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KENYA
FIJI

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DATE

27 June 1924

Secret Order 225

By: H. H. S. S. S.

Mr. CIRCULAR on

Mr.

Mr.

Mr.

Asst. U.S. of S.

Sir: Head

3/15/24

Perm. U.S. of S.

Part U.S. of S.

Secretary of State.

Position of Indians.

Forwards, on behalf of Govt. of India
Colonial Committee, memorandum on
Agricultural Franchise and Reservation
of the Islands in Kenya. + an Mo for interview
Also also for separate interviews about
FIJI.

Previous Paper

S. 30815

Call for materials

MINUTES

[Fiji Dept. have seen and are
ready.]

Typed minutes attached.

There seems no need to
do anything till the further meeting
is held.

The S. of. will no doubt
wait till the Cabinet decision
on immigration is known
(July 9th) That will
rules and but 14/15/24

Subsequent Paper

9.6

348183

notification of July 8th + to Govt.
only to 20th 11th 14th 15th 115th
Wed. 8/7/24

Copy

Handwritten initials

W.H.

MINUTES.

MINUTES NOT TO BE WRITTEN
ON THIS SIDE

Mr. Hollenback

Please receive the

Conference

Under

to

77 J. mg

W. J. M. 8724

8/11/14

See 35140

Part 5 was

2-2-15

and

Mr Green

We have an app. with
LPS at 4.30 on Thursday on Kenya.

I don't see why this should be

discussed on that occasion if there is

time. Pl let LPS have a note

Yours

11/7

INDIA OFFICE,

WHITEHALL, S.W.1.

11th July, 1924.

Dear Mr. Thomas,

I enclose herewith, on behalf of the Colonies Committee, memoranda outlining the suggestions which, under instructions from the Government of India, they desire to discuss with you regarding the franchise of Indians in Fiji and the Fiji Residential Tax Ordinance 1923.

As I mentioned in my letter dated June 27th, the Indian members of the deputation have arranged to leave England at an early date. We should therefore be grateful if you could kindly accord us an interview on this subject, and also regarding the publication of the report of the Indian Deputation to Fiji, on any date between July 15th and 18th inclusive. Mr. Rangachariar proposes to postpone his departure, if necessary, in order to be present.

Yours sincerely,

P. Hoque Simpson

The Indian Franchise in Fiji.

Present
position.

In their reply dated March 19th, 1920, to the Fiji Deputation, the Government of India, on the advice of a Committee of the Indian Legislative Council, asked the Government of Fiji to give a general Guarantee by Ordinance, with the approval of the Secretary of State for the Colonies, that the position of Indian immigrants in their new homes would in all respects be equal to that of any other class of His Majesty's subjects resident in Fiji. The Government of Fiji after full discussion with the elected members of the Legislative Council and representatives of the General Council of Planters, expressed their willingness to give the guarantee asked for. A draft Ordinance purporting to give effect to this undertaking was submitted by the Government of Fiji to the Colonial Office in 1921, but the Government of India pointed out certain ambiguities in the draft and asked that the matter should be held in abeyance pending the visit of the Indian Deputation to Fiji. That Deputation, in Part IV of the Questionnaire reproduced in Appendix XI of their Report, indicated in greater detail the defects of the draft. Since their report further progress has been suspended.

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tical
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2. The Colonies Committee are instructed in the first instance to discuss with the Colonial Office the measures necessary in order to apply to the enfranchisement of Indians the principle of equality of status which has been accepted by the Colonial Government.

Under the Letters Patent of Fiji, the qualifications of electors are as follows. An elector must be:-

- (1) of European descent or, being the son or lineal descendant of a European father, able to read, write, and speak the English language.
- (2) a British subject by birth or naturalisation,
- (3) aged 21 or upwards
- (4) continuously resident in Fiji for a period of not less than 12 months, and
- (5) possessed either of immovable property of value of £20 or of movable property of value of more than £120.

The Legislative Council

11 nominated officials, 7 elected members and 2 natives
 Council:
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 to such
 Indians as a result of the representations of the Colonies Committee. The Government of India have, however, asked that the amendment of the Constitution on these lines should be deferred pending discussion with this Committee, on the grounds that they now prefer common to communal franchise and that the proposed representation of Indians is in any case inadequate.

3. It is true that the Indian Deputation recommended the principle of communal representation, but this was only advocated as a more or less temporary expedient and subject to reconsideration if any development towards responsible government should occur. They also made it clear that a condition of their

recommendation

itions
communal
franchise.

recommendation was that each community should be allotted on a communal basis an equal number of seats. In reply to the questions of the Indian Deputation regarding their willingness to accord full equality of status to Indians, the Fiji Government placed in the forefront of the practical difficulties connected with the question the position of the Fijian Trust under the Deed of Cession. Under this Deed Fiji was ceded as a possession and dependency of the British Crown, subject to a condition, among others, that the rights and interests of the High Chiefs should be recognised so far as is consistent with British sovereignty and the Colonial form of Government. The Colonies Committee appreciate that this implies that these interests must be maintained, and have no desire to question this. But the elective representation on the Legislative Council at present enjoyed by the European community is presumably regarded as not inconsistent with the terms of the deed of cession, and it can hardly be argued that the grant of a similar status to their Indian fellow subjects would infringe those terms.

Common
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vocated.

4. Events in Kenya have given rise to a strong public feeling in India against the system of communal franchise. The reasons for this feeling have been explained fully in the Committee's note on "Franchise in Kenya", and they do not think it necessary to traverse the ground again. Communal franchise as applied in colonies where Indians do not form a minority community, is regarded as a system which is intended to assign an inferior status to Indians as compared with their British fellow-subjects, and to limit the growth of their political influence in the Colony.

