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LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE

22nd March 1920.

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My Lord,

We were honoured with Your Lordship's commands signified to us in Sir H.J. Read's letter of the 9th instant stating that it had been decided to annex to His Majesty's Dominions, under the name of the Colony of Kenya, the greater part of the territory now constituting the East Africa Protectorate and requesting us to favour Your Lordship with our opinion upon the following questions:-

- (1) Whether the Colony of Kenya when annexed will be a British Settlement within the British Settlements Act, 1887; and if so
- (2) Whether an Order in Council annexing the territory, on the lines of the accompanying draft followed by the issue of Letters Patent providing for the delegation of His Majesty's powers under the Act to the local Legislature and reserving the concurrent power of legislating by Order in Council, will be the proper means of providing for the establishment of the new Colony, and if not what other instruments should be adopted.
- (3) If the above course is adopted whether Orders in Council of the first class mentioned in paragraph 3 of the Representations should be repealed and replaced as suggested in paragraph 4 of such Reference and what will be the position with regard

to

Nothing to be done at present

A/B
17/8/20

Wait - saving up in 4 weeks
accp
18.5.20

The statements have all been
sent out & the matter of the completed
portion of the 1902 Order had already
been taken up. see draft of 14.7.20
in Council / 150 25/20

Nothing remaining, 120 for a
copy all, except to find this for the
Minutes collected 1/2/20

C.C.S. 28/11/20

5/11/20

to the future amendment of other Orders in Council which are kept in force under clause 4 of the draft (Annexation) Order in Council.

(4) If the Colony is to be regarded as acquired not by settlement but by cession or conquest, whether the accompanying draft Order in Council should be amplified so as to make full provision for constitution and if not what other instrument or instruments should be adopted for this purpose.

(5) If the Colony is to be regarded as acquired by cession or conquest whether in view of the fact that the Legislature already granted to the territory almost the whole of which will be included in the new Colony will be continued in the latter, and that the character of that Legislature is in the course of being changed from nominated to representative, the power to legislate by Order in Council can be retained in future.

(6) If the provision indicated in the fourth question is adopted whether the Orders in Council of the first class mentioned in paragraph 3 of the Reference should be repealed and replaced as suggested in paragraph 5 of such Reference, and what will be the position with regard to the future amendment of other Orders in Council which are kept in force under clause 4 of the draft (Annexation) Order in Council.

(7) Generally with regard to the means of giving effect to the proposed annexation.

WE have taken the matter into our consideration and, in obedience to Your Lordship's commands have the honour to submit the following

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Report

(1) In our opinion the Colony when annexed will be a British Settlement within the British Settlements Act, 1887 (50 & 51 Vic. C. 54). The case is a stronger one than that of New Guinea, upon which the Law Officers advised in 1884 and 1885.

(2) We think that an Order in Council annexing the territory, on the lines of the draft submitted, followed by the issue of Letters Patent providing for the delegation of His Majesty's powers under the British Settlements Act to the local Legislature and reserving the concurrent power of legislation by Order in Council (see proviso to section 3 of the Act), are the proper means of providing for the establishment and administration of the new Colony.

(3) After the annexation all legislation for the new Colony will take effect under the British Settlements Act, and the Orders in Council of the first class mentioned in para. 3 of the Reference to us should, we think, be repealed by an Order in Council under that Act, and not under the Foreign Jurisdiction Act, which will cease to operate as soon as the territory is annexed. Other Orders in Council kept in force under

under clause 4 of the Annexation Order in Council can also be amended by legislation under the British Settlements Act.

The other questions do not arise.)

We have the honour to be,

My Lord,

Your Lordship's most obedient
humble servants,

James Stewart

James M. Pollock

The Right Honble,

Viscount Milner G.C.B.
&c &c &c,

Colonial Office,

Downing Street, S.W. 1.