

1924
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KENYA

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C.O.
6015
7 FEB 24

DATE

7th January 1924

W. G. B. Gwynne

CIRCULATION :-

Mr. Bunde
Mr. B. B. B. B.
Mr. Bunde

U.S. of S.

Deportation Ordinance 1923

Roxy (E.A.)

Submits for censure, amendments to

U.S. of S.

U.S. of S.

Secretary of State

Previous Paper

M. 9.

32123

23

MINUTES

Section 2 as amended & the proposed new section 3 & 3A are somewhat cumbersome but I think they will do, except that the first part of the new section 3 should be amended to read "why a recommendation to the Governor that he be ordered to give security or that he be deported should not be made." The substitution of "report" for "recommendation" in sections 4 & 5, and of the addition of the words "unless the Governor otherwise direct" to section 6 seem all right. The additional clause proposed in para. 5 seems clearly desirable.

Para. 6 is more difficult. I agree that the procedure under this Deportation Ordinance

Subsequent Paper

X. 10341
27

70 G. H. King Secret
56 FEB 1928
28182/27
Strait

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is not suitable for dealing with
usually lawless natives, but on the
other hand I think an educated
native agitator should be able to
avail himself of the safeguards
under this Ordinance in the same
way as an Asiatic or European.
I do not think it would be satisfactory
to revive the 1909 Ordinance simply
by repealing clause 12 of the 1923
Ordinance, even if such repeal is in
fact equivalent to reenacting
the 1909 Ordinance. I think
the 1909 Ordinance should be
loyally reenacted, but that
"natives living in" "native
reserve" should be substituted
for "any native" in clause 3, and
"native" for "person" in clauses 5, 6,
8 and 9.

We had better defer re-issuing
the Ordinance until the amending
Ordinance is passed.

? to reply JHB
12.2.24

JHB
15/2

Mr. Bush,

We had a talk about this
matter, which is becoming distinctly
complicated.

The Nigeria model has been
altered in substance, while enough
of the form has been retained to
make the result to my mind unsatisfactory.

A. In Nigeria:

- (1) On conviction of felony, the
Court may recommend
deportation in addition to any
other punishment.
- (2) In ^{cases of} probable breaches of the
peace, the Court may require
security for peace and good
behaviour, and in default may
recommend deportation.
- (3) In cases ^{of} ~~counted~~ dangerousness to
peace and good order etc., the
Court may recommend deportation.
- (4) When the Court has recommended
deportation, the person is to
be detained in custody pending
the Governor's decision.

B. In the Kenya Ordinance as
enacted indicated:

- (1) Deportation after conviction
is only incidentally referred to
(Section 6).
- (2)

(2) Nigeria "Breach of the Peace"

Section is omitted, and with it the provisions of security.

(3) The Nigeria provision as to peace and good order is represented by two Sections (2 and 3) which are obviously intended to be read together. That is, 2 provides for arrest on the strength of the prima facie case, and 3 for the subsequent hearing and (if the Judge is satisfied) for the recommendations for deportation.

C. On the Ordinance, we pointed to an apparent discontinuity between 2 and 3, since it was not definitely shown that after arrest the person was to be brought before the Judge. *Later, we raised the question of security and the clause for security seems to have been some idea that 2 and 3 dealt with distinct cases, an idea for which I am not sure that there was sufficient justification.*

D. In the proposals for amendment now received, we have provision for security appearing in Section 2 as an alternative to deportation. In Nigeria, security is only contemplated in matters involving a mere breach of the peace, and it is an absolutely fresh provision that security should be used as an alternative to deportation

in

in the more serious cases to which it is now proposed to be attached.

At the same time, it is proposed to alter Section 3 in a manner which (in view of the alteration of Section 2) will *not* make it still more independent of Section 2, although, as I have pointed out two Sections deal with exactly the same class of offence; in fact, it is now proposed to provide two entirely distinct provisions as to the procedure to be taken on the same classes of case, *while the new provision as to security - (2) is left by the new*

I annex a suggestion as to how I think that these two Sections should be brought more into harmony. I do not feel inclined to suggest that we should adopt the more drastic Nigerian principle of recognising deportation as a possible punishment for conduct likely to lead to a mere breach of the peace; and, in fact, my proposal adopts the suggestion that security may, where suitable, be required in the more serious "peace and good order" cases; and, apart from such

general

PUBLIC RECORD OFFICE (LONDON)

Nigeria "Breach of the Peace" section is omitted, and with the provisions of security. The Nigeria provision as to peace and good order is represented by two Sections (2 and 3) which are obviously intended to be read together. That is, 2 provides for arrest on the strength of the prima facie case, and 3 for the subsequent hearing and (if the Judge is satisfied) for the recommendations for deportation.