The Committee do not ask for any special franchise qualifications for Indians. They are prepared to accept the qualifications for electors prescribed in the Letters Patent of 1914, subject only to the revision of sub-clause 1 of section 20 so as to omit the racial discrimination against Asiatic British subjects, and so as to include the literary qualifications for electors recommended in 1921 by the Davson Commission. With regard to candidates, they suggest that in order that the number of qualified Indians may not be unduly restricted, some reduction in the property qualification prescribed in the Letters Patent might be considered; and they agree with the Indian Deputation that the qualifying test in English for candidates should be the same for Indians as for Fijians, and that it would be more satisfactory if the matter were left to the discretion of the Governor rather than of the Agent-General of Immigration. The Committee recognise that the result of this measure might be that the number of Indians qualified for registration as electors will be too small to enable them to secure even a single Indian representative on the Council. This difficulty will no doubt disappear in time as the full effects of the abolition of the system of indentured labour on the economic prosperity of the community make themselves felt. In the meanwhile some special arrangement to protect Indian interests during the transition period will be necessary, and the Committee suggest that the most suitable way of securing this object would be by the reservation of a certain number of seats on the Council for Indian candidates. They suggest that a minimum of 3 seats should be reserved for Indians until such time as experience shows that the Indian electorate is strong enough to secure adequate representation for itself without special protection.

5. In the event of this solution being regarded as unacceptable, the Committee consider that the representation suggested by the Government of Fiji is inconsistent with the principle of equality of citizenship between Europeans and Indians which was accepted by His Majesty's Government when they assented to the Resolution

at the Conference of 1931. There were in the last census of 1931 3,878

European and Indian population in the Colony. It is reported that

of the land and labour of the Colony. In these

As the chief labour a part which is equal representation

and Indian population to be fully justified.

the importance of the Indian community is not adequately represented by

the number of seats which it is proposed to allot to them, and that no measure which does not accord to the

Indian community on a communal basis representation on the elected minority in the Legislative Council at

least numerically equal to that already accorded to the non-official European Community can be regarded as

consistent with the principle of equality of status.

II. The Municipal Franchise.

6. The Indian deputation to Fiji have in paragraphs 124 - 127 of their report summarised the position under the existing municipal law, and made proposals with a view to remedying the Indian grievances. The main grievance is that the insertion under the amending

Ordinance of 1915 of the words "and who can read, write and speak the English language" in § 20 of the Municipal Institutions Ordinance 1909 as a qualification for electors has had the effect of depriving the Indian population of Suva, which is more than twice as large as the European population, of all representation on the Municipal Council. The Colonies Committee understand that the language qualification, which corresponds with that required from electors for the Legislative Council, was introduced because the administration of the Suva Municipality was at that time unsatisfactory, and it was found that in the absence of any educational qualifications for electors the Municipal Council had fallen into the hands of the illiterate class of Fijians, Polynesians, East Indians and half-castes, and that prominent citizens would not offer themselves as candidates for election. The Committee appreciate the dangers of placing the ultimate power in the hands of a largely illiterate electorate, and do not go so far as the Indian deputation which advocated the entire abolition of the educational qualification. They have, however, no doubt that the Secretary of State for the Colonies will agree that a measure which has resulted in the virtual extinction of Indian representation on the Municipal Council for the last nine years goes too far and requires some modification. As in the case of the Legislative Council, they suggest that the system of a simple educational test in various Indian vernaculars as well as in English, recommended in 1911 by the Davson Commission, should be given a trial, and that an amendment on these lines, while avoiding the consequences against which the amending Act of 1915 was intended to guard, would be a measure of bare justice to the Indian ratepayers. The Committee also agree with the Indian deputation, that in order to afford the Indian community an opportunity of returning

returning some of their own fellow-countrymen to the Municipal Council, it is desirable that the ward system should be introduced in the Suva Municipality under the powers already vested in the Governor under § 3 (3) of the Ordinance of 1909. The adoption of these two measures would place the Indian community in a position to ventilate their grievances in matters of municipal administration and to take a share in remedying them.

F I J I P O L L T A X .The Poll-Tax Ordinance.

The Fiji Residential Tax Ordinance was passed in July 1923. Under this Ordinance all male persons between the ages of 18 and 60, other than Fijians and Rotumans, resident in the colony on January 1st, 1924, and in subsequent years, are liable to pay a tax of such sum not exceeding £1 as the Legislative Council may from time to time determine by resolution. Lepers, lunatics, permanently disabled persons, persons still undergoing education or training, and any other persons or class of persons decided by the Governor, are exempt from this tax. Under this last clause the Governor has exempted from the tax persons having 5 dependent children under the age of 18. For the purposes of this tax every person in the island to whom the Ordinance applies, were required to register themselves within two months. At the time when the Ordinance was under consideration the Indian community were represented by one nominated member only on the Legislative Council. As soon as the Ordinance was passed, he resigned on the ground that it would be most hurtful to Indians, owing to their poverty and depressed condition. Both before and after the passage of the Ordinance, Mass meetings of Indians were held to protest against its provisions. The Government of India supported their representations and urged that the measure was "calculated to reduce Indians in Fiji to a humiliating position". In January 1924 an Indian deputation waited on His Excellency the Governor in order to submit their grievances against the Act and appeal for relief. The Act has now been brought into force and the Governor

reported

reported last March that registration was proceeding smoothly. The rate of the tax for 1924 has been fixed at \$1 per head.

The official case for the Ordinance.

2. The Governor has publicly explained that the tax was imposed because there was a real necessity for more taxation. He pointed out that Europeans pay it in addition to the income tax which most of them have to pay. Fijians are exempted because they already pay direct taxes amounting to about 35 sh. per head per annum. The cost of living for Indians has fallen by 25 p.c. since 1921 and the C.S.R. is the only employer that now pays wages to Indians at so low a rate as 1s/9d per day. He did not believe that Indians were so poor as was occasionally represented. He reminded Indians of the objects on which it was proposed to spend the proceeds of the tax. The Government intended, for instance, to build a hospital and to make arrangements for training Indian medical students.

