

EAST AFR. PROT.

No. 33231

33231

Dec 16 1895

(Subject.)

Report of Land Commission

Subject's his observations on
if any of appointments recommended by
the Board are approved as a whole
they are hereby

(Minute)

Mr. Read

I submit a typed minute on
this paper. It is to be considered
with Mr. Powell's report on the
Survey. The survey is the first
control of a satisfactory land system.
Speaking generally the Commission
work is better than their late. I mean
that when it is they appear to
advocate free transfer & with a view
to a land boom & land speculation
like that which took place in the early
days of Victoria. Their actual
proposals are of a much more
moderate character.

M.R./

Mr. Antrobus

I have very little to add to Mr. Elliot's
very interesting minute with which I agree

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H.L. 158 - AUGUST 1907

question

It is, as the Commission
say (Chap 4 of Report), of the
greatest importance at this
time that the Govt should
be able to work with a policy
well thought out beforehand;
and this Report although it
contains no knowledge of the
history of land legislation
in other countries, is a very
useful piece of work, and
the proposals made in it
are generally reasonable.

I agree that a Land
Board, as proposed by the Com-
mission, should be created
and it should contain a Council
for Provinces as well as one
for (Australia); and that
the most urgent and important
matter now is to elect a
Council for Land, who will be
able to advise the Govt on the
best possible lines for
the future, and to see that
the Govt does not do anything

10

settlement in Canada or Aus-
tralia is a matter which
requires further discussion.

11th Nov 27

As to the Council for Land, I should
very much incline to Canada rather
than to Australia or New Zealand,
though I am not at all sure that
an English barrister would not best
fill the position -

11/10

20/11

W. G. G. G.

Further to Mr. Ekin's remarks because
is not a final decision of the Commission
but that it is due to the Report of the Land
Committee to form the basis of
discussion among the members of the
future Law Board.

The representative points therefore for
decision for the Govt of the Govt is to
appoint a Chairman of the Board.
I should have preferred the selection to be
made from those in this country; and
concerning the qualifications suggested
by the Commission

At Antwerp.

At Sir M. Ommeney's request, I have seen Mr Holderness of the J.O. who originally recommended Mr Preston. He says that he suggested Mr Preston as he thought that he was the best man available in the country. He also thought that, as Mr P. was an able man & had had some experience of administration with irrigation schemes, he would have been sufficiently qualified for the present office. It seems probable

however that Mr P. will be required ^{in any case} India. Mr Holderness is to agree that a regular salt & Officer would be more for our purposes, but we have to get him from the terms offered, he does not think that we should get a man more than 35 or so. He thinks we should write

to them
to the Treasury & approval of the proposed terms to the J.O.?

We must also
Mr Preston
we have
mentioned the
wanted

H V R

10/2
18th Feb 10

S. proceed.

7/10
10/2 clause

I should not offer
 free passages to & from this
 country on such-leaves, but
 otherwise I cannot discuss your
 proposed terms of appointment
 of the S. Africa Land Comm. If you
~~will~~ sound him before he gets his
 cable from India, offer your terms
 "subject to Treasury approval,"
 have not consulted my chiefs.

Yours sincerely
 Robert C. Anderson



AFRICA PROTECTORATE.

No. 458

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H. L. 158 AUGUST 1907

With reference to despatch No. 864 of June 1897,

forwarding copies of the Report drawn up by the Committee

I appointed to enquire into the land question in the East

Africa Protectorate, I have the honour to submit to you herewith

my comments. I consider that the report on the whole

is carefully thought out and excellently put together,

embodying as it does the views of the many persons who gave

evidence before the Commission.

There is undoubtedly a strong feeling amongst the

settlers that the conditions under which they lease land

in the Protectorate are too stringent, and the great

complaint is that they have no power of lease transfer.

There is much to be said on both sides, and it would

Principal Secretary of State

for the Colonies,

Downing Street,

LONDON.

would bring in capital and increase speculation. The first comers who have perhaps bought land merely as a speculation and have done no work on it, would receive a large profit by selling, and it is doubtful if the purchasers would do any more work than their predecessors. They might simply remain in possession of the land and wait for an opportunity to sell again at a profit. In the meantime, though money is circulated by this method, the land itself is not developed. As the law stands at present, a man before obtaining a transfer must show that he has done some legitimate work, and if after a certain period no attempt is made to develop the property, the land reverts to Government. A solution to this question may be possibly found in a proposal put forward by Mr. Ainsworth, which is enclosed herewith, namely to levy a tax on all unoccupied or unproductive land whilst allowing free transfer of free hold property.