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I annex a suggestion as to how I think that these two Sections should be brought more into harmony. I do not feel inclined to suggest that we should adopt the more drastic Nigerian principle of recognising deportation as a possible punishment for conduct likely to lead to a mere breach of the peace; and, in fact, my proposal adopts the suggestion that security may, where suitable, be required in the more serious "peace and good order" cases; and, apart from such

general

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ALL WITHOUT PERMISSION OF THE
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general criticisms as you may make,

it is subject to your view as to whether this is really sound. *But it looks well, at least, to have available a fairly good general substitute.*

As my proposals are somewhat drastic, I send them on to you before dealing with the points raised in the latter part of Mr. Calder's minute.

I may add with regard to the proposed Section 3 A that the Sections quoted from the Indian Penal Code are Sections relating to offences against the State.

To it includes cases to deal with which are not really serious cases for imprisonment.

My after-thought on the one side for the defence may be a simplification.

W. B. Bottomley

Under the order the - all the things to do was to say any or say have the acts been committed - to decide the removal. I don't think the action to be taken was entirely within the Gov's discretion. Under your suggestion the Judge will have nearly judicial & partly advisory duties. In the event to which he uses his judicial powers he will over-ride the Gov.

I am not objecting to the no reason why you should not do that.

See however a few fatal suggestions. The provision as to evidence in the offence is wholly superfluous, but it looks well & I'd leave it in. I think we should have a very wide of the law in the latest suggestion or otherwise that we may see it as a whole.

*X
I'll write all the amendments*

W. B. Bottomley

W. B. Bottomley

I am sorry to add to the anxiety

of this subject by producing a new draft - but please see one attached all the same

*W. B. Bottomley
20/3*

W. B. Bottomley

I am glad to say I have no hesitation in preferring Mr. Eushe's draft to my own. For the ~~object~~ ^{purpose} of these exercises, I would refer back to my minute of the 3rd of March, where I think the difficulties which I have felt are sufficiently set out. Of the remaining points dealt with in paragraphs 5 and 6 of the Governor's despatch, that in paragraph 5 is incorporated in Mr. Eushe's draft. It is I think obvious that we should not make this legislation the occasion for partisan or frivolous applications for deportation by the political opponents of the accused person.

-As regards the Removal of Natives Ordinance 1909, please see Mr. Calder's minute, with which I agree. It is certain that the measure, if it is to be revived, must be revived ^{with the clause it should be removed,} expressly. On the whole of this it is to be remembered that the Ordinance now in question represents the substitution of judicial hearing for the exercise of executive power after the receipt of ex-parte information. Having got rid of the latter for general purposes it is distinctly a question whether we ought to have purely executive process in any case; but I agree with the Governor that it would be burdensome and unnecessary to

A

Kenya Deportation Ordinance, 1923
with amendments proposed by the Governor
and the Attorney General.

(L.S.)

R. T. CORYNDON.

5th January, 1923.

Title

AN ORDINANCE TO PROVIDE FOR THE DEPORTATION OF
OFFENDERS AND DANGEROUS PERSONS.

Date of commencement

(5th January, 1923).

Enactment

BE it enacted by the Governor of the Colony
of Kenya, with the advice and consent of the
Legislative Council thereof:-

Short title

1. This Ordinance may be cited as "The
Deportation Ordinance, 1923".

Arrest of sus-
pected persons

2. Where it is represented on oath or affi-
davit to a Judge of the Supreme Court sitting in
chambers that any person is conducting himself so as
to be dangerous to peace and good order, or is en-
deavouring to excite enmity between any section of
the people of the Colony or Protectorate and His
Majesty, or is intriguing against constituted power
and authority in the Colony or Protectorate, the
said Judge may order the arrest of such person who
shall be brought forthwith before the said Judge and
given an opportunity of showing cause on his own
behalf or by counsel, why he should not be ordered
to give security or be deported as the case may be.

Recommendation
for deportation
in case of
dangerous con-
duct

3. Where it is shown by evidence on oath to
the satisfaction of a Judge of the Supreme Court
sitting in Chambers that any person is committing
any of the acts set forth in the last preceding
section hereof, the Judge shall draw up a summary
of his findings upon such evidence and shall cause

the

the same to be served upon the person accused, together with a notice calling upon him to show cause why a recommendation to the Governor that he be deported should not be made.

At the time of showing cause the person accused may with the permission of the Judge question any of the persons upon whose evidence the findings accompanying the notice have been based. If the Judge after considering the evidence adduced before him and making any further investigations which he may deem to be desirable is satisfied that the person accused has committed any of the acts set forth in the last preceding paragraph hereof and that an order of deportation should be made, he shall forward a report to the Governor setting forth his decision, together with his reasons therefor.

3.a. Where a Judge after convicting a person charged with an offence punishable under Sections 121, 121A, 122, 123, 124 or 124A of the Indian Penal Code is of opinion that an order for the deportation of the person so convicted should be made, he may forward a report to the Governor setting forth his findings upon which such opinion is based.