The Indian case against the Ordinance.

3. The Colonies Committee wish to represent that the view that Indians are well able to pay this tax is in direct conflict with the view taken by the Indian Deputation to Fiji. They reported that at the rate of prices prevailing in 1922 a wage of even 2s/6d per day was inadequate, and suggested as an interim measure a formula which would have yielded at that time a wage of about 3s/- per day. The resources of Indians have been depleted by the reduction of their wages in 1922 far below the estimated cost of living. The present minimum rate of wages in the country is reported to be 2s/- under employers other than the C.S.R. Under the formula suggested by the Indian

Deputation

Deputation, and conditionally accepted by the C.S.R. in 1922, it should be 2s/6d as shown in the margin.

There are therefore strong grounds for fearing that

Price of statutory ration 1914 = 2/9	s.d.	} the present scale of wages
" " " 1924 = 4/5		
Ratio 33:53		} is still below that on which
Minimum wage of free labour 1914 = 1/6		
On ratio 33:53 present wage = 2/5		} Indians can live decently
		} and that therefore there is

no margin out of which the tax can be paid. It is understood that the revenue of the colony is raised by indirect taxation, to which Indians in proportion of their numbers must contribute a substantial share. It is unusual to estimate the contribution of the labouring classes to the public revenue of any country solely by the amount of direct taxation that they pay. The Committee cannot moreover but feel that it is unfortunate that a tax, which must fall with special severity on Indians of the working classes, was introduced by a Council on which the Indian community alone had elective representation. That it is a step towards giving to Indians a certain measure of representation is not postponed at the instance of the Government. It does not alter the fact that a tax of this nature is imposed without representation and in face of the unanimous opposition of the community chiefly affected. For these reasons the Committee urge that this tax should be withdrawn, and that some other system of raising revenue, less oppressive to the Indian community, should be tried. If however it is decided to maintain the Ordinance the Committee wish to suggest that the amount of the tax should be graduated in accordance with the means of the payer, that exemptions either in whole or in part should be provided for so as to make allowance for all infants and children under education and for invalid dependants, and that the

maximum age of 60, which is a great age for an Indian labourer, should be reduced.

The Committee has made no attempt to discuss the numerous points at issue, but has at the last moment put in a memorandum on three only of them, containing many assertions, the mere examination of which would take a long time. It is of course impossible to check the statements or to consult the Colonial Government in the few hours available and the note herewith is therefore of a very summary character.

The Committee also wish to open with the Secretary of State the question of the publication of the Report of the Indian Deputation to Fiji. I submit that the Secretary of State should at this stage decline to hear or to say anything on this point. Our attitude, the reasons for which are briefly stated in the annexed copy of a letter from Sir J. Masterton-Smith to Sir Arthur Hirtzel, is that the report is a gross breach of faith and a venomous and malicious attack on British Administration, which, if published, must necessarily be subject to public reply and would lead to bitter racial feeling in Fiji, to anti-Indian movements and probably to an agitation for transfer to Australia. It has never been communicated to the Government of Fiji for an expression of their views. I suggest that the Committee be informed that the Secretary of State cannot deal with the question of the publication of the report without the views of the Government of Fiji and sees no advantage in referring to the matter at the interview, but suggests that in the first place representatives of the Committee might have an informal discussion with officers of the Colonial Office.

J. M. G.
19.7.24

Private

18th August, 1923.

Dear Hirtzel,

I am sorry that I should have left so long unanswered your private letter to me of the 24th May regarding the question of publishing the Report of the Indian Deputation to Fiji. But, as I have told yourself and Seton, the difficulties are more serious than you suppose. In the first place it was originally arranged that the report should be published in the general suitability of the Government. In the face of the protests received on the 18th of March, 1923, and the fact that Fiji had not the opportunity to be heard, it was understood that there was to be no publication. I do not think that the Government will turn themselves into a platform for the 1920 disturbances and the report again, you will see, is not intended as representing a carefully drawn up record of the Fiji (and, incidentally, the British) mind, but merely a record of impressions left on the Indian mind is rather too transparent.

Quite apart therefore from the unfairness and prejudice displayed throughout the section (paragraphs 19 to 52) of the report dealing with this subject I feel that a question of good faith with Fiji is involved; and, as you will see from the last part of the Governor's telegram of the 12th of December last, the same view is taken locally of the section (paragraphs 113 to 127) dealing with the constitution.

With regard to the rest of the report, I

really

really do not see what useful purpose can be served by the publication of a partisan document in which every possible ingenuity is exercised in misrepresenting and blackening a British Government and Legislature. I will ask you to look at the preposterous misdescriptions of the Governor's attitude towards strikes in paragraphs 29, 40, 86 and 91, and to note the clever manipulation of the facts and the confusion of demands on a Government with demands on an employer. It would be interesting to know whether the members of the deputation actually hold that a general strike is the correct constitutional way of promoting legislation and alterations in the budget. Paragraph 90 is an attack - and an untruthful attack - on the whole system of British Colonial Administration. The word "practice" therein is particularly noteworthy.

But there is no need to go into details at this stage. The point is that in view of the malevolent character of the report and the certainty that it will raise a storm in Fiji, I cannot advise the Secretary of State to agree to publication until the views of the Governor are available, and I must therefore ask if a copy can be sent ^{out} confidentially. In any case if it is published there will have to ^{be} a defence published also, and in view of the behaviour of certain members of the deputation in Fiji and Australia, which created a most unfavourable impression, I do not see how it could avoid taking exception to their conduct. This would only be adding another faggot to the Kenya flame.