Article 9 of the Crown Lands Ordinance seems a very important one, and one which might be modified to the extent of returning to the original purchaser on the re-sale of the land the whole or a portion of what he

originally

originally paid.

4. Irrigation laws have not yet been promulgated. They are, however, very necessary and will prevent much litigation in the future.

5. Article 11. I can see no hardship in the terms of this article as permission to renew his lease is never likely to be withheld from a man who has done good work on his property. Some leases are for short periods, but a great many are up to ninety nine years.

6. Article 14. I see no reason to alter this section. That the land leased may not be assigned without the consent of the Commissioner is to enable the Government to keep a check on the slaves of men that may come into the country. The requisite consent would never be refused to any desirable person.

7. I am of opinion that sub-section (d) to Article 14 should be retained, otherwise landholders might be unable to obtain access to their estates at all. Cases have already arisen where one man has tried to block another by refusing to allow a road to pass through his property, and it has

been

been necessary for Government to intervene.

Sub-section (d) of the proposals of the Land Committee were carried out, it would be impossible for a person to travel in the Kikuyu districts as there is not a single property of four thousand acres in it.

9. Article 14. The drainage of the town of Nairobi is undertaken by the Municipality and the Water Supply by the Railway. I am afraid that the time has not yet come to entertain propositions as to water works, etc. in other parts of the Protectorate.

10. Article 15. I do not agree with the Committee's recommendations with regard to this article. It seems to me that the Collector of the district would naturally know more of the merits of such cases than an outside person and is the right person to deal with them.

11. Article 17, 24 & 25. A better definition of the term "generals" would be certainly desirable, at any rate to enable a man to use the surplus store on his own land for building purposes. As to the Government reserving to itself the

power of drawing on the country for stone, timber, etc., required for making roads, bridges or other public works, I consider it quite necessary as material might otherwise have to be brought from long distances at enormous expense.

12. With regard to the price of land it is true that the present system of classifying and valuing land is not very satisfactory, though as the rates are extremely low, no landings are suffered.

13. That no person should possess more than one homestead is entirely in accordance with my own views. There are few people either at home or here who can satisfactorily develop a farm of six hundred and forty acres without a large capital.

14. I do not see, however, how the area for homesteads in the Kikuyu district can now be reduced except in cases where the land reverts to Government. In such cases it would be an excellent thing to sell the land outright in plots of three hundred and twenty acres. Practically the whole of the Kikuyu district is leased as homesteads, but there has been no great tendency on the part of the public to apply for them in other parts of the Protectorate.

- In the event of applications being received, I think the smaller area, sold outright, preferable to the larger.
15. As regards the method of payment of homestead selections, I do not advocate that it be spread over a number of years, as this would mean expense to the Government in the way of clerks, collectors, etc. It would be preferable for a Bank to lend the money.
16. Rules 17, 18 and 19. I am rather in favour of the comments on these Rules and "beneficial occupation," as defined, would possibly meet the case. It would be well to ^{define} divide the rules relating to forest and fencing, if the proposals of the Committee in this respect are worthy of consideration.
17. With regard to the branding of cattle, an Ordinance is being prepared according to the terms of which all cattle must be clearly marked or branded.
18. The monetary qualification which is so strongly objected to seems to be of little use, though it has perhaps kept out some paupers. There is no doubt that on several occasions the necessary money has been borrowed

for a few hours to enable people to qualify. This restriction might well be abolished. A statement signed by the land owners to the effect that an applicant is respectable and a fit person to take up land would doubtless answer the purpose quite as well.

19. Rule 20. I am inclined to concur with the recommendations of the Committee on this point. If the law were altered I am sure that the country's resources would be more speedily developed, though certain individuals would doubtless abuse their power.

20. Whatever decision is taken with regard to the transfers they ought to be absolutely barred to Indians or natives in the districts suitable to European colonization. Owing to the insanitary habits of Asiatic and African, they are not fit persons to take up land as neighbours of Europeans. There are enormous tracts of land in the Protectorate perfectly suitable for Indians to develop without encroaching on the comparatively small area suitable for European settlement. There is no objection to the small plots and gardens which have already been leased to Indians and natives in the

highlands, as they are generally far from the European dwellings, and being of small extent, can be easily controlled.