3.c. Where a ^{recommendation} Report for deportation has been made the person in respect of whom such ^{recommendation} report has been made shall be detained in custody pending the decision of the Governor.

3.7 If after considering any ^{recommendation} such report as aforesaid in Council the Governor shall decide that in the interest of peace, order and good government, an order of deportation should be made, he may by writing under his hand and seal order the person to be deported

Deportation
custody pending
Governor's
decision.

After consultation in Council
Governor may issue
an Order of
Deportation

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4.6. Where a ^{recommendation} report for deportation has been made the person in respect of whom such report has been made shall be detained in custody pending the decision of the Governor.

5.7. If after considering any such ^{recommendation} report as aforesaid in Council the Governor shall decide that in the interest of peace, order and good government, an order of deportation should be made, he may by writing under his hand and seal order the person to be deported.

Detention in custody pending Governor's decision.

After notification in Council Governor may issue an Order of Deportation.

deported to such part of the Colony or Protectorate as he may direct, or to such part of His Majesty's Dominions or of any country under His Majesty's protection, as he may, with the concurrence of the Secretary of State, direct.

Deportation of persons undergoing sentence

88. If a person ordered to be deported has been sentenced to any term of imprisonment such sentence of imprisonment shall be served before the order of deportation is carried into effect, unless the Governor otherwise direct.

Duration of deportation order

97. An order of deportation may be expressed to be in force for a time to be limited therein, or for an unlimited time, and may if deportation is to a place within the Colony or Protectorate require the deported person to report himself to the nearest administrative officer or officer of police at intervals of not less than thirty days.

order to be sufficient authority for detention

108. An order of deportation shall be sufficient authority to all persons to whom it is directed or delivered for execution to receive and detain the person therein named and to carry him to the place named.

penalties for breach of order

119. (1) If a person ordered to be deported to a place within the Colony or Protectorate leaves or attempts to leave the place to which he has been deported, while the order of deportation is still in force, without the written consent of the Governor which consent may be given subject to any terms as to security for good behaviour or otherwise as the Governor may seem good, or wilfully neglects or refuses

refuses to report himself as ordered, such person shall be liable to imprisonment of either description for six months and to be again deported under the original order, or under a new order.

(2) If a person ordered to be deported to a place without the Colony and Protectorate returns or attempts to return to the Colony and Protectorate while the order of deportation is still in force, without the written consent of the Governor which consent may be given subject to any terms as to security for good behaviour or otherwise as to the Governor may seem good, such person shall be liable to imprisonment of either description for six months and to be again deported under the original order, or under a new order.

10. The Governor shall forthwith report to the Secretary of State every order made by him under this Ordinance and the grounds thereof and the proceedings thereunder.

Report to Secretary of State

11. The Governor-in-Council may make rules for the better carrying out of the provisions of this Ordinance.

Rules

14. (12.) No proceedings shall be instituted under the Principal Ordinance, except by the Attorney General or with his previous sanction in writing.

~~Passed in the Legislative Council the fifth day of January, in the year of Our Lord one thousand nine hundred and twenty-three.~~

~~This printed impression has been carefully compared~~

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Report to S
of State

Rules

B
Title

Kenya Deportation Ordinance, 1923
with amendments suggested by Mr. Bottomley.

65

AN ORDINANCE TO PROVIDE FOR THE DEPORTATION OF
OFFENDERS AND DANGEROUS PERSONS.

Date of commencement

(5th January, 1923).

Enactment

BE it enacted by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof:-

Short title

1. This Ordinance may be cited as "The Deportation Ordinance, 1923".

Arrest of suspected persons

2. Where it is represented on oath or affidavit to a Judge of the Supreme Court sitting in chambers that any person is conducting himself so as to be dangerous to peace and good order, or is endeavouring to excite enmity between any section of the people of the Colony or Protectorate and His Majesty, or is intriguing against constituted power and authority in the Colony or Protectorate, the said Judge may order the arrest of such person who shall be brought forthwith before the said Judge and be given an opportunity of showing cause on his own behalf or by Counsel why he should not be ordered to give security for peace and good behaviour or be deported, and at the time of showing cause such person or his Counsel as the case may be may with the permission of the Judge cross-examine any of the persons upon whose evidence he is accused and may call any witnesses whose evidence the Judge may deem to be relevant upon the questions in issue.

Recommendation for deportation in case of dangerous conduct.

3. If the said Judge after such person has been given an opportunity of showing cause is satisfied that

that such person has committed any of the acts set forth in the last preceding Section hereof, the said Judge may:

(a) order him to give security in two or more sureties for peace and good behaviour, and in default may recommend to the Governor that he be deported.

or (b) recommend to the Governor that he be deported.