Yours sincerely,

(Sd) J. Maisteron Smith

Indian Franchise

It is only in recent years that the Indian community has included men of sufficient capacity and education to take part in Legislative work. A nominated Indian was added in 1916. In 1919 it was agreed that two Indian Members elected on a communal basis should be substituted and the Indian Government were favourable. A Commission was appointed in Fiji to advise on the best means of carrying the proposal into effect. It reported in January 1921 and draft Letters Patent and draft regulations were prepared.

The India Office, acting presumably on behalf of the Indian Government, then began to ask for postponement. The Fiji Government, the British community in Fiji and this Office have pressed continually for the withdrawal of Indian opposition to the reform, but have completely failed. All sorts of reasons have been adduced by the India Office for delay, but until recently not those now stated in the memorandum to be the real grounds. This procrastination has caused Indian unrest in Fiji, has seriously embarrassed the Government and has disgusted the unofficial Europeans, who cannot understand why domestic reforms should be postponed at the instance of the Indian Government.

Our attitude has been that two members elected on a communal basis can be granted at once, and that three can be considered. The attitude of the European community, which is wealthy and highly educated and controls practically the whole industrial life of the Colony, is that they will not have a common roll, would refuse to work ^{it}, and would prefer the abolition of elective institutions altogether. It is clear also

that

unrest, but had prevented the Indians from acquiring that experience in politics which might have enabled further advances to be made to-day; that their existing immaturity is indicated by the attitude of non-cooperation adopted by Badri Mahraj; that, as the Committee evidently recognise, local conditions make a common roll impossible, as both Europeans and Fijians are equally opposed to it; that the Secretary of State has immediately the original proposal to the elected members; that the question of some approach to equality shall be discussed with the Fiji Government; and that further approximations should be considered from time to time as the Indian community shows itself qualified to take a fuller part in the government of the Colony.

MUNICIPAL FRANCHISE.

The account given in the Committee's memorandum of the history of the educational restriction on municipal voters is sound, being largely quoted from official documents, though it is hardly correct to refer to the "extinction" of Indian representation, inasmuch as there were no Indians on the Council under the old franchise. The municipality of Suva had fallen into such a state in 1914 that the substitution of a Government board was being pressed. The qualification of literacy in English introduced in 1915 has worked well, so that the Suva Town Council is now efficient, honest and vigorous.

We are of course aware that it is not so much the literacy of voters, as their honesty, that matters; and that the inveterate tendency of the Indian to municipal corruption is the real ground for finding some means of barring him. But the Indian Committee cannot be given that reason.

The Governor considers that considerable concessions could be made provided that there is no appearance of pressure in the Legislative Council. The Committee^{ask} for two concessions. Firstly, the admission of voters literate in Indian vernaculars; secondly, the introduction of the ward system of election. The reply to the first is that an Indian language is useless for the purpose of understanding and taking part in a system of local administration controlled, reported and carried on entirely in the English language and that the present system has led to such a vast improvement in municipal affairs, to the advantage of Indian, as of other, ratepayers, that it would be unwise to alter it except on the clearest proof that no deterioration would result. The matter

matter however will be referred to the Government of Fiji. As to the second, I am not aware of any special objections to the adoption of the ward system. Indeed if under the present voting qualification, the ward system led to the election of one or two non-Europeans of standing, they would probably be welcomed. The reply might therefore be that the Secretary of State will consult the Government of Fiji with regard to the possible introduction of election by wards.

THE RESIDENTIAL TAX

This is a tax of £1 per head on able males between 18 and 60, not being Fijians (who already pay higher direct taxes). The real reply to the Committee is that the general taxation of a Colony, to which Indians are liable as members of the community, is not their affair at all. They are evidently aware of this, for they base their intervention on "taxation without representation". As the absence of representation is due entirely to the obstruction of the Indian Government, this is disingenuous.

The Government had to bring in a tax of this kind owing to the fall in revenue due to the depression in the sugar industry produced by the refusal of the Indian Government to allow emigration. It was not possible to put on more indirect taxation, as the Fijians on whom it would largely have fallen, were already paying native taxes averaging 35/- a head; and there was already an income-tax. The Committee have to base their objections on the alleged poverty of the Indians.

Our evidence is that the Indians of Fiji^{constitute} one of the most prosperous Indian communities. Arriving as penniless labourers, the census of 1921 showed 15140 farmers as against 4837 labourers (the remainder being mostly traders and artisans). The proportion of farmers has increased rapidly since. The death-rate is extraordinarily low (7.8 per thousand in 1922). Almost anybody who wants to can claim a free passage back to India, and some go; but Dr. S. K. Datta said in Calcutta on November 13th last after a visit to Fiji "he would be an awful fool to accept such a right".

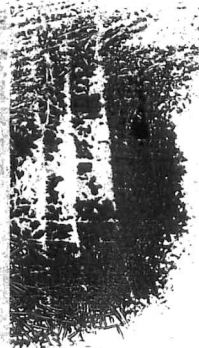
In any case, the Governor has full power to
exempt

exempt or reduce in the case of any person or class of persons. He has already exempted persons with five dependent children and has promised consideration of all cases of hardship.

An undertaking has been given that at least £5,000 a year shall be expended out of the proceeds of the tax on improved medical facilities for Indians.

