

EAST AFR. PROT.  
 No. 13729

13729  
 REC'D &  
 RES 18 APR 08

Governor. No.  
 1908

(Subject.)

1908

Master & Servant Ordice

20<sup>th</sup> Feb.

Submit report on working of ordice & propose certain amendments.

Last previous Paper.

U.S. 2204

(Minutes.)

Not 9/1

Mr. Hoar

This must be read in connection with the Gov. Dep. & enclosure on 13763/08, with you. Not with me

The facts stated on page 7 of Mr. Hollis's memo are most regrettable; whatever the spirit of the Government's policy may be, it is clear that the practice of its district officers has not been what it should be.

I entirely agree with Mr. Hollis's views, especially para 9 & with the passages marked in the minutes by Judge Barth & the C-Advocate.

The amount of the proceedings in 13763 shows that sufficient regular labour is not at present forthcoming & that the poorer settlers are suffering in consequence

Why was Mr. Hoar 9/12/08? 8269  
 Mr. Hoar  
 8269  
 8269  
 8269

subsequent Paper.

2750

It cannot readily change the  
 habit & requirements of Africa  
 wages by ~~an~~ amendment  
 application of ~~the~~ <sup>the</sup> ~~law~~ <sup>law</sup> ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~country~~ <sup>country</sup> ~~and~~ <sup>and</sup>  
 because Europeans have  
 embarked on enterprises depending  
 for their success on the local  
 supply & demand, without taking  
 account of the local ~~circumstances~~ <sup>circumstances</sup>  
 which render the introduction  
 of civilized economic conditions  
 a matter of time & patience.  
 Govt would not be justified  
 in departing a headlong from  
 the festive trade policy  
 Anythg which tends to ~~use~~  
 secure labour by compelling instead  
 of ~~compelling~~ <sup>convincing</sup> the natives  
 should be resolutely excluded  
 from labour legislation, &  
~~rather~~ <sup>rather</sup> depart from this  
 essentially English tradition?  
 would let the settlers of  
 elsewhere meet the inevitable  
 development of natural laws  
 of supply & demand, fostered  
 and not forced, render the  
 country suitable for enterprises  
 requiring the cooperation of ~~the~~  
~~black~~ <sup>black</sup> inhabitants.

R.P.L.

Mr Ellis.

Dealing with the objections that have been raised to the Ordinance, the Gov. proposes:

(1) To abolish payment in kind. This gets rid of the objection specially cited by Mr. Churchill (51203/06). The Gov. proposes further that it should be made obligatory on employers to pay wages monthly or weekly, unless otherwise provided in the contract.

(2) To reduce the period of imprisonment under sec. 19(b) to two months. It may be remarked that sec. 21 and 22 provide sentences of imprisonment of one or two months, with or without hard labour, for certain offences. The case of indentured labourers in the W.I. is not quite analogous, but there is certainly no justification for the sentences in L.A.P. to be more severe than those for similar offences in, say, Trinidad. In the Colony the sentences are:

- for ~~absence~~ <sup>being</sup> from work, one month;
- being drunk, abuse or ~~insubordination~~ <sup>disobedience</sup>, or threats, usage or intimidation, 2 months.

In each case the imprisonment is accompanied with such work, usually of a light character, as the Gov. may determine. I would certainly not make mere absence from work punishable with hard labour.

(3) The Gov. proposes to make the provisions of sec. 24 and 25, which permit the magistrates to add on any term of imprisonment at the test of the contract, permissive instead of imperative, or even to abolish sec. 24 altogether.

(4) The Gov. proposes to ~~limit~~ <sup>limit</sup> the scope of the compensation clause 26.

In addition he proposes to make it compulsory for employers to carry dismissed employees to their homes.

With these amendments the Ordinance should not itself be open to serious criticism, but it is clear that the interpretation placed on it by magistrates, the

been most irregular. The cases where flogging has been inflicted, quite illegally, for offences under this Ordinance call for serious remark.