3.a. Where a Judge after convicting a person charged with an offence punishable under Sections 121, 121A, 122, 123, 124 or 124A of the Indian Penal Code, is of opinion that an order for the deportation of the person so convicted should be made, he may forward a report to the Governor, setting forth his findings upon which such opinion is based.

4. Where a recommendation for deportation has been made the person in respect of whom such recommendation has been made shall be detained in custody pending the decision of the Governor.

5. If after considering any such recommendation as aforesaid in Council the Governor shall decide that in the interest of peace, order and good government, an order of deportation should be made, he may by writing under his hand and seal order the person to be deported to such part of the Colony or Protectorate as he may direct, or to such part of His Majesty's Dominions or of any country under His Majesty's protection, as he may, with the concurrence of the Secretary of State, direct.

6. If a person ordered to be deported has been sentenced to any term of imprisonment such sentence

Detention is pending Gov decision.

After consid in Council may make an of Deportat

Deportation sons under sentence.

sentence of imprisonment shall be served before the order of deportation is carried into effect.

Duration of deportation order.

7. An order of deportation may be expressed to be in force for a time to be limited therein, or for an unlimited time, and may if deportation is to a place within the Colony or Protectorate require the person to report himself to the nearest administrative deported officer or officer of police at intervals of not less than thirty days.

Order to be sufficient authority for detention.

8. An order of deportation shall be sufficient authority to all persons to whom it is directed or delivered for execution to receive and detain the person therein named and to carry him to the place named.

Penalties for breach of order.

9.(1) If a person ordered to be deported to a place within the Colony or Protectorate leaves or attempts to leave the place to which he has been deported, while the order of deportation is still in force, without the written consent of the Governor which consent may be given subject to any terms as to security for good behaviour or otherwise as to the Governor may seem good, or wilfully neglects or refuses to report himself as ordered, such person shall be liable to imprisonment of either description for six months and to be again deported under the original order, or under a new order.

(2) If a person ordered to be deported to a place without the Colony and Protectorate returns or attempts to return to the Colony and Protectorate while the order of deportation is still in force, without the written consent of the Governor which consent may be given subject to any terms as to security for good behaviour

behaviour or otherwise as to the Governor may seem good, such person shall be liable to imprisonment of either description for six months and to be again deported under the original order, or under a new order.

10. The Governor shall forthwith report to the Secretary of State every order made by him under this Ordinance and the grounds thereof and the proceedings thereunder.

Report to Sec
of State.

11. The Governor-in-Council may make rules for the better carrying out of the provisions of this Ordinance.

Rules.

12. The Removal of Natives Ordinance, 1909, is hereby repealed. Provided that any order made thereunder shall have effect as if it had been made under this Ordinance.

Repeal.

NOTE The amendments suggested in §§ 5 and 6 of the Governor's despatch on 6015/24 are not incorporated here.

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NOTE The amendments suggested in §§ 5 and 6 of the Governor's despatch on 6015/24 are not incorporated here.

Report to Sec
of State.

Rules.

Repeal.

W. A. ...

Section 2 (i). "Where it is represented on oath or affidavit to a Judge of the Supreme Court sitting in Chambers, that any person is conducting himself so as to be dangerous to peace or good order, or is endeavouring to excite enmity between any section of the people of the Colony or Protectorate and His Majesty, or is intriguing against constituted power and authority in the Colony or Protectorate, the Judge may, if he is satisfied that there is a prima facie case against such person issue a warrant for his arrest.

(ii) A person arrested upon such warrant shall be supplied with a copy of the charge or charges with which he is accused and with a summons to appear before a Judge in Chambers to show cause why he should not be ordered to give security to keep the peace and to be of good behaviour, or ~~to~~ be recommended for deportation.

(iii) Such summons shall be returnable not later than the third day after the arrest of such person, but the Judge may adjourn the hearing thereof for such time and upon such conditions as he thinks fit provided that no one adjournment shall be of a greater duration than 7 days.

(iv) Upon the hearing of the summons the Judge shall take such evidence upon oath as is tendered in support of the charges and the witness may be cross-examined by the accused or his Counsel ~~may cross-examine such witnesses and~~ ^{and the accused} may on his own behalf call any such witnesses ^{+ under such oaths} ~~whose~~ evidence the Judge may deem to be relevant upon the questions at issue.

3 (v). If the Judge, after considering the evidence adduced before him and making any further

further investigations which he may deem to be desirable, is satisfied that the person accused has committed any of the acts set forth in Section 2 (f) he may

(a) order him to give security in two or more sureties to keep the peace and to be of good behaviour in such amount and for such a time as he shall think fit, and in default may recommend to the Governor that he be deported; or

(b) recommend to the Governor that he be deported.

