note which will serve as the basis either of an announcement in Parliament or of a press notice.

(It will be for ^{late} consideration whether a full dress despatch should be sent to Kenya as suggested in the last paragraph of Mr. Allen's minutes of the 9th January. The draft of such a despatch has already been prepared by Mr. Allen.)

*Get H. to get to Sir W.
 M. Carter - Sir Skilton was both
 remunerated out the
 recruit.*

Was 20.4.32

* 20345/A/29412
 £
 Tanganyika 787.10.7
 Uganda 589. 2.7
 Kenya 25.lb.10
 £ 1402.10. 0

...the normal arrangements of subsistence

...

A candidate is that of T.S. Tagart, ^{Chc}
late of Northern Rhodesia. He is a first-rate
man with very extensive experience, both among
the natives and at headquarters, and also a
lawyer. He is now 44, but that is ^{no} ~~no~~ ^{order}
of importance. See Mr. Carter, ^{no number 59000}

W.S.
23.3.32

14
Sec of State

You should see the various
of the Department. Unless you
take an immediate decision, I
would like to have time to discuss
with Sir C. Bottenley & his colleagues

I am not at all enamoured of
the idea of sending a retired
Tanganyika official, and I am
not at all sure how the appointment
of Sir Hitchcock would be received
in Kenya.

J.H.G.

24.3.32

Sir S. Wilson:

Mr. Acheson has shown me Mr. Boyd's minute of the 22nd, within.

With regard to the first paragraph, I think that if the point were put to the Governor he would revert to his proposal of a one-man commission.

Short of that, the alternatives are either to find two men here (two men in public life who have not committed themselves to any line of policy on native administration), or to find two men from the Colonial Service sufficiently distinct from Kenya affairs.

Cover, enclosed in No 25

Mr. Bagshawe, a Provincial Commissioner in Tanganyika, now on leave, has written both to Sir R. Hamilton and Lord Olivier, stating that "it was generally expected in Tanganyika that if the recommendations of the Joint Committee were adopted I should be put in the Land Enquiry, as I very much want to be". Mr. Bagshawe has done notable work in land matters in Tanganyika, and my only objection to him is that I am doubtful whether the membership of any man in the Tanganyika service would be acceptable to public opinion in Kenya. Mr. Bagshawe may not have realised that the enquiry in question was a purely Kenya matter.

Mr. Parkinson has mentioned the name of Mr. Kitchen, just retrenched from the Palestine service. I annex particulars about him. He seems an excellent man, and I can suggest him without reserve, provided that the Office can be sure that his helping us in this way would not be an embarrassment if difficulty is found in finding another post for him. He would certainly not make much out of going to Kenya.

410
Public
C. 533
LONDON

18 To Gov. tel (D r p) ^(17 and) 15. 3. 32

Mr. Allen has accepted other
decision with me. When the
letter has gone, Mr. will go
to Sir Parkin Gace.

Ord 15. 3. 32

19 To Sir W. Morris Carter. 4/0 cons - 16 MAR 1932

(sent in duplicate)

19a In re W. Morris Carter 17 Feb 1932
(reko 4019)

DESTROYED UNDER STATUTE

Recd
J.H.L. alone

17. 3. 32

20 To Gov. Tel. — 19/3/32
(Kenya ref. 18)

21 For. — Tel. rep. — 19/3/32

Amended terms of reference suggested
in No 18 agreed to. Has appointed Wilson
who is ready to submit to result of poll
as explained in No 17.

22 For. — Tel. - prop. — 21/3/32 Ca

23

Mr. H. T. Allen

As the enclosed private and personal
telegram from Sir Joseph Byrne has arrived in Sir
S. Wilson's absence, I am sending it direct to you.
The Secretary of State has seen it and thinks it
rather disappointing that the Governor has not made
any suggestion for making an appointment to the
Commission, if it should turn out that Mr. F. O' B.
Wilson is elected and declines to serve on the
Commission, in view of the previous support which
he has given to the declared policy of the settlers
towards any modification in the existing boundaries
for native reserves.