21. As regards the question of native reserves, I have not been able to make up my mind from the evidence at my disposal as to which is the better method, large reserves far removed from centres of European population or small reserves scattered up and down the country. The opinions of settlers differ largely on this point and whichever scheme is adopted it will require most careful consideration as to the locality, size, etc. of the proposed reserves. The class of native, whether agricultural or pastoral, would also have to be taken into account.

22. The question of survey is one of supreme importance to this Protectorate, and I am dealing with it in a separate despatch enclosing Colonel Smith's report, on the Land and Survey office of this Protectorate. This report should be read in conjunction with the Land Committee's suggestions and proposals.

23. With regard to townships this matter is already in hand.

land having been reserved wherever it seems likely a township may spring up.

24. I am strongly in favour of more time being allowed for the erection of buildings in township lots. At present a number of tarry built houses are being run up in order to comply with the requirements of the law, whereas if more time were granted, a better class of houses would be erected. I think the time should be extended to five years, not ten as the Committee recommends, otherwise the lots would be locked up for too long a period.

In the event, however, of a ground rent being charged on all lots not built on, there would be no objection to the time limit being increased to ten years.

25. It would be very desirable to allow the rate payers to elect their own members of the Municipal Committee by vote, but a difficulty arises in connection with the coloured vote. As long as Indians and natives pay taxes, they ought to have a vote for their representative, but the white rate payers wish to monopolize the right of voting and I fail to see how this could be countenanced by

Government.

26. Regarding future administration, the first recommendation of the Committee has already been carried out,

and the post of Conservator of Forests has been abolished or rather amalgamated with that of the Director of

Agriculture. This arrangement is working very satisfact-

orily, and there now exists no friction between the two

departments. The creation of a post of Commissioner of

native affairs is a growing necessity, and I entirely

concur in the recommendations of the Committee. If this

appointment is made, I have an officer in the Protect-

orate who is fully capable of carrying out the duties.

27. The formation of a Land Board, constituted as

suggested, would, I believe, be a boon to the country,

as many points that still form the subject of discussion

could be dealt with more speedily and with greater

satisfaction to the settlers than is at present the case,

where documents have to go through so many different

departments. The various duties, proposed for this Board,

are worthy of every consideration if this scheme is

entertained. The chief argument against the scheme is

that

that it would cost money, but I think we can safely predict that we should receive returns more expeditiously by adopting it. By arranging for a quicker settlement there would be an introduction of fresh capital, and therefore a rising revenue, which in a very short time would repay any extra expense that may be incurred. The non-official members that may from time to time be attached to the Land Board, should, I think, receive a specified amount per diem while sitting on the Board. This, would, in my opinion, be preferable to exacting fees for their maintenance. I do not approve of the appointment of permanent members; they should be taken as the occasion requires from the locality in which the situation in dispute arises.

23. In submitting last year's estimates I urged the appointment of an Assistant Crown Advocate, and I must again call attention to the absolute necessity for such increase in the staff. At present, being alone, the Crown Advocate, who has a variety of duties to perform, is unable to cope with his work; and the great delay, so frequently complained of, before applicants for land can obtain the title deeds, is in a large measure due to the pressure of work.

work in his office. It is a moral impossibility for one officer to conduct all prosecutions, draft ordinances and title deeds, and advise on legal questions of every nature as the Crown Advocate is expected to do at present. I therefore hope that provision will be made in next year's estimates for an Assistant.

28. Moreover I have made no comments on the paragraphs of the Land Committee's report. I am generally in agreement with the recommendations.

29. I think great credit is due to the members of the Board who have patiently and conscientiously endeavoured to ascertain and report on the requirements of the country.

Should you be of opinion that changes are required in the ordinance, the services of Judge Parth, who leaves for England very shortly, might be utilized at least as an

Assisting your law officers to draft an amended ordinance.

In this case I have the honour to request that it may be forwarded to me for my remarks before publication.

30. If any of the suggestions recommended by the Board meet with your approval, I should be grateful for a

telegraphic

telegraphic reply in order to enable me to make the necessary provision in the next year's estimates.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

J. Stewart

33231

227

Sub-Commissioner's Office,
Nairobi,

July 21st 1905.