This Ordinance practically gives the employer Govt. assistance in enforcing the terms of his contract with his labourers. It may as the Gov. says, benefit the labourer also, and that is no doubt the intention of the Govt; but the employer will always look upon it as a means of enforcing his rights. What is wanted is an efficient system of inspection of the conditions under which labourers work under contracts enforceable under this Ordinance, on the lines of the powers enjoyed by the Protector of Immigrants in a Colony where indentured labour exists. With this should go a power of determining a contract without cause shewn, at the discretion of the Governor, supplemental to the powers possessed by the Magistrate under sec. 19. Experience in the West Indies shows that it is very difficult to destroy what the employers regard as vested interests in forced or semi-forced labour; and it would be well for the Govt. to insist on all its powers now, before the custom of regarding the Govt. as a task-master has sprung up.

See the Inspector  
in the contract  
to Provincial  
is they  
Nature of the  
right to  
to exercise  
factory inspection  
H.V.R.

ABC

The Law will be found in 1924/86  
of Lord Diplock's des. on it in 34  
The provisions of it are not really  
defensible at all on grounds of  
abstract justice. There is in the  
N. Indies labourers are introduced  
from abroad at great expense to  
the employer there is some ground  
for the Govt. stepping in to remove

by penal imprisonment. But the  
 employer is not deprived of the  
 labour for which he has, in effect,  
 paid in advance. But here  
 where the balance is obtained  
 at little or no original cost & wages  
 are paid in advance. You see no real  
 reason for the Govt. refusing by  
 penal constraints contracts to  
 labour for considerable periods.  
 But they are the settlers in the  
 E.A.P. are not fond of abstract  
 justice. They like as one of them  
 said to temper it with necessity  
 and I am doubtful whether we  
 are strong enough to compel them  
 to follow its dictates.

I am inclined therefore to allow  
 the law to remain in question if  
 unaltered, as suggested by the Govt.

W.M. 21/5

Mr. Andrew:  
 I circulated yesterday a. S.P. to the  
 Govt. on the general question of the supply of  
 labour to the settlers in which it was  
 suggested that in order to be based on a  
 just principle defining the time in  
 which the settlers had agreed that  
 labour should be engaged, should be introduced  
 for the purpose of protecting the  
 interests of the labourer. It was  
 suggested that the law should

should be entered with the Govt. and  
 inserted into the Ord. dealing  
 with the whole question. There will also be  
 the question of the labourer imported from  
 Nyasaland into the E.A.P. of the volume  
 suggested in the same S.P. comes off.  
 I should be inclined to refer the Govt.  
 to the despatch which has been drafted, &  
 tell him that we accept his amendments  
 of the present Ord. for the time being,  
 but that a comprehensive Ord. dealing  
 with the whole question from the settlement  
 point of view of both the master & the  
 servant, & also with the question of foreign  
 imported labour, should be submitted  
 in draft for the action of the S. of S.  
 We can then carefully examine the S.P.  
 see that with the amendments of law  
 for the Govt.

W. J. R.  
 21/5

Colonel Seely

This ordinance is capable of being  
 used & there is evidence that it is  
 being used as an instrument of  
 oppression. Apparently you can trust  
 no one & never the magistrates to  
 deal justly with these native labourers.  
 I don't go into the law of the thing  
 there is no law, only native policy to

be considered. I should like to  
 disallow the law but we have  
 let it stand for 2 years so  
 we had better let them amend  
 as proposed & let the system  
 on until we can substitute  
 better one, but I wd. clearly  
 warn the gov: through him the  
 settlers that they must not  
 assume that the new law or  
 the new system will be as  
 favorable to the employer as  
 this.

H.B.  
 21/8

A most unsatisfactory state of affairs,  
 but I agree with Mr. Cox that as we  
 have allowed the law to stand for two  
 years or more we cannot now allow it,  
 but will do the operation in the sense  
 indicated by Mr. Cox and Mr. Read.

Y.S. at once  
 22/8

Mr. Bentley  
Mr. Arthur See also Gov Wynne  
 8-266

ask the gov: what steps have been taken  
 to prepare the General Act referred to in  
 our letter. H. 43 & of the 1st of 1890.

13729

327

18 APR 08

Governor's Office,

Nairobi,

March 25th 1908.

EAST AFRICA PROTECTORATE.

No. 155

(Incl. 4)

My Lord,

With reference to the correspondence ending with my telegram No. 17 of the 24th January last, I have the honour to submit my report on the working of the Master and Servants Ordinance.