I would suggest that the Secretary of State should remind the Committee that the necessity for the tax was created by the effect on industry of the ^{fiscal} report of the Government of India to allow assisted migration; and that as the tax is a purely domestic affair which does not differentiate in any way against Indians, it is not properly a matter which comes within the competence of the Committee at all. He may, however, mention that complaints are being received from Fijians that they are being unfairly taxed as compared with Indians, in spite of the fact that they provide themselves with educational and, to a considerable extent, medical services. Point out that the Committee have omitted any mention of the most important qualification, namely, the Governor's power to exempt or reduce in cases of hardship; and that it has already been announced that those who have five or more children dependent on them are exempted. Say that the Secretary of State will be ready to consider any concrete case of hardship that may be referred to him through the Governor; but that in view of the recent testimony of Dr. S. K. Datta to the conditions under which the Indians live, ^{to} of the fact that the great majority are not labourers but prosperous farmers; and of the small number who take advantage of repatriation arrangements, he finds it difficult to believe that there can be many such that

\$25000 from the tax is being expended in the current year on further hospital accommodation for Indians; and that it is intended to continue this in future. That he hopes that increasing prosperity may in time make it possible to reduce taxation; but that in present circumstances he cannot hold out any prospect that the residential tax can be abolished.



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Reference

The following notes are purely for Office use and would need much modification and condensation before they could be used as a reply to the Committee's memorandum.

A. Franchise.

The Secretary of State has already made it clear to the Committee that he will not have anything to do with the present policy of non-co-operation adopted by the Indians in Kenya. The question is, what line may be taken when the Indians abandon non-co-operation and show by a few years' participation in the political life of the country that their aspirations deserve sympathetic consideration.

In paragraph 2 of the Memorandum it is suggested it would be better to revert to a "mainly" nominated council. This might have been possible 18 months ago when the Europeans were recalcitrant, and, indeed, it was informally suggested then; but there is absolutely no reason, as things stand now, why the present constitution laid down in the White Paper issued by the last Government should be scrapped, thus depriving Europeans of the elective institutions which they now possess.

In paragraph 3 the Committee quote the ^{Resolution} Imperial Conference of 1921, on the assumption that the phrase "the rights of such Indians to citizenship" means the absolute wiping out of all distinction between Europeans and Indians. I think that in most countries, certainly in the United Kingdom, there is some distinction in citizenship; for example in this country the separate vote in respect of business premises and the University franchise. But it is the fact that, immediately after the 1921 Conference, Mr. Churchill took up the question on

the basis of an equal standing between Europeans and Indians with a strict property and educational qualification. It was found impossible to obtain agreement at the joint conference called locally by Sir E. Northey, to Mr. Churchill's outline of policy, and we had next the Wood-Winterton terms, with a property and education qualification, a common voters' roll, with provision for reserving seats for Europeans and Indians respectively. Unfortunately this scheme included a condition that the qualification should be so determined as to provide an Indian electorate of 10 per cent. of the Indian population. A qualification which is to depend on its numerical effect does not carry much weight.

It is possible that, if the Indians can settle down to a few years' working of the Constitution indicated in the White Paper, the violence of the Europeans' feelings will be greatly modified, and if a substantial qualification could be insisted upon without reference to numbers of Indian voters the difficulty of the common roll would be much reduced.

A new point has however arisen, since the Wood Winterton terms were drawn up, which will be of importance if the common roll ever becomes practical politics. It was then recognised that, if qualification tests were imposed, those European voters who are now on the list would have to remain on the list irrespective of qualifications. Under the White Paper policy the Indians were asked to decide what qualification they would desire for their separate "communal" franchise

and

and they chose the adult franchise (men and women), which already existed for Europeans. So far there have been few or no registration of Indian Electorates but if Indian electorates are later registered under this qualification the question would arise whether the Indians on the register would not, like the Europeans, have to remain on the voters' list irrespective of race. If the answer is that they must so, the chance of the Europeans agreeing peaceably to a common roll is absolutely nil, and it would have to be supposed, that in the case of both Indians and Europeans, existing voters not qualifying under the new conditions must lose their vote.

While I put forward this suggestion for the common roll, I remain personally convinced that in the present conditions of Kenya the communal franchise gives us the best chance of amicable work. The idea that the common roll with electorates of either race voting for candidates of either race, will tend to eliminate racial animosity seems to me visionary. At present I am convinced that any candidate offering himself to the voters of the other race would infallibly lose the votes of his own race, and, even if that were not so, I do not think that we should get a satisfactory council if the choice between (say) two European candidates in a particular constituency turned on a minority Indian vote in that constituency. Such a condition, like the Irish vote in America in the past, can only lead to graft.

In

In paragraph 8 the Committee endeavour to show that, even if there were a large influx of Indian emigrants the European community would have no need to be afraid of being swamped politically, because it has been laid down that responsible self-Government ~~is~~ not in the picture. As a matter of fact, no amount of White Papers will remove the aspirations of the European community towards self-Government, and any constitutional change which would place India in a majority of the council would rightly or wrongly disgust the Europeans with conditions in Kenya altogether.

If at any time the common Roll did become an immediate question it seems necessary to emphasise the importance of strict qualifications. The idea laid down in the Committee's Memorandum that property and education should be weighed against each other, so that the rich illiterate can scrape in, is in my opinion as bad as the previous 10 per cent. proposal. The danger is that there would be no limit to pressure for widening the qualification until there was in the end universal franchise, with Indians presumably still in the numerical majority which they now possess.

There remains the safeguards of reservation of seats to which the Europeans took exception, mainly on the ground that there was no guarantee of finality. Attention was drawn to the statements of Mr. Sastri and others

others aiming at a settlement of the Kenya question by instalments, and they feared that, whatever they gave away, they would be asked to give away more. That is the back of most of the Kenya opposition.

Finally the Committee suggest that, if European representation is maintained there should be as many Indian representatives as Europeans, and that of the natives must come up to the principle of equal numbers of seats on the worst possible basis to go upon.