4. Upon the conviction of any person for an offence punishable under Sections 121, 124 A, 122, 123, 124 or 124 A of the Indian Penal Code, the Judge presiding at the trial may in addition to any other punishment which may be awarded, recommend to the Govt. that the person so convicted be deported.

5. Any recommendation under this clause for deportation shall be accompanied by a report by the Judge setting out the acts which he has found the accused to have committed or the offences of which he has been convicted and the stating his reasons for recommending that the accused be deported.

6. The report in Art. 4 as in Art. 4 - *beginning where it is decided at*
(for abolition) must become
"Recommendation"

Lord Russell
S.P.S.

The report to be submitted on the paper laid down to include length & the accompanying Ord^{ce} (with a complete Sft. of the Ord^{ce} which we propose to substitute for the local production) has been prepared by the Dept^t, with a view to setting out the case by itself.

The Sft. Ord^{ce} seems to me fully to safeguard the position. Send it out to the Secy & direct its enactment?

H. J. R.

1/15/24

A. C. once
6/5/24

Gov/6015/24 Kenya

THE KENYA DEPORTATION ORDINANCE,
1923.

Under the provisions of the East Africa Order-in-Council, 1902, ~~Sections~~ ^{Articles} 24 - 27, the Governor (or Commissioner as he was then styled) had power to order the deportation of any person where it was shown by evidence on oath to his satisfaction that the person was conducting himself so as to be dangerous to peace and good order in East Africa, or was endeavouring to excite enmity between the people of East Africa and His Majesty, or was intriguing against His Majesty's power in East Africa.

In 1920, when the Order in Council of 1902 was replaced, on the annexation of the Protectorate, by a new Order in Council which did not contain any provision for deportation, the Governor was told in a Confidential despatch of the 14th of July, 1920, that the articles in question should be retained for the present until they could be replaced by a local Ordinance dealing with the subject on lines usually adopted in the Colonies.

P.C.30025/20

Gov.16480/23

On the 1st of March, 1923, the Governor submitted an Ordinance, which had received his assent, entitled "The Deportation Ordinance, 1923". This Ordinance was said to be based on Nigerian Ordinance, with certain differences which were explained by the Attorney General of Kenya in a memorandum which accompanied the Governor's despatch. The chief difference was that, where the Nigerian Ordinance provided

(See Nig. Ordee. N of 1916 818 (8))

(Gov. Gen. 25622/16 Nig)

(Sec.2)

provided that the Court might, upon sworn information, order suspected persons to give security for peace and good behaviour, the new Kenya Ordinance empowered the arrest of such persons. The Secretary of State's legal advisers commented on this that no provision was made for the next step after arrest, i.e. for any person so arrested to be brought forthwith before the Judge in Chambers for enquiry and either recommended for deportation or discharge.

Prior to its receipt by the Secretary of State, the Ordinance had been the subject of criticism and Colonel Wedgewood had already made enquiry respecting it in the House. In the Colony the Indian Congress Association at Mombasa passed a resolution denouncing the Ordinance on the ground that it would be a weapon in the hands of unscrupulous persons, to be used for racial purposes. This resolution, with the request of the Congress that His Majesty should be advised to disallow the Ordinance, was communicated to the Secretary of State by the Indians Overseas Association.

On receipt of the Ordinance the Secretary of State replied to the Association and the Congress that he saw no reason for their fears, as the Ordinance transferred to the Judiciary powers which had hitherto been held by the Executive Government, and as the liberty of the individual was specifically safeguarded by the provision in Section 3 that no person should be recommended for deportation without having first been given an opportunity of making a statement in
his

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Gov.16480/23

his defence. The Anti-Slavery and Aborigines Protection Society were also pleased to learn of the alterations to ensure judicial enquiry.

At the same time the Acting Governor (the Governor having proceeded to England with the deputations on the Indian Question) was informed that after careful consideration the Secretary of State had decided not to tender any advice to His Majesty respecting the Ordinance, pending the result of the negotiations on the Indian Question.

The Indians Overseas Association then wrote further saying that in their opinion the liberty of the individual was not sufficiently safeguarded by Section 3 of the Ordinance, and that an individual accused of offences under the Ordinance ought to have not merely an opportunity of making a statement in his own defence, but also the right to be represented by Counsel, to traverse the evidence against him and to bring rebutting evidence. In communicating this letter to the Acting Governor, the Secretary of State observed that the Nigerian Ordinance, on which the Kenya Ordinance purported to be based, did contain provision that a person charged under the Ordinance should be given an opportunity of showing cause why he should not be ordered to give security or why he should not be deported, as the case might be; and further that when originally published in Bill form for criticism, the Kenya Ordinance had contained a similar provision. The Acting Governor was asked for the reasons which had led to this provision being deleted, and was also asked whether he and his legal advisers