*Sec. Nat. Affairs  
Oct. 22nd 1907*

*Judge Hamilton  
May 11th 07*

*Judge Barth  
Oct. 30th 07*

*Mr. Combe  
Jan. 22nd 08*

2. As regards the general policy and scope of the Ordinance and the conditions which rendered its provisions necessary, these are fully explained in the Minutes of the Crown Advocate submitted with my despatch No. 241 of the 18th June last, and the Minute of the Secretary for Native Affairs of the 22nd October last now enclosed.

3. The main object of the Ordinance was not only to ensure that the native employee should be made to realize the obligation on <sup>him</sup> to fulfil the terms of the contract entered into by him, but also to secure that he should not be allowed to undertake an obligation of which he does not fully understand the terms, and ensure that he is properly treated and paid by his employer, and is therefore intended to be as much for the protection of the native as for the benefit of the

white

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

R.

(2)

white settler, between whom the Government in the person of the various District Officers ~~and~~ in the position of an arbitrator.

4. It is only fair to say that the Ordinance was to some extent used by the District Officers to punish the natives; but this was not the fault of the Ordinance but of the manner of its application, and I am glad to say that this has now been altered and District Officers fully realize their position as just arbitrators between both parties.

5. There have unfortunately been instances where the white employer of labour has behaved very unfairly to the natives he has employed, both in the matter of food and pay and of general treatment, and though the provisions of the Ordinance allow of such cases being adequately dealt with it has been found in practice that a labourer who has been ill-treated generally prefers to return to his home, rather than wait and take proceedings against his employer. As a consequence we find that the Ordinance is used far more by the employer than by the employee. Nor is this to be wondered at; the natives are in a low state of civilization and have not learned their rights under the law. This, however, will not continue as the natives advance in civilization; moreover the institution of the Native Affairs Department has enabled cases of ill-treatment of natives to be taken up which might otherwise have passed undisturbed.

6. On the working of the Ordinance I have received opinions

(B)

white settler, between whom the Government in the person of the various District Officers stands in the position of an arbitrator.

4. It is only fair to say that at first the Ordinance was to some extent used by the District Officers to punish the natives; but this was not the fault of the Ordinance but of the manner of its application, and I am glad to say that this has now been altered and District Officers fully realizing their position as just arbitrators between both parties.

5. There have unfortunately been instances where the white employer of labour has behaved very unfairly to the natives he has employed, both in the matter of food and pay and of general treatment, and though the provisions of the Ordinance allow of such cases being adequately dealt with it has been found in practice that a labourer who has been ill-treated generally prefers to return to his home, rather than wait and take proceedings against his employer. As a consequence we find that the Ordinance is used far more by the employer than by the employee. For is this to be wondered at; the natives are in a low state of civilization and have not learned their rights under the Law. This, however, will not continue as the natives advance in civilization; moreover the institution of the Native Affairs Department has enabled cases of ill-treatment of natives to be taken up which might otherwise have passed undealt with.

6. On the working of the Ordinance I have received  
opinions



(5)

opinions from all Provincial Commissioners and many of the District Commissioners as well as from His Majesty's Judges. I enclose the opinions of His Majesty's Judges, which it will be observed, in no main agree with the views expressed at length in the Minute by the Secretary for Native Affairs. I shall not trouble Your Lordship with the various district reports though they have been carefully studied in connection with the remarks I am offering in this despatch.

2-  
20/10

7. Turning to the provisions referred to in paragraph 8 of Your Lordship's despatch No. 787 of the 31st November 1906. I have the honour to offer the following observations:-

**SECTION 10.** The object of this Section is to allow of a period of apprenticeship being entered into. It is true that it would cover a period of labour service as it stands but as a matter of fact the nature of the labour and the conditions are such that it is rare to find a contract of labour extending one year. The great majority of contracts are not more than three years in the limit allowed on the Gold Coast, and should raise no objection to a reduction of this period to two years, or even to one year which in practice is rarely exceeded. If this is done it may be desirable later on to consider the question of the introduction of a law of apprenticeship.