It is now clearly out of the question to
make any announcement in the House of Lords tomorrow
about the personnel of the Commission, but the
Secretary of State would be glad⁴ as a matter of
urgency, if the Department would advise him what the
next step is towards getting this Commission consti-
tuted.

Est. Boyd
22/3/32

24 For. Kenya. Tel. 59 — 24/3/32

24a House of Commons debate 23/3/32

16 Po for Kenya. Tel prep. — 13/3/32

17 For Kenya — Tel. prep. — 13/3/32

Reports steps taken to find a representative of Petlon Community, & now withdraw previous objection to Wilson. Will approach him on his arrival. Matter would have to be reconsidered if Wilson is elected on 3/3/32 to represent UKAMBA Constituency. 2/3/32

2 in Shereburn

Sir S. Wilson

Sir R. Hamilton

S.P.S.

? Await further telegram from Sir

J. Byrne

J. Hunter
2/3/32

J.P.
2/3/32

J.P.
2/3/32

M.H.
3.3.32

I am very glad. I don't see why a member of the left Union wd. be disqualified if he became a member of Council.

Dear

J.P.
4/3/32
5.3.32

4/3/32

I have drafted this tel as meeting from the top & read through to Cliff.

It was beyond the instructions by amending as to the outstanding item of reference.

If there is to be a public announcement by 22 March Sir Mon's letter ought to be written beforehand.

It is understood that Sir Mon will accept an offer of words but no terms have been offered to him.

? a draft has been prepared for Sir C. Sturley & Sir

Explaining & saying that it is being assumed that Sir Mon

has objections to the inclusion of the name of Sir Mon, but

not of speaking for Sir Mon to

also as to confirm the assumption of Sir Mon

It was to be sent 2 letters one to Sir Mon one to Sir Mon's secretary Sir Kelly has J.P.B.

J.P.B.
4/3/32

J.P.B.

copy in wall as the proposed addi-
tion of reference

1/17/32

2/7/32

[I am sorry for my lapse of memory
which delayed the letter to Dr. Brown,
Center for the best part of a week. So far,
no harm has been done.]

I still cannot believe that
there is no ^{one} man of the "middle"
class who could not be expected
to give an unbiased opinion. But
there is no getting over the fact
that

As we are shown five outside men
(with great inconsideration through
lack of local knowledge), it might
well be desirable to avoid the
atmosphere of controversy which the
selection of "publicists" in this
country would involve. So: Rhodesia
might well produce a settler
not wholly committed to either
class, & capable of a fair
and ex W-Afr. Official with a
liking for land questions.

15 Feb. 2.2.32

DESTROYED UNDER STATUTE

[If it is to be a sub. then Commissioner, 10
we must find an outside secretary].
7. 4/2/32
Would be pleased to accept invitation to be Chairman.
To Sir W. Carter 7. 6/2/32

Dept. of State.

I mentioned this to you
this afternoon. May I telegraph
as in draft marked A. approval?

Mr. Allen has pointed out to
me that there is no real hurry
in getting this Commission out
to Kenya; as if there at the same
time as Lord Ingham, the Native
Affairs Department would find
it difficult to cope with both
inquiries at once.

I agree that we need not be in
a hurry, once you have settled
the personnel and chosen a
particular to say so, in case
you are asked what you have
done to implement the recommendations
of the Joint Committee.

8.1.32

Sec of State.

