

EAST AFR. PROT.

19549

30 MAY 08

19549

No. 211

(Subject)

1908

Order 2 1908

Judgment Extension

Tracy

Last previous Paper

Submit

15658

Open copies to Tracy (Minutes)

Mr. Ristey

Mr. Cox
Mr. Anderson

substantially identical material included with
copy to Mr. Cox of 1908

At once
4/30
4/6

4/16/08

4/16/08

4/16

Governor's Office

Nairobi,

30 MAY 08

No. 232

(Incl. 2)

My Lord,

With reference to Your Lordship's despatch No. 624 of the 15th of November 1907, I have the honour to transmit herewith two authenticated and air printed copies of an Ordinance which has recently been passed by the Legislative Council, together with an explanatory memorandum by the Crown Advocate giving the reasons for its enactment.

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

My Lord,

Your Lordship's most obedient,
humble servant,



SECRETARY OF STATE
FOR THE COLONIES,

DOWNING STREET,

LONDON, E.C.W.

MEMORANDUM

THE JUDGMENTS EXTENSION ORDINANCE 1908.

19549
 Recd
 30 MAY 08

1. The Judgments Extension Ordinance 1905 enables the Courts of this Protectorate to execute decrees passed by the Courts of Uganda.

The purpose of this Ordinance is to extend the provisions of that Ordinance to decrees passed by His Britannic Majesty's Court for Zanzibar and further to make provisions whereby warrants issued by His Britannic Majesty's Court for Zanzibar or by the Uganda Court for the arrest of a defendant in a Civil case may be executed by the High Court or by a Magistrate holding a Subordinate Court of the first class in this Protectorate.

2. The Secretary of State has approved of legislation for these purposes on the understanding that similar laws will be made in Zanzibar and Uganda.

3. A draft of the law ~~was~~ prepared by Judge Lindsay Smith which it is proposed to pass in Zanzibar and which is based upon the Judgments Extension Ordinance 1905 of this Protectorate was submitted to His Excellency the Governor by the Secretary of State and has been followed in the Ordinance under consideration with such alterations and additions as have been considered necessary and are explained in Schedule hereto.

The Ordinance is one to which His Excellency the Governor may properly assent on behalf of His Majesty.

J. H. Lamb

CROWN ADVOCATE.

THE JUDGMENT REVISION ORDINANCE 1908.

Section.	Remarks.
Section 1. Transfer and execution of Zanzibar and Uganda decrees in East Africa.	Section 2 of the Judgments Extension Ordinance 1905 with such additions as are necessary to extend the provisions of that Section to decrees passed by His Britannic Majesty's Court for Zanzibar. Section 1 of Judge Lindsey Smith's draft of the regulations proposed for Zanzibar.
Section 2. The execution in East Africa of warrants issued in Civil Cases in Zanzibar and Uganda.	Section 2 of Judge Lindsey Smith's draft with the alteration suggested in Judge Barth's minute thereon and approved by the Secretary of State.
Section 3. Fees.	Section 3 of Judge Lindsey Smith's draft.
Section 4. Courts to take security from plaintiff before requesting Zanzibar or Uganda Courts to execute warrants issued in Civil cases.	Judge Lindsey Smith's draft of this Section was ultra vires in so far as it proposed to legislate for this Protectorate and Uganda. It is understood that provisions similar to Section 4 of the East Africa Ordinance will be made in the Zanzibar and Uganda laws.
Section 5. Power to extend the provisions of the Ordinance as regards decrees to other Protectorate or places.	Section 4 of the Judgments Extension Ordinance 1905.
Section 6. Repeal.	
Section 7. Short title.	

A. P. Smith

CROWN ADVOCATE.

Governor's Office,
Nairobi,
23rd 1908.

~~PROTECTORATE~~

No. 218
(Incl. 1)

19551

My Lord,

I have the honour to acknowledge
of Your Lordship's despatch No. 154 of the 19th March
conveying Your Lordship's instructions with regard to
the new Land Laws. A draft Ordinance is being
prepared on these instructions, but it is felt that it
would be a pity to deal with only a portion of the
Protectorate in an enactment on a subject of this
importance, more especially as the differences which
would be required in legislation between the conditions
of the highlands and lowlands are not so great as would
appear to be the case.

2. In this connection, as well as the other
points raised therein, I would solicit Your Lordship's
consideration of Colonel Montgomery's report No. 37 of
to-day's date, herewith enclosed. The other points
raised are briefly as follows:-

- (a) The composition and powers of the Land Board;
- (b) The maximum scales of rents to be imposed on
the 2nd and 3rd periods of 99 years' leases;
- (c) Land grants to Indians;
- (d) Differentiation between highlands and lowlands.