The Secretary of State has refused to accept the doctrine that different communities are at different stages of political education, and that it is possible only to maintain the principle of the White Paper until the Indians have for a period of years in the present constitution a fair chance and have shown a willingness to assist in the counsels of the Colonial Secretary of State refusing to commit himself to any kind of settlement which can be contemplated at the end of that time or, I suggest, to bind himself to the period of 5 years suggested in paragraph 8 of the Memorandum. He could of course readily agree that the position of the various communities would be an important matter in the consideration of any scheme for the grant of any measure of responsible self-government for Kenya.

B. Reservation of Highlands for Europeans.

We have here the usual two claims: first, that Lord Elgin's decision of 1908 that grants of agricultural land in the highlands should not, as a matter of administrative convenience

Handwritten notes:
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convenience, be made to Indians did not apply to transfers of land after the original grant, and, secondly, that the modifications in the law made in the Crown Lands Ordinance 1915 were a departure from Lord Elgin's policy that there should be no legislative discrimination against Asiatics.

These points were fully dealt with in the White Paper (page 16). Lord Elgin had no need to say anything about transfer, for the simple reason that every transfer was then subject to the veto of the Governor. The idea that, while laying down that the highlands should be a European reserve, he contemplated for a moment that a grant made to a European one day might be transferred to an Indian the next day is grotesque. On the second point, the modifications made in the Crown Lands Ordinance in 1915 were due simply to the change of the method of alienating land from allotment to sale by auction, and to the abandonment (in order to facilitate transfers) of the power of veto already referred to except in the case of transfers which might weaken the European reservation in the highlands or transfers which ^{would} place improvident holders of land at the Coast at the mercy of land-hunters, whether European or Asiatic. The Crown Lands Ordinance was by no means a war measure, as it has suited the Indian side to make out; it was a result of many years' consideration in Kenya and here and of the personal attention given to the matter by Liberal Secretaries of State, in particular the late Viscount Harcourt, who personally decided the form of words in which the restriction on transfer between persons of different races was to be framed.

The Committee's argument is that the reservation is unnecessary, because there is little likelihood of the Indian desiring to take up land in the highlands, and that

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if they do take it up it will be for cultivation by themselves and not by means of native labour as is the case with European settlers. Actually, I should think that there is no real chance of Indians taking up land in the highlands for their own occupation, whether for cultivation by themselves or by native employees, but it is the possibility of their doing so which has made this the point to which European settlers attach most importance and on which there appears to be no means of bridging the gulf without a definite claim from Europeans that there has been a breach of faith. They maintain that they have been encouraged to take up land in the highlands on account of a pledge that they will not have Indian neighbours, and there can be no doubt that, while one or two Europeans would be glad to sell their farms to Indians, there is a very strong feeling, on whatever grounds it may actually be based, against having Indian neighbours.

There is a further point which it is material to mention. Freedom of transfer implies freedom of mortgage, and at present the European farmer is dependent for additional capital on what a bank or European capitalist can give him. In the depression which is now passing, there has been great difficulty in obtaining funds, and we may be perfectly certain that, if the restriction on transfer had not existed, the greater part of the European farms would now be pledged to Indian money lenders who are at least as rapacious as any of their kind in any country. We have experience on the Coast and in Zanzibar of what happens when the land gets into the hands of these leeches, and we shall have come to the end of the development of the highlands of Kenya if a similar state of things is allowed to grow up.

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INDIA OFFICE, 126
WHITEHALL, S.W.1.
27 June, 1924.

Dear Mr. Thomas,

I enclose herewith, on behalf of the Colonies Committee, a memorandum outlining the representations which they wish to make to you, and which you have agreed to receive, regarding the Indian franchise in Kenya and the reservation of the Highlands for Europeans and of certain areas in the Lowlands for Indians.

The Indian members have already booked their passages back to India and Mr. Rangachariar proposes to leave England, if possible on July 16th. In the circumstances we should be very grateful if you could very kindly accord us an interview, on the subject of this memorandum and on the point referred to in paragraph 6 of my letter dated June 26th on July 8th or on one of the following days in that week.

We have also been instructed to make representations to you regarding the position of Indians in Fiji. We have been studying the subject and should be very much obliged if you could see your way to granting us a

Rt. Hon. J. H. Thomas, M.P.

separate

Colonial Office.

separate hearing on this subject before July 16th.

We shall submit a memorandum on the subject on
hearing from you.

Yours sincerely,

J. Hope Ingam

The Committee have already communicated
the draft Kenya Immigrants Regulation
regarding the draft Kenya Immigrants Regulation
and the proposed Ordinance to the Secretary of State for the
Colonies. They propose in this memorandum, under instructions
from the Government of India, to represent their views
on the provisions affecting British subjects
and to deal with in-
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... far as the
... of the country
under the direct and complete control of the Colonial Office.
The West African system, under which there is no general
franchise, and special interests are represented by a
minority of members nominated by the Governor or elected
by particular municipalities, seems to them to be best
calculated to ensure the paramountcy of native interests and
to prevent any immigrant community obtaining an undue voice
in the administration. The success of a somewhat similar
system

system in Uganda affords evidence that an arrangement of this kind is as well adapted to East Africa as to West Africa. Reversion to a mainly nominated Council would we believe be welcomed by Indian opinion and would remove one of the chief causes of friction between the European and Indian communities.

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3. If however it is considered impracticable to retrace the steps already taken, then the Committee claim that the system of franchise adopted should be consistent with the principle laid down in the resolution of the Imperial Conference 1921:-

"The Conference, while reaffirming the Resolution of the Imperial War Conference of 1918 that each community of the British commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities, recognises that there is an incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire. The Conference accordingly is of the opinion that in the interests of the solidarity of the British commonwealth it is desirable that the rights of such Indians to citizenship should be recognised.

The representatives of South Africa regret their inability to accept this Resolution in view of the exceptional circumstances of the greater part of the Union".