**SECTION 11.** With reference to the payment of wages in 1906 I noted the reasons why this provision was inserted in a Minute I wrote at the Colonial Office during

(4)

during my last visit to England. The object was to allow of settlers arranging with natives to settle on their lands on terms to be mutually agreed to not necessarily including payment. Since then, however, the natives have rapidly become accustomed to the use of money and a form of agreement between farmers and natives on their land has been drawn up by the Secretary for Native Affairs, which provides for cash payment for services rendered, and has been found to work satisfactorily among the Iumbwa and Kikuyu, where the majority of the white farmers are settled. There seems, therefore, no reason for the further retention of any provision allowing for payment in kind. But it would certainly be desirable to make provision for all wages being paid monthly unless at the express desire of the employee.

SECTION 10 (b). The object of this Section is to enable the Magistrate to enforce his orders when he finds it necessary to direct the fulfilment of his contract by labourer. Were this power of imprisonment altogether abolished there would be no hold over the labourer whatsoever. In this connection I would refer to paragraph 6 of Mr. Hollis' Minute. This provision must be retained but I should have no objection to reducing the maximum period of imprisonment to two months. The law is not put in practice against an employer unless the employer thinks fit to do so, and the latter is often as reluctant to go to law as the former is.

Section

(5)

**SECTION 21.** I agree with the opinions expressed by the Secretary for Native Affairs in paragraph 5 of his Minute and by the Crown Advocate in his Minute of the 22nd January 1907 that the retention of this Section is necessary. Although it may seem at first sight to be directed entirely against the employee, it is not the case in fact, as it works as much for his protection. Whilst the employer must be protected by Law it is equally important that he should have no excuse for taking the Law into his own hands as he would be otherwise apt to do.

**SECTION 24.** The Section as it stands is undesirable as its provisions are imperative. By the institution of the word "may" for "shall" in the second line the power would be left discretionary to the Magistrate. But as the provisions of this Section, as above worded, would be rarely enforced, I shall have no objection to its abolition.

**SECTION 26.** In this connection I would refer to the remarks of the Crown Advocate in his Minute of the 22nd January last. I have discussed the matter with His Honour Judge Hamilton, with whom I have gone through the principal points connected with the Ordinance, and I agree that the provision of this Section should be considerably narrowed down in the manner indicated by the Crown Advocate if indeed it be not considered that the Magistrate has already sufficient power under Section 19. These latter points might, however, well be left over for discussion in the Legislative Council.

(6)

8. There are a few other points connected with the Ordinance which I would wish to refer. At present it is very difficult as to whether the definition of the word "servant" in Section 1 includes such persons as labourers on the Uganda Railway, and I am advised that the definition should be altered so as to include all labourers.

SECTION 20. The power in this Section should not be imperative, but should be permissible at the discretion of the Magistrate. I am further of opinion that provision should be made in the Ordinance requiring an employer, should he dismiss a servant at some other place than that at which he was engaged, to provide the necessary means for his return either to the place of his engagement, or his home.

9. It would also be desirable to empower the Magistrate under Section 16 to direct that any case be dealt with by ordinary Civil Action when he considers the circumstances are such as to render this desirable.

10. I agree with opinions that have been expressed that this Ordinance is a most useful legislative measure, and with the amendments I have proposed in this regard. And the experience our Civil Officers now have as to its working, I am hopeful that the objections which have been raised to it will now have lost a good deal of their force.

11. I propose, subject to Your Lordship's

approval,

(7)

approval, to amend the Ordinance in the manner indicated in this dispatch.

I have the honour to be,  
With the highest respect,

My Lord,

Your Lordship's most obedient,  
humble servant,

*Henry Buller*

Despatch No. 137 of 13th 1908.

MEMORANDUM ON THE WORKING OF THE MASTER AND SERVANTS ORDINANCE  
1903 WITH REFERENCE TO COLONIAL OFFICE  
DESPATCH NO. 737 OF NOVEMBER  
21ST. 1908.

