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NOV 09

Governor. No.

Board 594

1909

10 Oct.

Last Previous Paper.

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2956

~~John P. ...~~  
 W. ...

I have attached (1) a copy of the Native Patent & Labour Regulations No. 3 of 1909 which is repealed by this Ordinance.

(2) a copy of the Master & Servants Ord. No. 8 of 1906.

For the purpose of easier reference, I have underlined in red all differences in the two Ordinances (1906 and 1909).

It will be seen that the differences may be divided into -

(A) Detail where the 1909 Ord. follows 1906 Ord.

(B) Large additions - i.e. §§ 16-22 Apprenticeship contracts; §§ 24-22 Care of Servants; §§ 33-39 Labour Agents.

(A)

(A) Most of the detailed alterations are included, and remarked upon in the Cram Advocate Memo. (enc. to 29567). Certain points may perhaps be noticed:

§2. The ordinance is confined to servants who are Arabs or natives of Africa (not of European or Asiatic origin). This seems to be justified in the vic. explained in CA's memo: para 2. - ~~increasing number of the important question of imported laborers from the East Indies (see also the minutes appended)~~

§6(d). A stipulation is now made for contracts to state that employer will pay wages at monthly or smaller intervals unless otherwise expressly desired by the employee.

This meets Mr. Hollis' views (see his memo: in 13729 p. 5 top and p. 2 bottom).

§11. Contracts - other than those of apprenticeship - are not valid for more than two years. The 1906 Ord. had three years. Para. 3 p. 2 of Mr.

Hollis' memo: raises query as to the three year period, but in view of the sections 16-23 apprenticeship contracts, it is clearly desirable to cut down the period of validity (cf. para 7 of his) Bayes Sadler's des. in 13729).

in applying to written contracts - I think sec 12 (a) (i) intended to apply to oral contracts (for month or less - see p. 3 (2)) J.S.R.

§12 (a) (i). In cases where wages are not fixed by the contract or where the contract is to pay "longer at any period or at any rate" other than monthly, contract the contract "shall be determinable by either party at the close of any day" without notice.

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I think this needs consideration.

(d) No contract is to be attested acc. to § 6 (c) unless it states as accurately as may be the remuneration to be paid.

(β) Determinability without notice at the close of any day is also in the 1906 Ord. It does not seem very satisfactory for either party. The amount is protected by the clauses requiring 24-32 to some extent.

Even so, it is not all why only monthly payment contracts are treated in this way. "Why not weekly payment contracts also?"

§§ 13 and 14 (of the 1906 Ord.). Provision for payment in kind is abolished. This appears to be justified - (cf. para 7 of his) Bayes Sadler's des. in 13729 & Mr. Hollis' memo, enclosed therein para. 4, p. 3) & it is satisfactory to note the progress of the native which enables him to understand currency.

§40. Complaints may now be made to a 2<sup>nd</sup> class magistrate or J.P. who may not adjudicate on the complaint but submit to the proper authority. This provision is clearly useful, as the necessary magistrate of 2<sup>nd</sup> or 4<sup>th</sup> class might be miles away: and the more the opportunities of either party lodging a complaint, the more the likelihood of the ord<sup>n</sup>. working as it is meant to work.

§45 (b) ( § 191k of 1906 Ord<sup>n</sup> ). Sir J. Kaye's saddle in p. 6 of his despatch 13729 anticipated the reduction of ~~the~~ the term of imprisonment to a maximum of two months. No change, however, has been made but Mr. H. H. in his memo. did not advocate any alteration & I see no reason for objecting to the 3-month term, unless the argument put forward by Mr. Crowell in his minute of 20 Aug. in 13729 is to be accepted - viz. if in Trinidad they have a limit of 2 months, you must not go beyond 2 months in E.A. For my own part, I distrust these odious comparisons & the principle (as illustrated in West & East Africa, for example) leads to confusion, if insisted on.

§45 (c). Civil procedure v. criminal. This seems an important point, but one on which I think the legal dept. is alone competent to advise.

