

1930

Kenya

1

No. 16239

SUBJECT

C 0533/401

The Legitimacy Ordinance

No. 23 of 1930.

Previous

*See Births & Deaths Order
15821/29.*

Subsequent

1.
One authenticated
and 12 printed copies
to library.

Gov. Grigg. 402. 19th. June 30.

Trs 2 authenticated and 12 printed copies of
an Ordinance intituled "The Legitimacy Ordinance
1930" with a copy of the legal Report.

Have you any objections?

L. M. Allen

17/7/30

Per Dett.

There are precedents & losses
about Col. Legitimacy Orders

H/B

19

See list of Col. legislation on the
subject also similar Order (36602/27)
& Canada Order (637/2/24) attached.
The former 2 papers - which I
remember also as a minute by you
are in circulation with a recent
of Resolution paper

12/Jan 24/7/30

This Ordinance is practically identical (except
in some important particulars, noted below)
with Ordinance on the same subject enacted
by the Colon or such as beheaded. That
Cronada - N. Rhodesia.

As to A before the next result of this concept
with the H.O. about the beheaded Bill
so far as it is relevant to corresponding
provisions in the Kenya Ord. is
(1) in sec 4 (1) "legitimized" (line 6) (sh)

(1) ~~the words~~ "declaring of the legitimacy or illegitimacy of such person" (being) should be omitted

(2) sec 4(1) is substantially - proviso to sec 4(1) and should take that form

These small matters are it is pointed out to the Gov, though I do not think it would be a material ~~is~~ necessary if the rest of the Order were satisfactory, notice that sec 5 does not include

sections (3) & (4) of the corresponding section 3 in the Imperial Act. Subsec (3) of that section relate to the devolution of property on a daughter or title of honour, and such a case may be entitled to a name in a Colony - Nevertheless the Kenya Order sec 12(1) does reproduce sec 10(1) of the Imperial Act, saving the succession to any dignity or title of honour, so I do not see why it should not have included sec 3(3) of the Imperial Act.

~~But there is one very important omission to which we must call attention - viz the omission of sec 1(2) of the Imperial Act.~~

But there is one very important omission to which we must call attention - viz the omission of sec 1(2) of the Imperial Act.

The object of that provision was to prevent the legitimization of the offspring of adulterous intercourse, the whole foundation ~~is~~ of the Act here to provide for the legitimization only of a person whose parents might have been legitimized at the time of his birth

It follows that the law of legitimization

ably among his Mr. Unwin's ~~did~~ include these provisions in the TdO order (S of 1927, sec 5) when he was A.C. of TdO
S.A.

N

the ~~subsequent~~ matrimonial in Scotland and other places where it would be ~~valid~~ (it would be valid and legal too) is ~~subject~~ limited.

It would gladly be content to public policy that a married man who during his marriage had children by a woman should, on his wife's death, be allowed, in any case, to legitimize those children.

Mr. Unwin's ~~clearly~~ says that this provision has not been included in the Bill and gives no reasons for its omission.

It is only his "first thoughts" when as A.C. of TdO he offered TdO order of 1927 was preferable to his second thoughts as exhibited in the Kenya order.

I would send out the TdO order (observing that it was after by Mr. Unwin's ~~then~~ Act of that Colony), comment on the omission of sec 1(2) of the Imperial Act [= TdO sec 3(2)], and say that the Kenya order should be amended so as to correspond with the TdO order, subject to the small amendment of sec 4 noted above which it should be explained, were suggested by the H.O. in connexion with a legitimacy Bill on the same lines from another Colony and without the signature of non-allowance pending amendment

He did include it in the TdO order sec 3(2)
S.A.

S.A.
29/7/30

Draft causa.

J.W. Unwin

578

atacce

Gov. 648 - (1/2. Trinidad Order No. 8/1927) - LONDON - 21 AUG 1930 (No. 1. LONDON.)

(1) ~~the words~~ "the words" declaration
of the legitimacy or illegitimacy of such
person (George) should be omitted.

(2) sec 4(1) is substantially in proviso to
sec 4(1) and should take that form

These small matters will be brought
out to the Govt, though I do not think
it necessary if the rest of the Order were satisfactory,
I notice that sec 5 does not include

sections (3) & (4) of the corresponding section 3
in the Imperial Act. Subsec (3) of that
section relates to the dissolution of property
with a dignity or title of honour, and
such a case may be likely to arise
in a Colony. Nevertheless the Kenya
Order sec 12(1) does reproduce sec 10(1)
of the Imperial Act, saving the
succession to any dignity or title
of honour, so I do not see why
it did not have included sec 3(3)
of the Imperial Act.

~~But there is one very important~~

But there is one very important
omission to which we must call
attention - viz. the omission of
sec 1(2) of the Imperial Act.

The object of that provision was to
prevent the legitimization of the offspring
of adulterous intercourse with the
founder or holder of the Act, in order
to provide for the legitimization only
of a person whose parents might
have been legitimized at the time of his birth.

I believe that the title of legitimization

Oddly enough the Kenyan Order
includes these provisions
in the T.D. Order
(S of 1927, sec 5)
when the I.A. Act
of T.D.
S.R.