Since I spoke to you, I have been thinking of this Commission and I feel it would be a little drastic to tell the Governor (at any rate at this stage) that he must appoint two particular men in the Colony to serve on a particular Committee. We generally assume that the Governor knows the people in his own Colony better than we do, and as both Capt Wilson & Mr Hensted are settlers I suggest that we might give the Governor the chance of saying who he would

nominate. I have spoken to Sir C. Baillanley who agrees

3/16
23.1.32

11 Tel. to Gov. Kenya. P.O. mms (no 10A and) - 26/Jan 1932

12 To Sir W Morris Carter. % with enclos. as on draft - cons - 1 - FEB 1932

13 Jv. Kenya -> Pl (Private Secretary) 1/2/32

States that after long discussion in Executive it was unanimously agreed that the two Comms appeared to be the only solution. Hensted has consented to sit on and to advise on choice of balanced by representative of Settlers Community. Asks if S.G.S. would be prepared to accept his decision - if not, Gov will do his best to find someone.

I can only read a few lines of the letter. It seems that the Gov is prepared to concede his definite decision against a non-white Commissioner. (Apparently Carter & Hensted have not to say the least, have apparently (in the local news) have the balance of the letter. He may well have to review this Gov that he has not answered the

N.B. to do with the Commission

P. Elliot from despatch from Gov. Kenya. 29/1/32
No. 665

to Gov. Kenya ———— P. Elliot ———— 19/1/32

Submits observations on the proposed terms of reference for the Commission & suggests certain additions.

As to personnel, Government thinks it would be difficult if not impossible to find two fair-minded & unprejudiced local men. Therefore recommends that Sir M. Carter be asked to serve as a one-man Commission with Mr. Pagan as Secretary.

It is true that nos. 3 and 5 of the revised terms of reference overlap a certain amount. No. 3 is however confined to rights which are given on a basis of local conditions section 4 of the Native Lands Ordinance, while No. 5 was intended to cover claims of a much larger nature. Unless the Governor agrees.

It has been known for some time that difficulties have arisen in the working of the Native Lands Trust Ordinance, especially on the three points mentioned by the Governor.

It is therefore suggested that the Secretary of State should agree to the addition of a

further term of reference on the lines proposed by the Governor. On the other hand the actual wording which he proposes seems open to objection. It would be most undesirable that the wording should be open to the construction that Government wanted to re-open the whole question of native lands within the Colony, or to detract or depart from the principles of the Native Lands Trust Ordinance in any way. If this idea got about in Kenya it might mean that the natives would regard the whole Commission

The file as to Mining is in circulation on which I have already tentatively suggested that the question of policy involved should be referred to this Commission. We have a good deal of information as to the other difficulties in the file relating to the demarcation of the boundaries of the Native Reserves.

WMD

Commission

Commission with suspicion.

It is therefore suggested that the new term should read -

"To review the working of the Native Lands Trust Ordinance, and to consider how any administrative difficulties that may already have arisen can best be met, whether by supplemental legislation or otherwise, without involving any departure from the principles of the Ordinance".

3. The Governor suggests that Sir Morris Carter should serve as a one-man Commission. This is an attractive idea from the point of view of expense, but the attached copy of the telegram shows that the Secretary of State will not agree.

Draft reply submitted for
Cowan after speaking to Sir C.
Bottanley.

J. H. Allen
22/1/32

Sir S. Wilson

The first part of the draft follows on our discussion today. I agree with Mr. Allen as to the additional Term of Reference. In particular, we want to avoid opening up the N. L. T. Ord. as if

we can
22/1/32

questions of the terms of reference and the personnel of the Commission, in regard to which the Governor made recommendations in paragraphs 10-12 of his despatch of the 5th August (3 in the file). When these points are settled an official telegram should be sent to the Governor, saying that the Secretary of State has had under consideration the steps to be taken to give effect to the recommendation in para. 10(1) of the Joint Committee's Report, and that a despatch is being sent by the next air mail us to the appointment of a Commission and its terms of reference and personnel.

The proposed despatch should be a public one, and should embody the greater part of Lord Passfield's confidential despatch of the 30th April 1931 (without, of course, any reference to it), but concluding with definite directions as to the terms of reference and as to the personnel of the Commission. I submit, for opinion, a draft of the suggested private and personal telegram from Sir S. Wilson, and if this is approved, the papers should then return to me in order that I may get on with the preparation of the draft despatch so far as it is possible to complete it pending the receipt of Sir J. Byrne's reply.