Sir,

I have of late given attention to the question of land development in this country and especially to that in the Kikuyu district. I have now the honour to submit my views for your consideration. At a previous point of the country's development I was personally in favour of restricting dealings in land, my idea being to prevent speculation and so enforce development. I was of opinion at the time that if Government compelled a man to occupy his land under certain rules he would necessarily develop it, or at the end of the period prescribed by the rules, the land, failing development, would revert to the Crown. I am however now convinced that the existing restrictions do not assist in the development we all desire.

As so much actual soil undeveloped a country is of no real value. It is only the produce of the soil which is of use, and I am afraid that our present procedure is tending in many instances to keep this country in an undeveloped state. The present procedure is practically as follows:— A would-be settler arrives in the country, he obtains a homestead of 150 acres and pre-empt a further area of 480 acres. He is obliged to show the Land Officer that he has £300, but he is not bound in any way to spend a penny of it on the land. In six months - more or less - he finds he can do very little with the land, but he maintains his option

Deputy Commissioner,
Nairobi.

option over the land for three years, and during all that time the land would, under the present rules, remain undeveloped. This means that one man who is possibly not in a position to develop ten acres "blocks" a square mile. If this man desires to "unload" any of the land he can only, generally speaking, do so by surrendering to the Crown, in preference to which he retains his option for the three years.

Extensive speculation in land in this country and the possible creation of a great land "bubble" may be and undoubtedly is a state of affairs to be avoided, but ordinary dealings in homestead land amongst the public would not, I think, result in very extensive speculation. At any rate it seems bad policy to keep a poor man bound to 160 acres or even to a square mile of land, and to prevent him from selling out either what he does not want or the whole to a man of money who would be able to develop it.

I am now inclined to the opinion that all homesteaders should be able to obtain a freehold title to the land they occupy ^{and} should be at liberty to sell out if they so desire. Under such an arrangement I feel that many people would take up fifty or one hundred acres and would do something with it. This would really make the country go ahead and we might have under such conditions half a dozen prosperous settlers on a square mile of land in place of one who is, or who will become, lost amidst untouched acres. It will, I feel sure, be to the advantage of the country to sell outright all homestead blocks subject to the following condition:- that the Government shall give two years notice of their intention to put on a tax of half a rupee per acre per annum on all unproductive or unoccupied land. I think that with a land tax on unproductive land we can easily dispense with all the existing conditions and at the same

time do what is necessary to stimulate development by bringing in more money and more workers.

From the economic point of view there can be no doubt but that our present system is not a success.

All sales and transfers of land would require to be registered in accordance with the existing regulations.

I have etc.,

(Sd.) John Ainsworth,

H. M. Sub-Commissioner.

The report of the Land Committee appointed to consider the question of Crown Lands in the East Africa Protectorate shows an entire ignorance of the history of legislation on these subjects in other new countries such as Australia and New Zealand.

It expresses, however, the universal but not reasonable desire of the first comers to a new territory to get hold of as much land as they can on the easiest terms possible, with the greatest possible facilities for transfer.

It was against this desire that the more advanced Colonial Office of the forties and fifties of last century fought in vain. The land grabbers triumphed with results that are regretted, I think, by every one in Australasia to-day, except of course the heirs of the successful grabbers.

A few figures, culled mainly from Spence's "Land Systems of Australia", will illustrate what these results have been.

Thus, in 1861, 200,000 acres were in 1861

42 million acres had been alienated in England, nearly 22 millions of which were equivalent to about 100,000 acres of the area of England and Wales, was in the hands of 50 persons.

Only 2 per cent of the 22 millions and 100 per cent of the 22 millions were cultivated.

Instead of settling on the land, the best part of which was alienated to people who made little

or no use of it, settlers were driven to the towns. *that*
between 1841 and 1891, the urban population increased *by*
200,000 and the rural population less than 70,000.
Similarly in New Zealand *in 1891 it was found that*
227 persons held 4 1/2 million acres.

In Tasmania figures as to the area of individual estates
are not available, but the fact that whereas in 1860
with a population of 57,775, 120,000 acres were under
crops, in 1891, with a population of 145,000 the area under
crops had only increased to 127,000 acres. *that is*

*shows the
end of settling
land and all
yearning for
something
better*

It is facts like these, directly traceable to
bad systems of Crown Lands legislation, which explain
most of the worst features in Australasian life—the
slow growth of the population, the rapid growth of the
towns, reproducing in the midst of vast vacant lands the
worst evils of old civilisations in the way of sweating
and overcrowding, ~~and~~ the ever increasing debt, and
the rise of a Socialist party which is led by the
experience of such abuses of the rights of property to
endeavour to destroy the very institution of private
ownership.