He did include it
in the T.D. Order
sec 3(1)
S.R.

his illegitimate matrimony in Scotland and
other places where it would be valid from a public
policy (i.e. under the local law) is similar to
that.

I would prefer to continue to public policy that
inserted in the Kenya Order. It is better
had children by a woman should, on his
wife's death, be able to, in any way, be
to legitimize their children.

Mr. Macleay's cabinet says that this provision
has not been included in the Bill and give
no reasons for its omission.

I think his "first thoughts" when an Act of
T.D. Order was offered to Kenya were preferable
to his second thoughts as exhibited in the
Kenya Order.

I would send out the T.D. Order (observe,
that it was offered to the Kenya Order when
Act of that Colony), comment on the omission
of sec 1(2) of the Imperial Act [= T.D.
sec 3(2)], and say that the Kenya
Order should be amended so as to correspond
with the T.D. Order, subject to the
small amendment of sec 4 which would
above which it should be replaced, was
inserted by the H.O. in connexion
with a legitimation Bill in the
same time from another Colony
and withhold signature of non-
desultory pending amendment

S.R.

29/7/30

Death causa.

J.M. Allen

S/R

atance

So. Gov. 648 - (No. 1. Amended Order No. 1927) - London - 21/1/30
(No. 1. Amended.)

AUG 1930

Mr. Eastwood

no reply to no. 2 yet

Thomas

29/1/31

Give them another month

When require

Eastwood

29-1-31

W

Room 4B

Please see Mr. Eastwood's minute of 29/1/31 above. No reply has been received to no. 2.

Thomas

28/2/31

now see no. 1 on 17099/31

W

2/3/31

Notice
Liby 785

To Gov 785 (1 answer) E/3 20 NOV 1931

(See minute on 17099/31 Kampar)

See
17099/31

O.O.

X16239/30. K.

Mr. Eastwood 15/8
Sir J. Risley 15/8
Mr. Allen 18/8

Mr.
Sir C. Bottomley

Sir J. Shuckburgh

Sir G. Grindle

Permit. U.S. of S.

Party. U.S. of S.

Secretary of State.



Downing Street,

21 August, 1930.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 402 of the 19th June in which you forwarded two copies of the Legitimacy Ordinance 1930.

DRAFT.

KENYA

No. 618.

GOVERNOR.

Trinidad Office. 8/27.
copy herewith.

2. I note that the Ordinance closely follows the Imperial Legitimacy Act, 1926, with the exception that section 1 (2) of the Imperial Act has been omitted. *As regards this omission I will point out that the whole* The whole foundation and policy of the Imperial Act was to provide for the legitimation only of a person whose parents might have been but were not married at the time of his birth *2. that* and the object of Section 1 (2) was to prevent the legitimation of the offspring of adulterous intercourse. On grounds of public policy I regard it as most important

important that this section should be contained in the Kenya law.

3. I enclose for your information a copy of the Ordinance recently passed in Trinidad, and I should be glad if the Kenya Ordinance may be amended so as to correspond with this Ordinance which, I may observe in passing, was framed when Mr. MacGregor was Attorney General of that Colony.

4. It would be desirable to take the opportunity of making the following further amendments of Section 4.

(1) Sub-Section (1) line 6. The word "legitimate" should be "legitimated".

(2) Sub-Section (1) line 9. The words "declaratory of the legitimacy or illegitimacy of such person" should be omitted.

(3) Sub-section (6) is substantially a revise to sub-section (1) and should take that form. These are suggested as the result of correspondence with the Home Office.

5. In the meantime no advice will be tendered to His Majesty in respect of the Ordinance enclosed in your despatch.

I have, etc.

(Signed) PASSFIELD.

KENYA

No. 402



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

19 June, 1930.

RECEIVED
14 JUL 1930
COL. OFFICE

My Lord,

I have the honour to forward herewith two authenticated and twelve printed copies of an Ordinance intituled "the Legitimacy Ordinance, 1930," which duly passed its third reading in the Legislative Council on the 17th April, 1930, and to which I assented in His Majesty's name on the 10th June, 1930.

A copy of the Legal Report by the Attorney General is also enclosed.

I have the honour to be,
My Lord,

Your Lordship's most obedient, humble servant,

Edward G. G. G.

GOVERNOR.

*For Governor 785-6/320 NOV 1931
Annud - 648 - 21 AUG 1930*

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

LEGAL REPORT

THE LEGITIMACY BILL, 1930.

The provisions of the Legitimacy Act, 1926, of England, whereby an illegitimate person is legitimated by the subsequent marriage of his parents do not exist in this Colony.

2. This is of particular importance in the case of persons resident in the Colony who, if domiciled in England, would come within the scope of any provident scheme and this Bill therefore provides (inter alia) that, where the parents of an illegitimate person marry or have married one another whether before or after the commencement of this Bill, the marriage shall render the illegitimate person, if living, legitimate from the commencement of this Bill or from the date of the marriage, whichever last happens.

The Bill closely follows the English Act, but the provisions of section 1 (2) of that Act, providing that nothing in the Act shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born, have not been included in the Bill.

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

Nairobi,
13th April, 1930.


ATTORNEY GENERAL.