Gov. 61900/23

Gov. 16480/23

M.I.
32123/23

Gov. 6015/24

advisers considered it desirable to amend the Ordinance on the lines suggested by the Indians Overseas Association. The Governor replied on the 7th of January, 1924. His reply

(a) suggested an amendment to meet the Colonial Office criticism that no provision was made for the procedure subsequent to arrest;

(b) suggested a further amendment meeting the point made by the Indians Overseas Association as to representation of accused persons by Counsel;

(c) stated that if the Secretary of State desired a further amendment adopting the wording of the Nigerian Ordinance whereby the Judge would be given power to call upon accused persons to give security as an alternative to deportation, there would be no local objection;

(d) suggested the addition of a further clause providing that proceedings should not be instituted under the Ordinance except by the Attorney General, or with his previous sanction in writing. The object of this was to prevent proceedings being initiated by private persons;

(e) suggested the re-enactment of the Removal of Natives Ordinance, 1909, which had been repealed by the 1923 Ordinance, on the ground that the latter was not suitable for dealing with native cases.

The drafting of the new Ordinance to give effect to these suggestions (except (e)) was considered defective, and a revised draft (copy annexed) has been prepared here.

As regards (c) no complaints had ever been received regarding the Removal of Natives Ordinance, 1909. It is considered that it would be reasonable to revive that Ordinance if it is made clear that it will apply only in the cases of natives living under tribal conditions in the reserves. In such cases judicial process in the courts is not satisfactory, and it is felt that executive power may safely be entrusted as hitherto to district officers. But if that Ordinance is to be revived, it is felt that it should be done by express enactment, and not merely by repealing the clause which repealed it.

REVISED DRAFT OF THE DEPORTATION ORDINANCE.

An Ordinance to Provide for the Deportation of Offenders and Dangerous Persons.

Short Title.

1. This Ordinance may be cited as "The Deportation Ordinance, 1924".

2. (i). Where it is represented on oath or affidavit to a Judge of the Supreme Court sitting in Chambers, that any person is conducting himself so as to be dangerous to peace or good order, or is endeavouring to excite enmity between any section of the people of the Colony or Protectorate and His Majesty, or is intriguing against constituted power and authority in the Colony or Protectorate, the Judge may, if he is satisfied that there is a prima facie case against such person issue a warrant for his arrest.

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(ii) A person arrested upon such warrant shall be supplied with a copy of the charge or charges with which he is accused and with a summons to appear before a Judge in Chambers to show cause why he should not be ordered to give security to keep the peace and to be of good behaviour, or be recommended for deportation.

(iii) Such a summons shall be returnable not later than the third day after the arrest of such person, but the Judge may adjourn the hearing thereof for such time and upon such conditions as he thinks fit provided that no one adjournment shall be of a greater duration than 7 days.

(iv) Upon the hearing of the summons the Judge shall take such evidence upon oath as is tendered in support of the charges, and the witnesses may be cross examined by the accused or his Counsel and the accused may on his own behalf call such witnesses and tender such other evidence as the Judge may deem to be relevant upon the questions at issue.

3. If the Judge, after considering the evidence adduced before him and making any further investigations which he may deem to be desirable, is satisfied that the person accused has committed any of the acts set forth in Section 2(i) he may

(a) order him to give security in two or more sureties to keep the peace and to be of good behaviour in such amount and for such a time as he shall think fit, and in default may recommend to the Governor that he be deported; or

(b) recommend to the Governor that he be deported.

4. Upon the conviction of any person for an offence punishable under Sections 121, 121A, 122, 123, 124 or 124A of the Indian Penal Code, the Judge presiding at the trial may, in addition to any other punishment which may be awarded, recommend to the Governor that the person so convicted be deported.

5. Any recommendation under this Ordinance for deportation shall be accompanied by a report by the Judge setting out the acts which he has found the accused to have committed^x or the offences of which he has been convicted^{xx} and stating his reasons for recommending that the accused be deported.

6. Where a recommendation for deportation has been made the person in respect of whom such recommendation has been made shall be detained in custody pending the decision of the Governor.

7. If after considering any such recommendation as aforesaid in Council the Governor shall decide that in the interest of peace, order and good government, an order of deportation should be made, he may by writing under his hand and seal order the person to be deported to such part of the Colony or Protectorate as he may direct, or to such part of His Majesty's Dominions or of any country under His Majesty's protection, as he may, with the concurrence of the Secretary of State, direct.

8. If a person ordered to be deported has been sentenced to any term of imprisonment such sentence of imprisonment shall be served before the order

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order of deportation is carried into effect, unless the Governor otherwise direct.

9. An order of deportation may be expressed to be in force for a time to be limited therein, or for an unlimited time, and may if deportation is to a place within the Colony or Protectorate require the deported person to report himself to the nearest administrative officer or officer of police at intervals of not less than thirty days.