13729

15 APR 08

The Master and Servants Ordinance 1903 taken as a whole is a most useful piece of legislation and has filled a long felt want. The manner in which it has in the past been worked has however been open to great objection, and magistrates, who under the Ordinance are given the widest discretionary powers of adjusting disputes and acting as arbitrators between employers and employees, have frequently used the Ordinance most improperly, with the result that a large percentage of their orders have been set aside by the High Court. The mistakes made by the Magistrates do not lie in the Ordinance but in the frequent omission on the part of those whose duty it is to administer the Ordinance to observe its provisions, and as a result the Principal Judge found it necessary in February last to issue a special circular on the subject, copy of which is attached. There are very few instances of servants or labourers having made application to the courts; but Masters often receive complaints, and Magistrates, instead of using their discretionary powers, have frequently punished the servants, and sentenced them to be flogged, in which case the High Court cannot upset their decision. Of late there has been a distinct improvement. Magistrates as a rule no longer omit to call for the contract, and the police do not arrest unless a complaint has been received from the employer; but flogging is still a frequent punishment, though an

illegal

illegal only except in the case of juveniles when a light cane only may be used (section 20).

2. The provisions which are particularly criticized are Sections 10, 14, 19 b, 21, 24 and 26.

3. Section 10 authorizes contracts of service for as long a period as three years.

I see no objection to this provision. It should be remembered that we have no apprenticeship system in this Protectorate, and if a native is to learn a trade and be of use as an artisan it is necessary that he should be bound to serve a master for a certain period. The native is usually entirely ignorant of the work which he has to perform, and his services are of little use to his employer until he has been taught. It is then only fair that the employer who has spent time and trouble in teaching his servant, should have the benefit of his services for some time after he has learnt his work. As a matter of fact this provision is not very much used. There are one or two cases where natives have entered into agreements to work for the Malindi Planters for 3 years, but no attempt, so far as I know, has ever been made to induce up-country natives to sign contracts for more than one year, and even then it has generally failed. The Kiloya, Mamba and Kavirondo will not as a rule work for more than one or two months at a time, though an exception was made in the case of the Mamba clove pickers who entered into agreements for 3 months.

Mr. McClellan in his report of September 19th. calls attention to a bad practice which was and I believe still is common in the Naivasha and Kisumu Provinces, viz: the engagement of small boys as herds for a term of one year, the employee to be paid nothing until the end of that period. After 8 or 9 months the boys, who have

by conception of time, think that their term of service is completed and then being dissatisfied either leave in disgust without their wages or steal what is really due to them with the result that they are prosecuted and imprisoned. In cases like this the Magistrate who attested the contract is probably to blame in the first instance as the terms could never have been properly explained to the servants.

Before the promulgation of the Master and Servants Ordinance it was customary in Lamu and other Coast Towns for freed slaves to engage themselves to Indians, Arabs and Swahili for five years. Owing to the abolition of the legal status of slavery I have asked the Provincial and District Commissioners to endeavour to persuade the slaves to agree to work for their former masters and to enter into contracts with them for any period up to 8 years. The attached form (marked B) is used for this purpose.

*Not here*

I am also trying to assist Missionaries to obtain, or rather to keep, pupils by entering into agreements with the children's fathers. Many complaints have been received from Missionaries, who after teaching children for a year or so, find that either the children get tired of the work and play truant or that the parents want their sons to herd goats or do other work of a like nature and take them away from school. This would not happen if an agreement were entered into between the Missionaries and the children's parents.

1. Sections 13 and 14. Allow payment of wages in kind.

There is not much to be said in favour of this provision but a good deal can be urged against it as it is at times abused by a certain class of settler in the Protectorate. At the Coast it was often customary - and this custom will no doubt continue - for masters to allow their slaves to cultivate their plantations, the only payment to the slave being a proportion of their earnings which was made in kind.



This provision was however made as it was thought that up-country natives who have no knowledge of the value of money would by their labours earn that which has to them some value and which they want. The country has developed and the natives advanced so rapidly in the last few years that there are now no natives that are ever likely to be employed as labourers or servants who are not acquainted with the use of the rupee. Naked Kavirondo, wild Dorobo, and savages from Meru and Embere, all know the value of money, and when they engage themselves for work, do so for money and for money only. If they are far from their homes they expect to be fed as well, and it is here that the abuse comes in for the employer at times deducts the value of the food from the pay to the employee, who after working for a month finds that his employer has already spent the greater part or the whole of his wage in feeding him.