In New Zealand and Newfoundland all classes of British subjects, including British Indians, already enjoy an equal franchise. Canada and Australia have held out definite hopes that measures for giving effect to the Indian claim will be considered as soon as a suitable opportunity arises.

His Majesty's Government were a consenting party to this Resolution and are not therefore free to apply in a Crown colony a system of franchise which is inconsistent with

with the principle embodied in it. The Committee cannot regard the system of communal franchise adopted in Kenya as consistent with the principle of the resolution. This method of election was adopted in India for the protection of minorities. In Kenya it has been applied to the Indian community, which is not in a minority as compared with other communities enjoying the franchise, and does not ask for such protection. Indians interpret the measure as designed to limit the growth of their political influence in the Colony and as a deliberate attempt to assign them an inferior status in spite of the recommendation to the contrary made by the Standing Joint Committee of Parliament in its third report. For this reason the Government of India have always maintained that the method of giving effect to the principle of the Imperial Conference resolution is by adopting in Kenya a common electoral roll and a common franchise on a reasonable property basis, plus an education test, without racial discrimination, for all British subjects. This view was accepted by Mr. Churchill in the settlement proposed by him in 1921 and again, subject to the reservation of a specified number of seats for the European and Indian communities respectively, in the Wood-Winterton Agreement of 1922.

4. In the White Paper His Majesty's Government, after discussing the relative advantages of a common electoral roll and of communal franchise, decided in favour of the latter. The arguments which led to this decision were traversed in a telegram from the Government of India in the following terms:-

"It is alleged as a primary argument in favour of the latter principle that it is compatible with African representation in due season and with Arab representation forthwith. We point out, however, that a common electoral roll would still enable protection to be given to the claims of these classes by the provision of reserved seats, the principle of which was accepted by the Wood-Winterton proposals. It is argued in the second place that the

communal system of representation permits a wider franchise for Indians. We have always recognised that a common electoral roll would at any rate in the first instance reduce the size of the Indian electorate. We have, however, been prepared to face that disadvantage in view of the importance attached by us to the principle of a common electoral roll, and in this we believe that we have always had a great body of Indian opinion in Kenya on our side. Thirdly, we do not accept the statement in the Colonial Office draft that the advantage of a common electoral roll is illusory. We have, on the contrary, maintained and we still maintain that there is no danger of composing the racial differences and tension in Kenya unless and until Europeans and Indians exercise franchise on a common basis. In this connection, I would refer you to the experience already gained in Cape Colony. Our objection to the communal system is that it separates off Indians from Europeans, and the two communities would, so long as this system is maintained, tend to lay greater emphasis on points of difference than those of common interest".

The consideration which led His Majesty's Government to overrule these arguments was the belief that in the special conditions existing in Kenya, elections would undoubtedly be fought on racial lines, and that therefore the main advantage claimed for the common electoral roll would be lost. The Committee maintain on the contrary that if a common electoral roll were adopted, this state of affairs would prove temporary and that racial antagonism would gradually abate. In any case it is far better for all parties, that such racial friction should be confined to the triennial elections rather than imported into the Legislative Council by a system of communal representation and perpetuated in every debate

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6. The Committee have in their memo. on the 131
Immigration Bill shown that there is little or no ground
for the fears of the European community that they are
likely to be swamped by a flood of Indian immigrants.
Such a fear must in any case be illusory, since His
Majesty's Government have in the White Paper definitely
stated that they "cannot but regard the grant of
responsible self-government as out of the question within
any period of time which need now be taken into consideration,
nor indeed would they contemplate yet the possibility of
substituting an unofficial majority in the Council for the
Government official majority". The elected portion of the
Legislative Council will therefore continue for an
indefinite period to be in the minority, and its functions
will be advisory. Even if the adoption of a common roll
meant, therefore, the increased representation of Indians
on the Council, the existing position would not be
materially altered. But the Committee regard such a
result within any measurable period of time as most
improbable. In advocating a common roll the Government of
India have suggested two important qualifications viz. a
reasonable property test and a common educational test
without racial discrimination. Since the Indians as a
community are, as the taxation returns show, greatly
inferior to the Europeans in wealth, a property test
approximating to that suggested by Mr. Churchill would exclude
large numbers of them from the franchise. The Committee
would not regard the adoption of an educational test in
English only as fair to the Indian community. If, however
there are difficulties in the way of recognising the chief
Indian languages spoken in the colony for purposes of this
test, they suggest that in the case of Indians, who are
unable to pass the prescribed test in English, the
alternative

alternative of a higher property test than that prescribed for those who can also pass the educational test, should be allowed. Subject to this qualification, the Committee advocate the adoption of a common roll ¹²² as suggested by the Government of India. It was found in practice to entail a substantial increase in the number of representatives. If this were allowed under the present system, Indians would be subject on this account.

6. If however the Secretary of State for the Colonies is, for the reason stated in the White Paper, prepared to concede a common roll without reservation of seats, the Committee would respectfully invite him to the system of a common roll embodied with the reservation of seats as recommended in the White Paper. A system on these lines would not be open to the objection which led His Majesty's Government last July to reject a common roll, namely that elections would be fought on a level. From the Indian point of view a common roll combined with reservation of seats is preferable to a common roll, for it would tend to bring the two communities together on a footing of greater equality and to emphasise their mutual dependence on each other.