In the forties and fifties of last century
the Colonial Office endeavoured to check the wholesale
alteration of land by raising the upset price of it to
20/- per acre and in the case of pastoral lands, *only*
granting leases for limited periods. They were, however,
overborne by the opposition of the colonists and stood
out for the 3 P's (Fixed tenure, Fixed rents and Free
Sale of rights) and from the time of the grant of res-
ponsible Government the colonies plunged into an orgy
of land speculation which resulted in the dissipation

within

within a generation of the best part of their enormous estates.

Since 1851 the Colonies have been painfully endeavouring to retrace their steps, the Governments in many cases buying back at high prices for closer settlement lands which their predecessors had sold to speculators at very low prices. They also endeavoured to prevent the remainder of the Crown lands being wasted in a similar manner by various enactments.

The chief principles of sound land legislation which emerge from a consideration of the Australasian experience are as follows:-

1. Land should always be surveyed by the Government before it is offered for sale or lease for a long period to settlers. If this is not done people will appropriate far more land than they pay for, and when a survey is finally made it may prove impossible to eject them or to equitably adjust boundaries. Men will seize on the wide of a water frontage and cut off back lands from access to roads, water or railways.

3. Land should be classified and the price and conditions of tenure varied accordingly.

4. Some of the conditions as to cultivation of the land granted or desired should be enforced.

5. Grants of land should not be made in fee simple freehold as a rule, but that most settlers should be given either as in New Zealand a "lease in perpetuity" i.e. a grant of the land for 999 years at a fixed percentage of a per cent on the value at the time of leasing, or as in South Australia a "perpetual lease" i.e. a lease for a specified number of years with the right of renewal in perpetuity subject to periodical reappraisals of rent, in estimating which the value of improvements made by the occupier or owner is not taken into consideration.

6. Some restriction should be placed on alienation, so as to prevent anyone, except settlers, who hold land in fee simple, from selling the land to a speculator. In New Zealand no man holding more than 2000 acres under any tenure is allowed to alienate any portion of his land.

7. The experience of the Australian Colonies should be borne in mind.

T. J. M. G. G.
 Secretary to the Commission
 of the Committee

T.M.G.

The Committee's recommendations are:-

1. That Article 9 of the Crown Lands Ordinance, which provides that, if land sold under the Ordinance appears to have been unoccupied for twelve months it should revert to the Crown on six months notice without compensation, should be repealed, and that leases of land should be granted instead - with covenants for development.

Although, as I have noted previously a perpetual lease has been found in some of the Australian Colonies a suitable system I doubt whether it would be as attractive as the present arrangement, and I think the Commissioner's proposal, that the rule should remain but that some compensation should be granted, should be adopted. I think that the Government should on resuming such unoccupied land pay to the owner of the land one half of the amount originally paid by him to the Government, or, if he acquired it from a third party, one half of the average value of land in the locality at the time of resumption.

2. That compensation should be given for improvements effected by the lessee at the termination of his lease - repealing the contrary provision in Crown Lands Regulations Sec. 11.

The Commissioner does not agree with this suggestion, but the principle seems to me very reasonable and is admitted in our Agricultural Holdings Act. The matter is however not free from difficulty - one has to guard against the case of a man who may have made some specious improvements, but at the same time

has

*There is no
question to be made
whether it is possible
to grant them by
the Act itself
or if a further Act*

has diminished the value of the land by starving it, allowing vermin to increase, &c. Such things are provided against in England by strict covenants in the leases, but they are often evaded and would be still more often evaded in a country like the East Africa Protectorate with the Government as lessee.

I think however that some such provisions are embodied in sec. 45 et seq. of the Pastoral Lands Act of South Australia (800 of 1904) might be applied.

3. The Committee object to Art 14 (a) C.L.R. which forbids the assignment of the lease except with the consent of the Commissioner.

I agree with the Commissioner that this Article should be retained *in order to avoid accumulation of land in a few hands*

9
H.S.R.
7/11/0

The form of a perpetual lease in South Australia (5th Schedule to Act — 830 of 1903) provides that the holder of a perpetual lease shall not "transfer, sublet, encumber, or mortgage without the written consent of the Commissioner of Crown Lands".