Mr. Isaac, Mr. Blacher and others are in favour of these clauses being retained in order that opportunities may be given to natives who are crowded out of the Native Reserves to settle on the farms of Europeans and to pay rent in kind or to work for a certain period free in lieu of rent. I have instituted a system which I think meets this case and is certainly preferred by the natives. I enclose a form of agreement (marked C) which has been entered into by farmers and natives in both Kikuyu and Iambwa with some success. The employers object to the period being limited to one year and would prefer a five or even ten year limit. This might be considered at a later date if the present system is found to work satisfactorily.

Under Section 14 I would recommend that provision be made for the payment of wages at the end of every

every completed month's work, unless the employee desires to be paid at the end of his term of service. Such abuses of the Ordinance as that mentioned in § 8 would not occur if servants were paid their wages monthly.

6. Section 19, under which a servant may be awarded 3 months imprisonment for a breach of contract, appears to me to be equitable. As pointed out by the Crown Advocate in his memorandum of January 5th., the purpose of this provision is not to enable a Magistrate to impose the maximum penalty for a breach of contract, but to impose that or a smaller penalty for the refusal or neglect to obey an order of the Court. There is no denying the fact that desertions are very common, especially among the Kikuyu who are apt to run away as soon as they have received their blankets, thereby breaking their agreements. Captures are far less frequent, and if the breach of contract or the refusal to obey the order of the Court is not made a punishable offence, nothing will deter whole gangs from deserting at any time they please.

6. Sections 21 and 22, which make punishable a variety of offences by a servant, are most important in order to protect the employees as well as the employers, and to remove every excuse for the latter taking the law into their own hands. Notwithstanding these provisions it is still customary with a large number of employers to fine their men at will or to flog them, and it is always an extremely difficult matter to get a conviction against them, especially as the police may take no cognizance of a case of assault unless the aggrieved party is certified to have suffered grievous hurt.

7. Section 24. Ordering the period of imprisonment to be added to the term of the contract.

I suggest a slight alteration in the wording of this

this section by the substitution of "may" for "shall". There is as a rule nothing inequitable in ordering a person who has engaged to serve for a certain period to serve for the whole of that period, and not to deduct the time he may have spent in prison from his period of service. But it is conceivable that the master is a harsh or unreasonable man, and the crime for which the servant has been sent to jail may be partly due to the master's own conduct, in which case it should be open to the Magistrate to order the completion of the term of service or not as he thinks fit.

8. Section 26 enables a Magistrate to order a servant to make compensation for damage caused by a servant to the property of an employer, with imprisonment in default.

The Crown Advocate in his memorandum of January 5th, points out that the provisions of this section do not come into operation until the servant has been convicted of an offence under section 21 or 22, and that when that fact is appreciated, it must be admitted that the provision is a useful one and is in the interest of both master and servant. This section, like the rest of the Ordinance, is a useful one if the officers who administer the Ordinance observe its provisions; but unfortunately this is not always the case, and I have heard of instances where Magistrates have ordered servants to pay compensation or to go to prison in default when they have not been entirely, if at all, responsible for the losses. Mr. McClellan in his report of July 9th, suggests that a limit be placed on an employee's liability, and the case mentioned by him, which I here repeat, shows his reasons for this suggestion and gives an instance of what some employers expect from their native servants. Two children aged about 9 and 13 were placed in charge of a mob of 500 sheep valued at Rs. 2500, and were held to be liable by their employer (the East Africa Syndicate) for the loss

of two of them. Other cases, which are frequent occurrences, are when boys are employed to herd stock by day and are expected to keep watch by night. If, as Mr. McClellan says, a couple of cows are stolen during the night, and if, as is possible, the boys are held to be responsible by the Magistrate as they are by their employers, they would have to work for 8 years for nothing in order to pay for the loss, or go to gaol.

9. Over and above the suggested amendments made in the preceding paragraphs I should like to see provision made to prevent a master from being able to dismiss a servant without giving him the wherewithal to enable him to return to the town or place at which he was engaged. It is a common practice for Europeans to engage servants at Mombasa without entering into agreements with them and to take them to other places in the interior. As the law stands at present the servant can, I think, be dismissed at any time or at any place, and the master is not responsible for his future.