§47 (2) Mr. Crowell in the minute already referred to objected to "hard labour" ever being given for absences from work.

This point I think must be left to the discretion of the magistrate, as in the case with the Ord<sup>n</sup> as it is now drafted. If it is considered that hard labour must not be allowed in these cases, then a special section would be needed to bear up this.

§47 (3) Useful additions, which should remain untouched.

§51 The alteration here (may) needs the suggestion of Mr. H. H. (para 7 of his memo).

§52 They have been set down from the 5<sup>th</sup> of the 1906 Ord<sup>n</sup>. The C.A.'s recommendation in his memo. of 22 Jan. 1904 (and to 13729) has been carried out in the respect of the Governor's course in the C.A.'s view. It is, indeed, perfect to the extent it is to be looked to in punishment - the other - the section as it now stands seems quite satisfactory.

§55 The penalty on the employer for withholding wages etc. is now £100 or imprisonment on default of payment of the imprisonment not more than 6 months. The Ord<sup>n</sup> of 1906 it was £100 or imprisonment not more than one month. The Ord<sup>n</sup> in the fine is serious.

but the Gov. considers that it is made up for by the possibility of fine + imprison-ment.

I doubt, however, whether this works out fairly. The chances are that an employer will not be imprisoned, ~~if~~ unless he has done something especially disgraceful or by limiting the fine. It appears that he is might be apt to get off more cheaply than he ought.

## B. Large additions

(1) §§ 1 & 2. Apprenticeship Contracts. These sections are taken verbatim from the Gold Coast Ord. 4 of 1893 (Copy can be consulted in W.A. Dept). Is a striking subject to in detail & the insertion of rules to govern this ~~kind~~ <sup>kind</sup> of contract is desirable: indeed if only the 2 virtuous youth can be prevailed upon to take up some trade properly as this Ord. anticipates we may together with Capt. Edward's scheme for the training & recruitment of police do a deal of good for the betterment of the native

is an interesting point. 413  
The penalty for removing apprentices, etc. is imprisonment not exceeding 12 months or fine not exceeding R<sup>s</sup> 1500.

I have never understood by what means imprisonment is equated with fines. 1st of one month = R<sup>s</sup> 1500 here I don't see why = § 39

R<sup>s</sup> 1500 = 3 months

(2) Care of servants. § 14 - 32

Excellent addition, and most useful for bringing to the notice of people who do not care pay anything about native labour. (I corresponded in 1877 (at) the only point that needs to be considered is the question of time when to become possessed of the pledged jersey or water bottle: the payment on the instalment system is all right, to end in any case. I think it is some safeguard against theft. It is for reason whether it wd. not be well to require a stipulation in each contract saying that if clothes is supplied with blanket, jersey & water bottle, he shall pay so much out of his wage (not toward a certain proportion), but if at the end of the time he prefers to have the money &

restore the goods, well: he might perhaps pay a very small percentage for wear & tear (water bottles last a long time, & blankets too, if they resemble the Army blankets) & by this means you ensure -

- (a) the employer is protected against theft.
- (b) the native is clothed as far as is useful
- (c) the native at the end of his contract has got a small sum saved up waiting for him.

### (3) Labour Agents §§ 33-39.

A useful set of sections to regulate the recruitment of native labour by "labour agents," as defined in § 2 of the Ord<sup>n</sup>. I do not see anything objectionable, except the 3 months imprisonment = R<sup>s</sup> 1500 in § 39, referred to above.

The net result of the new Ord<sup>n</sup> is to make a fairer arrangement from the point of view of the employer & the employee: and provided that the Ord<sup>n</sup> be administered rightly - and there seems little doubt

I would like to see the matter above.

seems to be a matter of fact from the labour agent's point of view. I do not see anything objectionable, except the 3 months imprisonment = R<sup>s</sup> 1500 in § 39, referred to above.

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really safeguarded the interest of the native no less than those of the master. Indeed the result of its changes is in favour of the employer practically all along the line - with the exception of minor points such as those raised in this minute. I should be inclined to say that the Ord<sup>n</sup> might be allowed.