4. They also object to Article 14 (v) providing that roads made by the lessee may be used "for the public service".

It appears that this is understood to mean that the public may use such roads, and the Commissioner advocates the retention of the provision on the ground that otherwise one landholder will block off other from access to his land. This is true, but on the other hand it is not quite fair that a man should have to keep up a road for his neighbors' convenience

On the whole, I think it will be sufficient to insert a provision that the Government may resume land for the purpose of a road through any property, paying merely for the value of the land taken, and without any obligation to construct the road. This will meet the case of such people as the Commissioner speaks of - while the maintenance of the road will be left to the people who use it until the Government chooses to take it over.

5. The Committee object to C.L.R. 14 (a) which provides that landholders shall permit travellers and their animals to access on uncultivated land and allow access to water. They say, I understand them, that in cases of holdings under 4,000 acres the outspan should be marked out and travellers be compelled to use that particular place. This seems reasonable and the Commissioner, who takes exception to it, appears to have misunderstood what the Committee meant.

I think that if East Africa is to be a great cattle and stock country some provision will be needed similar to s. 94 of South Australia Act 608 of 1904, providing for travelling stock on pastoral land and feeding thereon at a fixed cost per head.

6. They object to C.L.R. 15 (g) which compels the lessee of a building lease to provide reasonable drainage and water supply.

I agree with the Commissioner that this is right enough - it does not mean that the lessee must construct waterworks or sewage farms, but that if and when there is a drainage and water system he must connect with the main sewer and the water main: and where there

Yes
H.S.R.

W.H.O.

Yes
H.S.R.

for the point
the committee
my amendment
C.L.R.

W.H.O.

Yes
H.S.R.
W.H.O.

there is not he must sink a well and provide a dumb well.

7. They object to 16 (b) and (c) which provide that a lessee shall not interfere with native settlements and villages and shall refer disputes with natives to the Collector. This provision must clearly be maintained, as the Commissioner says.

8. The Committee object to the provisions of Articles 27 and 28 empowering the Government to take stone or other materials from uncultivated land for public purposes without compensation, and also to the uncertainty whether Article 3 does not, in reserving minerals to the Crown, forbid an owner to use building stone or earth on his own land.

I think that minerals should be defined as not including stone or earth ordinarily used for building or roads (c.f. South Australia Act 530 of 1903 s.10) - but at the same time I agree with the Commissioner that the power of the Government to take stone or earth for such purposes without compensation should be retained except where the owner has actually opened and is working a quarry or pit.

9. The Committee recommend the appointment of a Land Board to classify land; and that it should consist of a small number of persons with the requisite technical knowledge.

In this I quite concur and I think that if possible we should obtain one member of the Board as a Law Officer from Australia or New Zealand.

(See also par. 29 of this Minute).

With regard to classification see pp. 66, 69.

70 of the Report (Mr Ainsworth's memo). A complete classification is only possible after a cadastral survey - but some rough classification - into Tropical, Sub-tropical, and Temperate, with sub-divisions under each head according to the rainfall, and the distance from the railway or a port, should be feasible.

10. The Committee recommend that the size of a "homestead" should be reduced from 500 acres (i.e. 100 with a right of pre-emption of 400) to 320 and that no person should hold more than one homestead though a man's wife and children over 15 might have one. I understand the Commissioner to concur in this and I agree. The size in Canada is 160 acres.

11. The Committee do not recommend any change in the price or method of payment for homesteads which at present is 2 rupees per acre which may be spread over sixteen years.

The Commissioner however objects to the continuance of the system under which the payment may be spread over a number of years - on account of the expense of accounting. I think however that the option to pay in this way should be retained as a man wants all his capital in the early years of the occupation for stocking and developing his farm.

12. The Committee recommend compensation for improvements on the forfeiture of a homestead and in this I agree - see (2) above.

13. The Committee and the Commissioner agree in recommending that in place of the specific requirements as to cultivating a definite amount of land and building a house, at present required by Rules 17, 18, 19 from a homestead selector, there should be substituted the spending of a definite sum each year on the "beneficial occupation" of the land.

I think that such a change, though desirable, would add a good deal to the labours of the Land Board.

I should be inclined to waive the provision as to the house, and while retaining the provision that a man must cultivate one-tenth of the land in each of the first three years add a proviso that permanent improvements of equivalent value will be accepted instead of cultivation.