10. An order of deportation shall be sufficient authority to all persons to whom it is directed or delivered for execution to receive and detain the person therein named and to carry him to the place named.

11. (1) If a person ordered to be deported to a place within the Colony or Protectorate leaves or attempts to leave the place to which he has been deported, while the order of deportation is still in force, without the written consent of the Governor which consent may be given subject to any terms as to security for good behaviour or otherwise as to the Governor may seem good, or wilfully neglects or refuses to report himself as ordered, such person shall be liable to imprisonment of either description for six months and to be again deported under the original order, or under a new order.

(2) If a person ordered to be deported to a place without the Colony and Protectorate returns or attempts to return to the Colony and Protectorate while the order of deportation is still in force,

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port to Secretary
State.

12. The Governor shall forthwith report to the Secretary of State every order made by him under this Ordinance and the grounds thereof and the proceedings thereunder.

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13. The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

14. No proceedings shall be instituted under the Principal Ordinance except by the Attorney General or with his previous sanction in writing.

15. *The Deportation Ordinance 1923 is hereby repealed, provided that any order made thereunder shall have effect as if it had been made under this Ordinance.*

KENYA
No. 17.



C.O.
6015

GOVERNMENT HOUSE,
NAIROBI.

KENYA

7th January, 1924.

My Lord Duke,

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With reference to Your Grace's despatches Nos. 796 of June 13th and No. 986 of July 13th last, on the subject of the Deportation Ordinance, 1923, I have the honour to submit for Your Grace's consideration amendments to the Ordinance which are designed to meet Your Grace's wishes.

2. The point to which Your Grace referred in paragraph 2 of despatch No. 796 will, it is thought, be met by the deletion of the words "pending further proceedings under this Ordinance" in Clause 2 and the substitution thereof of the words "who shall be brought forthwith before the said Judge and given an opportunity of showing cause on his own behalf or by counsel, why he should not be ordered to give security or be deported as the case may be". As a consequential amendment the proviso to clause 3 should be deleted.

This amendment will ensure a full inquiry by the Judge before any recommendation is placed before the Governor, and the inclusion of the word "forthwith" will, it is hoped meet Your Grace's point. Further it is thought that the objection raised by the Indian Overseas Association in their letter of June 28th

which -

HIS GRACE

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

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AG. Chief
Office, dated
3-9-1923.

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which was enclosed with the 2nd despatch under reference is met by the insertion of the words " or by Counsel", and I am advised that it is unnecessary to add words giving the suspected person "the right to traverse the evidence adduced against him and the right to bring rebutting evidence "for the right to show cause covers these rights.

79

3. I regret that in the report of the Select Committee of Legislative Council on this Ordinance, no reason for the alteration of the first draft of Clause 4 (2) is given, but should Your Grace desire that the wording of the relative Nigerian Ordinance should be followed so that the Judge may be given power as an alternative to deportation to call upon the suspected person to give security, I do not think that there would be any local objection.

4. As regards the 4th paragraph of despatch No. 986, the Acting Chief Justice holds the same view as Your Grace's legal advisers.

The Acting Chief Justice has also submitted an alternative to Clause 3 which I enclose together with his covering letter. On this point the Acting Attorney General remarks that the wording of Clause 2 of the Ordinance follows almost verbatim the Nigerian legislation from which it was taken, and submits that the word "conducting" does refer to all three offences "conducting himself in the manner set forth in the preceding section" and is not used in a wider sense as is suggested.

5. I would wish to take the opportunity presented by the introduction of an amending Ordinance to request Your Grace's consideration of two further amendments. Your Grace is aware that some months ago a case was taken under this Ordinance on the application of certain members

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agreed
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of the public. When this Ordinance was passed, however, it was not anticipated that proceedings under it would be taken save by the Crown, and it is clearly undesirable that prosecutions should emanate from private persons without the consent of the Crown. I therefore submit the following additional clause for Your Grace's approval:-

" No proceedings shall be instituted under the Principal Ordinance except by the Attorney General, or with his previous sanction in writing."

6. It has also been represented to me by the Chief Native Commissioner that the Removal of Natives Ordinance, 1909, which is repealed by Clause 12 of the Deportation Ordinance, 1923, should be reinstated. As the law stands at present, no action against natives suspected of sedition can be undertaken save before a Judge of the Supreme Court, and it has been demonstrated recently that native witnesses in such cases will not speak freely in open Court. The operation, since its inception, of the Removal of Natives Ordinance, 1909, has not so far as I am aware been questioned and I agree with the Chief Native Commissioner, who is supported by the Acting Attorney General, that the machinery of the Deportation Ordinance, 1923, is unsuited to native cases and that advice on political matters of this nature is more properly tendered to me by the administrative authorities. I trust, therefore, that Your Grace will approve the re-enactment of the Removal of Natives Ordinance, 1909, by the repeal of clause 12 by the Deportation Ordinance, 1923.