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It may further be noted that the question of <sup>non-Exp</sup> regulated (or indeed any other) native labour, referred to in Mr. Read's minute of 2/7/21 in 13829/2 P.S.P. appears to have been previously considered but I am not quite clear that it is covered by the Ord<sup>n</sup> either under foreign contracts or labour agents: and if straight desirable it might be well to have additional clauses made in an amending Ord<sup>n</sup> after this one is allowed in order to cover the question. <sup>at least</sup>

I have the honour to be, Sir, your obedient servant  
A. J. P.

✓ Sec 12(a). The operation of this is, I think, obscure  
in view of the opening words of (i) "in cases where the  
wages are not fixed or" which the original intention  
was to confine (i) to oral contracts - but apparently  
(a) (ii) and (b) apply to written contracts, and  
→ find some difficulty in construing, two notes  
and a whole early sec 3-b

2/ Foreign unemployed labour from Newfoundland a domestic

This is not dealt with either under Foreign  
contracts of service (see definition Labour Regd  
Contract which are concerned with the export  
of labour from the Protectorate. Nor is it dealt  
with under the head of "labour" to which  
the labourers "are after their importation recruited"  
by Labour Agents within the Prot. The  
word of course does not cover recruits  
outside the Prot. J.

But any "native" (see definition) when introduced  
to labour in the Prot., if he comes within the  
words definition of "servant", becomes int. to  
the Empire & subject to the provisions  
of a Servant (and his master to those  
of an employer) under the act.

SJA 2/12

W. Fielder. This is a great advance in previous  
arrangements. With regard to sec 12 (a), note in the course of 1st  
minute. In section 55, I think that "the hundred Papers"  
should be altered to "the first hundred Papers".  
In the last line of the 1st para of  
Section 62 "attention" should be "attention".

With regard to the question of certain provisions  
raised by Mr. Parkman see Mr. Bailey's minute at the top  
of the 7th page of Mr. P's minute with which I agree.

allow the word "subject"  
to what is stated

the first part of my minute

Col. Bailey

Lord Curzon

Person in charge

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38013

REC'D  
NOV 27 1909

GOVERNMENT HOUSE,

Nairobi,

416

October 18th 1909.

EAST AFRICA PROTECTORATE.

No. 594

My Lord,

024  
29507

With reference to Your Lordship's despatch No. 588 of the 17th ultimo, I have the honour to inform Your Lordship that I concur with the provisions of the Masters and Servants Ordinance 1909.

I have the honour to be

Your Lordship's humble

obedient servant

*R. J. ...*  
GOVERNOR.

H. H. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES.

DOWNING STREET,

LONDON, S. W.





appears to me to be  
obscure. In view  
of the opening words  
of <sup>paragraph</sup> subsection (1)

"in cases where  
the wages are  
not fixed etc"  
<sup>might</sup> the intention, I presume,  
was to confine  
this <sup>paragraph</sup> subsection to  
oral contracts, but  
~~apparently a doubt~~

<sup>and paragraph</sup> (1) and ~~12 (b)~~  
apply to written  
contracts, <sup>and</sup>  
in consequence, I find  
some difficulty in  
construing this  
section as a whole  
with sections 3-6

3. In section 5,  
I am of opinion  
that

but apparently, <sup>paragraph</sup> (1) which  
also is applicable to a written contract  
providing for weekly or fortnightly  
payment of wages, and it is  
<sup>clear</sup> apparent that such contracts do  
not differ from written  
contracts providing for monthly  
payment of wages which fall  
within <sup>paragraph</sup> (1).  
However, in view of the language  
in the first line of the section, it  
is no argument is expressed here  
respecting its duration.

that the fine <sup>not</sup> of exceeding  
one hundred rupees  
to which the employer  
is liable should  
be increased to a  
fine not exceeding  
five hundred  
rupees. 418  
In section 62,  
attention should  
be attracted.

I have