I should also like to see provision made to ensure that labourers are suitably fed, housed and when necessary clothed by the employer if such labourers are not the natives of the district in which they are employed, and that when labourers are obliged to walk several days from the place at which they work to their homes after their term of service has expired, a sufficient supply of food is given them to enable them to reach their homes. Deaths from starvation amongst labourers returning from Nairobi and from various places on the Railway to their homes have been of frequent occurrence in the past; and it should in my opinion be a criminal offence for an employer to discharge men without taking precautions to prevent their dying of hunger on the way back to their homes.

NAIROBI.

October 22nd. 1907.

Secretary for Native Affairs.

HIGH COURT

Circular to Magistrates No. I of 1907.

1. OWING to the observation of the High Court of cases which have come to its notice in which proceedings have been taken under the Master and Servant Ordinance 1905, the attention of Magistrates is requested to the following points:-

2. Proceedings under this Ordinance are only quasi criminal. The party complained against need not necessarily be placed in the dock and can give evidence in his own behalf. (Articles 30 and 31)

3. All process issued under the Ordinance is free and neither party to a dispute is to be charged fees. (Article 33).

4. The Government in fact stands in the position, in the person of the Collector, of an arbitrator giving his services free to settle disputes.

5. To effect this the Collector is given very wide discretionary powers (Art. 19) of adjusting disputes, and his efforts should be directed to that end and the real cause of dispute thoroughly enquired into, and in cases of desertion the deserter should be carefully examined to ascertain the actual reason of his desertion.

6. The power to inflict penalties should not be resorted to except in those cases in which other adjustment is impossible or which obviously call for punishment.

7. The Magistrate must where the agreement between the employer and employed exceeds one month in all cases call for a duplicate written agreement or an attested copy of the original, in order that the Magistrate may be in a position to adjudicate on the dispute properly it is essential that this should be before him.

8. No such written agreement can be enforced against any party unless it contains the attestation required by Art. 8 with the particulars detailed in Art. 5.

sgd. R. W. HAMILTON  
Principal Judge.

In Despatch No. 135 of P.A.S. 25/1009.

MEMORANDUM ON THE WORKING OF THE  
MASTER & SERVANTS ORDINANCE.

- (1) The most important provision of this Ordinance is that contained in Article 12 under which the Collector has the widest discretionary powers of adjusting disputes.
- (2) In order to be assured that these powers were being properly exercised the High Court has since the Ordinance came into force in April 1906 called for the record of all cases under the Ordinance that have come to its notice in the monthly judicial returns of Magistrates.
- (3) I am not aware of a single instance in which application has been made to the Courts by a servant. They have all been made at the instance of the master.
- (4) The great majority of the cases called for have not been properly dealt with by the Collector or Acting Collector before whom they have come; and consequently during last 9 months 13 cases under the Ordinance have been revised and the Magistrate's order set aside.
- (5) The Registering officers have frequently omitted the attestation required in Article 5, and the Magistrates have omitted to call for the contract, and appear in some instances not to have exercised their discretionary powers but to have meted out summary punishment to the defendant labourer under their powers of flogging.
- (6) I regard the Ordinance itself on the whole as a

most useful piece of legislation but the manner in which it has been worked in practice leaves much to be desired, for instead of the Government acting in the person of the Collector as arbitrator in disputes the Ordinance has not infrequently been used as a means of punishing labourers who have been engaged, under contracts which are not in accordance with its terms.

- (7) In some instances fees have been charged for process contrary to Article 35 and contracts appear to have been registered per head instead of per contract.

As a consequence employers of labour have had a legitimate ground of complaint in the action of the Government in charging such fees when as a matter of fact the charges were not in accordance with the Ordinance. They have also been led to argue wrongly that seeing what they pay there is an obligation on the Government to catch their labourers when they desert.

- (8) The faults to which I allude and which give rise to complaint do not in my opinion lie in the Ordinance but in the frequent omission on the part of those whose duty it is to administer it to observe its provisions.

- (9) I attach a circular on the subject issued by me to Magistrates in February of this year.

Sd/- R.W. HAMILTON.

Principal Judge.

11/5/07.

MASTER AND SERVANTS ORDINANCE 1907.

I agree generally with Mr. Hollis and the Crown Advocate's remarks. If the provisions of Section 3 of the Ordinance are properly carried out there is in my opinion no objection to contracts extending for as long a period as three years.