7. If of the above courses commend themselves to the Secretary of State for the Colonies and he decides to continue the present system of communal representation, then the Committee would draw attention to the fact that according to the census of 1921 the number of Europeans and Asiatics aged 20 and upwards was as follows -

	<u>Males</u>	<u>Females</u>	<u>Total</u>
Europeans	4,565	2,632	7,197
Asiatics	16,884	5,732	22,616

Of the total Asiatic population, numbering 35,982 the number of Indians was 22,322. On the ratio of 23/36 the number

number of Indians in the colony exceeding the age of 20 would be 14,449. The number of Indian adults in the colony is, therefore, approximately double the number of European adults. On the basis of these figures the committee claim in the last resort that any compromise giving less than equality in the number of the representatives elected on a communal basis by Europeans and Indians respectively could not be accepted by India as adequate or just. To accord to Indians a smaller representation on the Council is to assign them an inferior status.

8. In conclusion the Committee are instructed to ~~request~~ ^{request} that, if either of the courses discussed in paras. 6 and 7 are adopted, or if matters are left as they are at present, the Colonial Secretary may give an undertaking that the matter will be reconsidered whenever the constitution of Kenya is again modified and especially should the modification be in the direction of responsible self-government, and in any case at the end of 5 years.

B. Reservation of Highlands for Europeans.

Present Position.

1. The Highlands of Kenya consist of that portion of the Colony north and south of the railway which lies between Kiu on the east and Fort Tarnan on the west. Their altitude varies between 4800 feet and 10000 feet. Practically the whole of the agricultural land within this area available for alienation has already been alienated to Europeans. Under the Crown Lands Ordinance 1915 it is provided that when the lease of lands available for agricultural purposes is offered for sale by auction, the Lands Officer shall notify whether persons other than Europeans will be permitted to bid at the auction. A covenant is implied in every lease of agricultural land granted to a European that he shall, without the consent of the Governor in Council, appoint or allow a Non-European to be manager or otherwise to control to be in control of the land leased in a penalty of forfeiture of lease. All transfers or other transactions in land that has been sold, leased or disposed of under the regulations of 1897 or the Ordinances of 1902 or 1915, if between persons of different race, must be notified to the Lands Officer, and the Governor in Council may veto any transaction within three months. This power of veto has been used by the Government of the Colony to create and maintain a reserve for European settlers on the agricultural lands of the Highland Area.

The White Paper.

2. In the White Paper the decision of His Majesty's Government regarding the Highlands was that "the existing practice must be maintained as regards both initial grants and transfers".

transfers". It was argued that European British subjects during the last 15 years had been encouraged to develop the Highlands, and that during that period settlers had taken up lands in the Highlands on the understanding that the existing principle would be maintained. The Crown Lands Ordinance 1915 introduced no new principle but merely maintained the principle of past practice. Lord Elgin's decision in 1908 that "while it was consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the Uplands Area should not as a matter of administrative convenience be made to Asiatics" had been interpreted by his successors and by the legal authorities as covering transfers as well as original grants from the Crown. In view of the position so created it was held that the terms of the Crown Lands Ordinance of 1915 did not amount to legal discrimination against Asiatics. As a set off to the exclusion of Indians from the Highlands it was decided to set aside a portion of agricultural land in the Lowlands, for development by Indian settlers.

The Indian Case.

3. The contention of the Government of India is that Lord Elgin's decision related only to initial grants of Government land in the Highlands, and that the terms of that decision were misinterpreted when they were stretched to cover a veto on transfers. Moreover the inclusion of a definite provision in the Ordinance of 1915 making transactions in lands subject to an official veto on racial grounds, which had not appeared in the previous Ordinance of 1902, is incompatible with the terms of the decision. It appears to the Committee that the Ordinance of 1915 which was passed in the special conditions of war-time, read with the decision in the White Paper, amounts to a legal discrimination against Indians in the matter of their civil rights.

4. Apart from the question of principle it does not appear to the Committee that a case has been made out on the facts for protecting Europeans against the acquisition of lands by Indians in the Highlands. The European works his estates on the plantation system with native labour. Experience in other parts of the tropics has shown that this system is foreign to Indian practice, and that there is very little likelihood of the Indian desiring to acquire land for management on these lines. In this respect there is a parallel between conditions in Kenya and in Natal. Although the Asiatic Enquiry Commission in 1921 recommended that the right of Asiatics to acquire land should be restricted by legislation to the coast belt of Natal, the Union Government rejected the proposal, preferring to wait until the reality of the danger which it was proposed to guard against had been more clearly demonstrated. Moreover, the cold and the damp climate of the Highlands of Kenya is unsuited to Indian agricultural methods. A possible exception might be that some Indians might acquire small holdings in the Highlands for purposes of garden cultivation. If this were to happen, the Committee suggest that it would not be a bad thing for the Colony. Present labour laws in the Colony are not likely to continue unmodified for an indefinite period, and, as the area of land under cultivation increases, the difficulty of maintaining the labour supply needed for the plantation system is likely to be enhanced. A certain number of small holdings cultivated by settlers themselves would tend to add to the prosperity of the Colony while relieving the growing pressure on the existing labour force.

5. Lord Milner justified the exclusion of Indians from the Uplands on the ground that Europeans are by nature physically excluded from other areas. Hence if the limited areas which is suitable for European settlement were thrown open to the competition of Indians there would be taking the
Colony

for agricultural land on the part of Indians who give suitable guarantees of their intention to develop the land themselves. The Committee understand that the Government of the Colony proposes to reserve approximately one million acres North of the Voi-Taveta Railway and one hundred thousand acres on the Tana river. They wish in the first place to make it clear that Indians have no desire to secure a reservation for themselves at the expense of the possible future requirements of the natives of the country. The acceptance of such a reservation would commit them to acquiescence in a principle to which they are entirely opposed. If however the decision to set aside such an area for Indians provisionally is maintained, they would ask that, before applications for such land are invited in India and in Kenya, the Government of India may be given the opportunity of sending an officer experienced in Indian settlement and agricultural methods, to report on the suitability of the proposed areas, and to advise the Colonial Government regarding the methods of settlement most likely to meet Indian requirements.