14. The Committee object to the rule by which a man is obliged to keep 10 per cent of his holding in forest. I agree that this rule is absurd. Forest reserves are necessary, but not keeping patches of wood all over the country at the expense of the landowners. I think that forest should not be as a rule included in homestead grants, but that it should be reserved to the Crown for the use of the settlers who should be allowed free a certain quantity of timber.

Where it is unavoidable to include timber in a grant the settler should be allowed to use it as he pleases, but he need not then be allowed to have Crown timber free.

(See the Canadian rules on this subject page 78 of the Yearbook of 1904).

15. As to fencing, it is very usual I think to insist on land being fenced by express covenant in a lease of Crown lands. See e.g. South Australia. No. 501 of 1890 s. 57 (3). do. No. 836 of 1903 Third Schedule (6).

I cannot but think that the milder compulsion afforded by the present Regulation that a man who has not fenced may not impound his neighbour's cattle may well be retained.

16. Compulsory branding of cattle is, I think, desirable.

17. The rule that a would-be selector must show the Land Officer that he possesses a certain sum can so easily be evaded that it may well be abolished, and a certificate

certificate of fitness signed by two landowners substituted instead.

18. The committee object to the rule by which a settler may not deal with his interest in the land, except by consent of the Land officer, until he has fully paid for it. This is a very usual rule in Crown Lands Ordinances in order to prevent the whole country falling into the hands of mortgagees - see e.g., the conditions of a Perpetual Lease in South Australia Act 830 of 1904. Fifth Schedule.

2 (3) do.

Third Schedule section 8

do.

2nd Schedule section 6.

Use
It might however be well to allow advances to settlers on the security of their land on terms similar to those sanctioned in Canada, see Emigrants' Information Office Handbook for 1904 pages 69 and 70: the mortgagee has to get rid of the land to a bona fide settler within 2 years of his entering into possession of the land.

19. The question of reserving the Highlands of the country for Europeans by not allowing Asiatics to hold land there, except short leases of garden plots, a course which is recommended by the Commissioner and the Committee, is one of some difficulty and delicacy.

Indian traders were established at the coast before any Europeans were there; Indian labour made the railway and Indian soldiers aided in the conquest of the country.

At the same time I think that in view of the large amount

amount of country which will in any case be left open
Indians and which is not suitable for European coloniza-
tion the restriction should be imposed.

20: The question of whether natives should be made
to live entirely in large reserves (like the Masai)
or whether they should be in small reserves interspersed
among the European settlements is one of great difficulty
on which the Commissioner has not yet made up his mind -
and I think it may be deferred for the present.

21. SURVEY

I am strongly of opinion that so far as is
possible no land should be granted until it has been
surveyed. This is provided for by Colonel Smith in
his report (Print 258) "A cadastral survey" is recommended
"on a scale of $\frac{1}{10,000}$ ". This should always be prepared
in advance of land settlement. The necessity of a
thorough survey is fully recognised by the Land
Committee pages 17 to 19 of their Report; but they
seem to advocate on page 18 a system of selection before
survey which, while it may be necessary in the present
state of arrears in the Land Department, should not be
allowed as a permanent system.

22. The matter of a survey of Mombasa appears
(page 19) to be specially pressing with a view to the
establishment of titles. The Committee recommend that
a special Board should be appointed for this purpose
and that when the survey is completed there, title by
registration should be introduced afterwards in other
parts

and the Commissioner for Native Affairs to form the
Board

parts of the Protectorate, as the Survey is completed.
This proposal seems very reasonable.

Yes
4/22
agreed that the
proposed rates
are as low as
the land
is worth
and a proposal
is made

24. The Committee recommend that survey fees should not be paid in advance but I do not think there is much hardship in this.

25. The recommendations of the Committee on page 21 as to reserving land for future townships is being carried out.

Yes
4/22

26. The Commissioner agrees with the Committee that a longer time should be allowed for building or building plots in towns, and this seems reasonable if rates are levied on unoccupied land.

Yes
4/22

27. Locations and passes for natives and Indians in townships are probably desirable. The Commissioner does not touch on this.

28. I agree with the Commissioner that if the Nairobi Council is elected Indians cannot be excluded from voting and the matter had better be left where it is.

29. With regard to the organization of the Land Board proposed I agree that such a body is necessary, but I cannot agree that a Conservator of Forests is unnecessary. Indeed the Secretary of State has recently urged the revival of this post in a despatch to the Commissioner.