If as Mr. Hollis adds all the tribes who are likely to supply labour know the value of money the necessity for a provision making payment in kind value disappears in so far as contracts to work instead of paying rent are concerned. I observe, however, that in Mr. Hollis' agreement (copy annexed to his memo) a fixed wage is provided for the work done by the employed in addition to the permission to occupy and cultivate land and if settlers are prepared to enter into such agreements the necessity for Section 14 of the Ordinance is not so apparent.

It would, if Mr. Hollis' facts are correct, be politic to make some payment in money obligatory under every contract of service the amount could be based on the value of other services rendered to the employer by the employed.

I most strongly support the recommendation that a provision be enacted making the payment of wages monthly or weekly as the nature of the contract requires and never at longer intervals than a month.

If the Magistrate exercise common sense, I do not think



think there is a hole in the provision of Section 21 sub-section 2. The sub-section is open to abuse as shown by a case in which several boys were sentenced to be flogged for failing to appear at the proper hour to do their work.

As has been pointed out the success or otherwise of the Ordinance depends on its administration; if the wide powers ~~power~~ given to the Magistrates under it are judiciously exercised, I am of the opinion that its provisions will prove of great benefit to both employers and employed.

sd/- J. W. BARTH.

NO:10:1900

ENCLOSURE

(12)

## MINUTE PAPER.

WITH REFERENCE to the Master and Servants Ordinance  
1906.

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I would suggest that the following alterations should  
be made in the Master and Servants Ordinance 1906:-

Section 1. The definition of the word "Servant" should be  
altered so as to include all labourers.

Section 14. If as Mr. Hollis states it is the custom for  
landowners to pay wages to the natives who reside on their  
farms for the services rendered by them to such landowners  
there is no necessity for the retention of Section 14.

I entirely agree with the suggestions that provisions  
should be made compelling employers to pay their servants  
monthly or weekly as the nature of the contract requires.

Sections 16 & 17. For "Magistrate of the first or second class"  
there should be substituted "Magistrate holding a Court  
of the first or second class".

Section 24. I think that this Section might be deleted  
altogether or if not deleted that it should be left to the  
discretion of the Court convicting the servant to say  
whether or not the period of imprisonment should be added  
to the term of service.

Section 25. This I think should also be left to the discretion  
of the Magistrate.

Section 26. I am inclined to the opinion that my original  
interpretation of this Section was wrong and that the  
provisions of the Section are wider than I thought as are  
proper.

It is necessary that some provisions should be made whereby a Magistrate may order a servant to compensate his master for any property lost or damaged by the wilful act or neglect of the servant, and that the Magistrate, after making such enquiries into the means of the servant as may be necessary, should be permitted to order the compensation to be paid in a lump sum or by instalments.

I would suggest that provision to this effect should be made in lieu of the existing Section 26.

I do not think that there is any necessity for the latter part of the Section which imposes imprisonment on a person neglecting to pay the compensation awarded.

MOMBASA,

CROWN ADVOCATE.

JANUARY 22nd 1908.

R. 57  
D. 1  
348

P.A.P.  
no.  
for 434

*Leaves*  
*Indy* 15th '08

Sir,

I have the honour to ack. the recd. of your letter of 13th of the 28th inst. regarding a report on the working of the Master and Servants Ordinance of the E. A. Prot.

I regret to observe that this Ordinance is capable of being used, and has in fact at times been used, as an instrument of oppression, and I have read with concern that part of Mr Hollis's memorandum which deals with the manner in which the Ordinance has been administered by magistrates.

The Ordinance has, however, been in operation for two years, and for the present I propose to leave it in operation; but it must clearly be understood that, when the Ordinance comes up for amendment, a system so favourable to the employers will not necessarily be continued.

I am addressing you in a separate despatch on the general question of the supply of labour to the mines in that despatch.

I have suggested that the Master and Servants Ordinance should be embodied in a general Ordinance dealing with the whole question of native labour. For the present, therefore, I am content to accept the amendments which you propose to make in the existing Ordinance; but in due course you should submit for my consent, the draft of a comprehensive Ordinance dealing with the whole question from the point of view of both the master and servant.

H. R. C. 28/8

Mr Hollis

Mr Head

N. C. 28

*See 1/29/8*  
*48*

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