3. I am in general accord with Colonel

H. R. PROTECTORAL SECRETARY OF STATE

PROTECTOR

PROTECTOR

LOHNS, N. Y.

Handwritten notes and signatures at the bottom left of the page.

The question was very carefully discussed at the Concessions Committee, and I should not depart from the figures approved by Lord Elgin on their advice.

4. The terms of grants to Indians (who are to be allowed land in the lowlands only, viz., grants of 20 or at most 100 acres for each family)

5. I think we should follow Colonel Montgomery's advice and settle the whole question of land both in highlands and lowlands in one Ordinance. His proposals for the amount of grants in the lowlands - that their area should be only 2/6ths of those given in the highlands on account of the greater fertility of the lowlands is reasonable.

6. I also agree that the rules as to dunnage and surtax on large accumulations should be embodied in the main ^{Bill} (See paragraphs 22 to 24 of Lord Elgin's despatch).

7. Colonel Montgomery suggests we should confer with the Crown Advocate who is on leave. But I don't think this is necessary - the questions involved are mainly matters of policy not of law - and such consultations are likely to delay the early settlement for which he presses.

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Efficiency.

This includes those tracts in which a white man can live without discomfort, and can even do some out door work without injury to his health.

The division of the country has been carried out on this principle and has the general approval of the Land Board. The highlands include roughly the tract lying North of the second degree of South Latitude, and that lying between the 35th. and 36th. degrees of longitude. Outside this region the climate is hot and in many parts unhealthy, and the tract is certainly nothing more than a planter's country.

As to conditions it is proposed to give smaller grants in the lowlands, and not to insist on white occupation.

The ordinary maximum grants to be given in the two different tracts are compared below:-

<u>Class.</u>	<u>Highlands.</u>	<u>Lowlands.</u>
I	900 acres.	320 acres.
II	1400 "	640 "
III	2600 "	1200 "
IV	5000 "	2000 "

The Coast and Lake lands are generally more fertile than those in the uplands, and it is admitted that a smaller area can be profitably worked in the former than in the latter.

In the highlands to small require white occupation and development to the value of 10 times the rental. In the lowlands to give the same value on the same conditions, or of an expenditure equal to 20 times

His Excellency

Since the meeting of the Board on 27th October, 1937, the Committee has written you.

The Committee is of the opinion that the Government has adopted the correct line, and that the Government should now assume a more active role in the promotion of these conditions.

The Committee is of the opinion that the measures to be adopted to prevent excessive concentration of land in the hands of individuals, and to secure a more direct and effective control of the land, should be advocated by the Government, and that the Government should also be concerned with the question of securing the boundaries of the estate, and the interests of the estate, and that the Government should also be concerned with the other points mentioned in the report. I think it would be desirable to include these points in one bill. The Committee also recommends that the instructions in the subject matter of the report of the Acting Director should be given to the owners of the land, and that the Government should be concerned with the revenue of the country. The tax will be based on an incremental value according to the size of the property, and is on the order of the income tax and the corporation tax, and is locally levied.

10. I trust that the Committee's report will be of some assistance to you in the consideration of the proposals.

His Excellency B.

now for a long time, and it is important that we
should bring out the new grain with as little delay
as possible.

I have the honour to be,
Your Excellency's
most obedient servant,

J. Montgomery
(J. Montgomery)
Commissioner of Lands.

Sw. 288
1857
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DRAFT

E. G. P. (No. 383)

Earl of Salter

MINUTE.

Mr. Davis 4 Aug

Mr. Reed 4

Mr. Just

~~Mr. ...~~

Mr. Coe

Sir C. Evans

Sir E. Hornwood

X Col. Stuy

The Earl of Crews

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not thought
C.O. 10 July
not thought
C.O. 10 Aug

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S.C. did
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4. 18

11 Aug 1857
to, I have to have had the
act of your desk No 213 of the
X the day, submitting a report of
Ch. Montgomery on various
matters connected with the
question of the tenure of land in
the East Africa Protectorate
2. I regret not to be
able to accept Ch. Montgomery's
recommendation that the Land
Board should be constituted with
members who would possess of an
admission to the character of
with some persons who be
able to do the work of the
of my presence in East Africa

to other intending settlers from
taking up land. I am 565
however fixed as to the
and the ~~unimproved~~ value of
the land ~~which~~ the enhanced
rent ~~thereof~~ & these increases
will be calculated up on the
'unearned increment' of the value
of the land and that tenants'
improvements will be excluded
from the calculation. In these
circumstances I am not prepared to
depart from the instructions
given by my predecessor after
the most careful investigation.

4. I can say ^{generally} in the terms
in which Mr. Lambson
indicates that lands should be
leased to tenants and I recall
his view that the whole system