I have the honour to be,

My Lord Duke,

Your Grace's most devoted and
most obedient servant,

R. T. Comynson

GOVERNOR.

NAIROBI

3rd September 1923.

Sir,

Her Deportation Ordinance 1923.

81

In answer to your letter No. 6/E 22670/31 of 1st August 1923 I have the honour to make the following comments on Ordinance 2 of 1923 (which is published in the Official Gazette of 7th February 1923).

2. Section 2 of that Ordinance speaks of a person
 - (a) conducting himself etc or
 - (b) endeavouring to etc or
 - (c) intriguing against etc.

3. Section 3 speaks of "a person conducting himself etc". The word presumably refers to all three offences mentioned in the preceding Section but I submit that the choice of the word conducting is most unhappy inasmuch as it is one of the words used previously and in an apparently wider sense.

4. I have discussed the matter with Mr. Justice who has drafted a suggested rewording of the Ordinance I enclose and thoroughly endorse.

I have the honour to be,

Your obedient servant,

T. B. Wainwright

A.C.L. 1

Honourable,

The Colonial Secretary,

NAIROBI.

The Acting Chief Justice,

DEPORTATION ORDINANCE, 1923.

I suggest that the following be substituted for
Section 3: - 82

3. Where it is shown by evidence on oath to the satisfaction of a Judge of the Supreme Court sitting in Chambers that any person is committing any of the acts set forth in the last preceding section hereof, the Judge shall draw up a summary of his findings (up - on) such evidence and shall cause the same to be served upon the person accused, together with a notice calling upon him to show cause why a recommendation to the Governor that he be deported should not be made.

At the time of showing cause the person accused may with the permission of the Judge question any of the persons upon whose evidence the findings accompanying the notice have been based.

If the Judge after considering the evidence adduced before him and making any further investigations which he may deem to be desirable, is satisfied that the person accused has committed any of the acts set forth in the last preceding paragraph hereof and that an order of deportation should be made, he shall forward a report to the Governor setting forth his decision, together with his reasons therefor.

3. A. Where a Judge after convicting a person charged with an offence punishable under Sections 121, 121 A, 122, 123, 124 or, 124 A, of the Indian Penal Code, is of opinion that an order for the deportation of the person so convicted should be made, he may forward a report to the Governor setting forth his findings up on which such opinion is based.

Section (4) -

Section (4) for "recommendation" substitute Report.
Section (5) add words " unless the Governor other-
Section (6) wise direct."

Ed. J. H. Pickering.

J U D G E .

57
No 6015/24 Kenya



83

14th Nov. 1924

Sir

DRAFT.

Kenya

No 478

Gov. Layton

MINUTE.

Mr. Seel 7.5.24

Mr. Calder 7.5

Mr. Bennett 9/5

Mr. Bottamley 10.5.24

Sir G. Davis.

Sir G. Grindle.

Sir H. Road.

Sir J. Masterton Smith.

Lord Arnold.

Mr. Thomas.

I have the honor to acknowledge the receipt of your despatch No 17, of the 7th of January, submitting for ~~our~~ my consideration certain amendments to the Metropolitan Ordinance, 1923.

2. My legal advisers have felt considerable difficulty, in spite of the amendments which have been effected, in accepting this Ordinance as it stands. I have therefore caused a fresh draft of the Ordinance to be

Off Ordinance

drafts, ~~which~~ of
which is now enclosed,
in accordance with their
views. A copy of their draft
is enclosed with this despatch
and I have to request that,
unless you wish to make any ~~other~~ ^{other} point,
you will take steps for its
enactment as an Ordinance
of the Protectorate.

You will observe
that the Committee recommended
in para 5 of their despatch
that the reply to be given
to the draft
should be to the effect
that to be recorded to
the effect in para 6 of
your despatch, that
the Rights of Natives

Ordinance, ~~1909~~ 1904,
should be re-enacted,
and disposed of ~~in this~~
suggestion, subject to the
 proviso that it should not
apply to natives other than
those subject to the authority
of their own tribal chiefs.

RAFT.

MINUTE.

- O. Davis.
- O. Grindle.
- H. Road.
- J. Masterton Smith.
- and Arnold.
- Thomas.

also
therefore consider that, ~~the~~ ^{if the}
Ordinance of 1909 ^{is to be} ~~should be~~
revised, it must be ^{of the}
expressly re-enacted, ~~and~~
~~necessary amendments would appear to be~~
~~that~~ the words "native living
in a native reserve" should
^{in line 2}
be substituted for "native" ^{of}
Section 3 of the Ordinance,
and the expression "such native"
should be substituted for "person"
in Sections 5, 6, 8, and 9.

(SIGNED) J. H. THOMAS.