J.H. Allen
9/1/32

Sir S. Wilson.

On ins. 7 I have asked in pencil the origin of the various terms.

The only point I wish to comment on is the Governor's first term - what specific additions to the Reserve are now

In the meantime the Eastern (removals) might also be looked into. J.H.A.

required. There may be outstanding questions which are matters of commitment rather than of fact, and these could not be covered by the law (1) but they can be brought under the law (2), and I think it will be sufficient if the despatch says that they should be.

We seem to have no authority for mentioning the Hamilton's name, but avoided I think the reference can do us harm. He looks to be suggested in the notes, but (a) I don't think it would be to have Ireland, (b) if we are to go outside Kenya there is no telling where we should stop.

Jaysee
J.H.A.

W.C.B.
11.1.32.

Sec of State
(through Sir R. Hamilton)

May I write as in draft?

J.H.A.

12-1-32

W.C.B.

13-1-32

S. S. Officer

End. W.C.B.
13/1/32

5/2/32

To Gov. Kenya Tel (P.O.) - 5 and Cms - 13/1/32

Recy for despatch
Official tel.
J.H.A.

favour of having anyone like
Lord Francis Scott or ~~William~~ Leakey
of whom it is certain
to be said that they will start the
inquiry with their minds already
made up. At the same time, I agree
that it is desirable to have people
who know something of the questions
under consideration. I should like
to have the former's suggestions
in the first instance.

J.H.L.

21.12.31

Sec of State

Sir Norris Carter would make an excellent
chairman, but as regards other members of
the Commission it is, I think, advisable not
to include persons having already definite views
on the subject. They can appear as witnesses,
as also can the C.N.C. a Committee for Hands.
The former can no doubt suggest names of
two or three non-officials who are not too much
tainted with any particular bias.

J.H.L.

20.12.31

I agree with the two last
delegates. Sir N. Carter would be
an admirable chairman & in view
of the combined & judicial outlook.
Then I sh. like two good &
reasonable Lord men. I wd.
suggest to be former N.F.O.A.
Wilson as one. You do not want
either officials, or partisans, or
big game men from outside. To
appoint a fair-minded Lord
man will encourage a confidence
in difficult administrative matters,
which is much to be desired.

P.V.A.

2/1/32

— to some extent
I have discussed this with

Sir C. Bottomley.

As regards action? the first
step should be a private and personal telegram from
Sir S. Wilson to Sir J. Byrne with reference to the
latter's private and personal letter to Sir S. Wilson
of the 11th November last, in order to clear up the
questions.

Extract registered
as 5 on file.

Leakey should be included as a counter weight.
In the ⁴⁻⁷ case, I feel that the Commissioner of
Lands, although very properly as a member of
the commission, will loom too largely if the
numbers are as small as the Governor suggests.

I may add that so far as I know,
we have no definite information as to the material
available, as stated in paragraph 4 of the
Governor's despatch, the reserves were declared to
be adequate for native purposes. However, the
information would be available to the Commission.

Please see also on 17333.

Wes
19.10.31

Went for Committee's Report to
Kerouac & then I think a discussion
with his house should be the
next move.

B.H. 6
at once

21.10.31.

Mr Allen.

Papers recirculated. C.A.S. min. R
R 297. 22/11/31

5 Extract from Personal Confidential
letter from Sir J. Byrne to Sir J. Wilson
dated 11/11/31.

Mr Allen.

Then clearly the next move

will be a talk with Mr Moore?
Shd. a letter be sent to him now?

Gardner
8/12/31.

Sir S. Wilson

I received Mr. Allen's record of
the discussion with Mr. Moore.
So far as the terms of reference are
concerned, the record contains the
material for a draft despatch to the
Gov. as General, I think we
can suggest Sir Morris Carter as
Chairman, & the rest of the Gov.
views on the rest. In the S.O.
letter from Sir J. Byrne to Mr
suggests the substance of 3 of the
record might be used as the
basis of information.

I do not think the idea of a
sub-judicial Committee is practical
and I suggest the Gov. should
to have a hand in considering the
essentially Kenya matter.

Wes. 19.12.31.

See p. 106

(through Sir R. Hamilton)

I think we should get the Governor's
views as to the personnel in the first
instance. I am not very much for

The Governor, with misgivings, agrees to a Commission, but wishes it to be hitched on to the Joint Committee Report. It would seem eminently reasonable to meet him in this respect and paragraph 105 of the Committee's Report (flagged in the copy below), which recommends such an enquiry will serve as a basis.

In that case a public despatch will later be required, generally no doubt on the lines of the Confidential despatch already sent; but caution will be required in particular as to the passages relating to the Barth judgment of 1921 which made the native tenants at will, and (b) the actual wording of the references as to the *Agan floze* regarding the Highlands.

As to (a), it would seem unwise to impugn the judgment publicly in advance and this point may have to be reserved for a Confidential communication to the Chairman of the Commission.

As to (b) it will be necessary to take into account the minutes of evidence on the 16th of June, questions 7942 to 8036 - see 17B flagged in 1333/30.

The suggested terms of reference will, of course, require careful consideration, and as regards the Chairman, Sir Morris Carter is now perhaps a little old. Sir Alison Russell might be a possible alternative, but no doubt there will be other names to be considered.

A Commission of two officials with an independent Chairman may be criticised, but in several

several respects it would seem preferable to have a Committee made up of persons selected for their known sympathies, which would have to be carefully balanced. I assume that this matter will be deferred pending consideration of the Joint Committee's Report, but I now send on for information. It would probably be desirable to discuss the matter with Mr. Moore who is not at present available, but with whom I have already had some ^{talk} conversation.

See also 17333/31 below as to the Masai claim to the one mile strip.

St. Allen

19/10/31

Sir S. Wilson:

I agree that this should wait until the Joint Committee's Report is out, if only in order that we may see exactly what points the whole region of its enquiries have to be dealt with by some sort of Commission.

Subject to that, I should ^{hardly} concur in the Governor's recommendation of Sir Morris Carter as Chairman, and I am a little surprised that Mr. Allen regards him at 57 as being a little old. I should much prefer him to Sir A. Russell as a man of more balanced judgment.

I agree with Mr. Allen that we cannot get off with two officials and an independent chairman (but I think that it is not quite fair to Mr. Wade to describe him as "conservative"). We should be pressed to have a European (Lord Francis Scott) on the commission, and in that case I think that Mr.

Sealey

of a recommendation for the appointment of this Land Commission. Failing this he suggests that the appointment should be announced as having been made by the Secretary of State as the best method of setting at rest the doubts publicly expressed before the Joint Committee as to the Native Land policy of the Kenya Government. I understand that it is unlikely that the Joint Committee will make a definite recommendation on the subject, but that their report will contain passages which would provide very good grounds for the second course suggested by the Governor. It would seem desirable therefore to wait until the Joint Committee report.

As regards the terms of reference to the proposed Commission, I am not quite sure that those proposed by the Governor in paragraph 10 are altogether adequate. I think it would be a politic move (from the point of view of reconciling unofficial opinion) to emphasise that the Commission is a preliminary and inevitable one to a policy of systematic development by non-native interests. It would seem that the announcement of the appointment of the Commission must be accompanied by some explanatory statement, and I think it would serve a useful purpose to discuss the exact wording of the terms of reference until the nature of this explanatory statement and the means of hitching it to the Joint Committee's report can be settled.

As regards the personnel of the Commission that suggested by the Governor is similar to that of the Southern ^{Rhodesia} Lands Commission. Sir Morris Carter

3
Carter was Chairman of that Commission and the equivalents of the Chief Native Commissioner and the Commissioner of Lands were its members. Sir Morris Carter served for many years as a Judge in Uganda and was successively Chief Justice of Uganda and Tanganyika. He retired in 1924 and is now about 57. In 1906 he was appointed Commissioner to enquire into Native Land tenure in Uganda, and was concerned in the subsequent land legislation. In 1911 he was President of the Native Land Settlement Committee. He has recently been Chairman of the Uganda Cotton Enquiry Commission (1929). His experience of the very similar Southern Rhodesia Commission would of course be invaluable. The appointments of the C.N.C. and Commissioner of Lands would, of course, be unexceptionable, and Mr. Fazan would make an admirable Secretary. It is no doubt desirable to keep the membership as small as possible, but I should have thought it might have been well to have an unofficial European member, in which case it would be necessary to balance him by someone of the calibre of Mr. L.S.B. Leakey to represent "enlightened" native interests. (I don't know that Mr. Leakey himself would necessarily be persona grata)

If one may be permitted to say so, assuming that in saying the Chief Native Commissioner the Governor has in mind Mr. Wade, perhaps the personnel he suggests would be a little too much of what one may call (for want of a better word) the "conservative" side.

But further discussion may wait for the report of the Joint Committee.

Johnstone
29.9.31
L. H. ...
29

** This is a
misunderstanding
(1931)*

** see extracts from his
Hilary Young report
Quoted on pp. 14-15 of
the memo 15.11.31
huron paper*

of a recommendation for the appointment of this Land Commission. Failing this he suggests that the appointment should be announced as having been made by the Secretary of State as the best method of setting at rest the doubts publicly expressed before the Joint Committee as to the Native Land policy of the Kenya Government. I understand that it is unlikely that the Joint Committee will make a definite recommendation on the subject, but that their report will contain passages which would provide very good grounds for the second course suggested by the Governor. It would seem desirable therefore to wait until the Joint Committee report.

As regards the terms of reference to the proposed Commission, I am not quite sure that those proposed by the Governor in paragraph 10 are altogether adequate. I think it would be a politic move (from the point of view of reconciling unofficial opinion) to emphasise that the Commission is a preliminary and inevitable one to a policy of systematic development by non-native interests. It would seem that the announcement of the appointment of the Commission must be accompanied by some explanatory statement, and I think it would serve a useful purpose to discuss the exact wording of the terms of reference until the nature of this explanatory statement and the means of hitching it to the Joint Committee's report can be settled.

As regards the personnel of the Commission that suggested by the Governor is similar to that of the Southern ^{Rhodesia} Lands Commission. Sir Morris

Carter

* This is a
misunderstanding
J.M.W.

* See the extracts from the
Hilton Young report
Quoted on pp. 14-15 of
the my memo - 13 a
previous paper

1 Extract from no. letter from Sir J. Payne to Sir C. Bottomley, dated 15 June.

2 Extract from no. letter to Sir J. Payne, in reply to no. 1, dated 10 July.

nos. 1 & 2 registered in accordance with minute of 9/7/31 on 14/7/31. Showing 25/8/31

Sir J. Payne Conf. 109 _____ 5 August
Comments on problems arising from native interests in and rights to land and agree that best solution would be by means of Commission of Enquiry, but sets out reasons for hesitating before final decision is taken. Suggests terms of reference of Commission and recommends should consist of Chairman, for which post he suggests Sir H. Carter, with C.N.C. and Commissioners for Lands. Proposes to detail Mr. Jagan as Secretary.

4 Extract from East African Standard, dated 17.7.31

no. 4 registered in accordance with minute of 26/8/31 on 14.8.31/13/31. Showing 15/9/31.

Mr. Freeston.

You and Mr. Allen have already seen this file, and I had understood that it is not necessary to send it on pending the publication of the Joint Committee's Report. I now understand from Mr.

Allen, however, that he wishes it to go forward at once. The Governor asks that if possible it should be arranged for the inclusion in the Joint Committee's

Report.

4. Not necessary wait for J.C. report. JMA