Yes
4/22
agreed that
the
proposed
is
made

Despatch of 29 July 1910
letter sent to the Secretary

Such an officer should accordingly be a 4th with the Commissioner for Land, the Commissioner of Agriculture and the Commissioner for Native Affairs to form the

7/10

Board

amount of country which will in any case be left open to Indians and which is not suitable for European colonisation the restriction should be imposed.

20. The question of whether natives should be made to live entirely in large reserves (like the Masai) or whether they should be in small reserves interspersed among the European settlements is one of great difficulty on which the Commissioner has not yet made up his mind - and I think it may be deferred for the present.

Handwritten notes:
Give out the
offering the
to the
likely by
in the
of the
of the
of the
of the
of the

21. Survey

I am strongly of opinion that so far as is possible no land should be granted until it has been surveyed. This is provided for by Colonel Smith in his report (Print p.5) "A cadastral survey" is recommended "on a scale of 1/10,000. This should always be prepared in advance of land settlement". The necessity of a thorough survey is fully recognised by the Land Committee pages 17 to 19 of their report; but they seem to advocate on page 18 a system of selection before survey which, while it may be necessary in the present state of arrears in the Land Department, should not be allowed as a permanent system.

22. The matter of a survey of Mombasa appears (page 19) to be specially pressing with a view to the establishment of titles. The committee recommend that a special board should be appointed for this purpose and that when the survey is completed there title by registration should be introduced afterwards in other

parts

parts of the Protectorate, as the Survey is completed, This proposal seems very reasonable.

*Yes
p. 28
I would like to
know what the
Commissioner
has to say
about it.*

24. The Committee recommend that survey fees should not be paid in advance, but I do not think there is much hardship in this.

25. The recommendations of the Committee on page 21 as to reserving land for future townships is being carried out.

26. The Commissioner agrees with the Committee that a longer time should be allowed for building or building plots in towns, and this seems reasonable, if rates are levied on unoccupied land.

*Yes
p. 28*

27. Locations and passes for natives and Indians in townships are probably desirable. The Commissioner does not touch on this.

*Yes
p. 28*

28. I agree with the Commissioner that if the Nairobi Council is elected, Indians cannot be excluded from voting and the matter had better be left where it is.

p. 28

29. With regard to the organization of the Land Board proposed, I agree that such a body is necessary, but I cannot agree that a Conservator of Forests is unnecessary - indeed the Secretary of State has recently urged the revival of this post in a despatch to the Commissioner.

*Secretary to the
is a big
require the
to be
T. H. O.*

*Despatch of 29 Sept. on 29100 - We had
letter on the 29th 1912*

Such an officer should accordingly be a 4th with the Commissioner for Land, the Commissioner of Agriculture and the Commissioner for Native Affairs to form the

Board with unofficial Assessors selected from time to time according to the locality.

So constituted the Board would be very useful and would relieve the Commissioner of much detailed work.

30. The Committee and the Commissioner both recommend the appointment of an assistant to the Crown Advocate to deal with conveyancing, etc., and to reside at Nairobi. *This seems essential if progress is to be made with the grant of lands. It is a must.*

31. The Survey department is recommended to be kept separate from the Land Board and this seems desirable. The question of the constitution of the Survey is dealt with in connection with Colonel Smith's report.

32. It is no doubt desirable that the Coast strip (now leased from the Sultan) should be brought under the British flag and the general law of the country - and until this is done the question of title to land must remain in obscurity.

*The assistant... must... to deal with... of the...
10/2 R
all the reports...
10/2 R*

*but this matter... probably have to... for the present...
the Sultan at...
£11,000 - year...
to be...
£500,000...
10/2 R*

10/2 R
33. The Committee (page 4 of Report) & the Governor (page 4 of do) agree as to the necessity of establishing a law to regulate the acquisition of British rights. *There is no doubt that this is a matter of great importance which must be seriously investigated. Both Hon. Mr. & Mr. ...*

10/2 R

Mr R. M. Dore, C.S.I.
 whose name was suggested
 by Mr Hollenhorst of the
 India Office, as a possible
 candidate for the post of
 President of the Land Board
 in the East African Protectorate,
 called here today.

He was born in 1854,
 entered the Ind. Civil Service
 in 1872; where he rose to be
 Asst. Secretary in the Finance
 Dept of the Govt of India 1895-7,
 and then Commr. N. Ind. Salt
 Revenue, which post he holds
 now.

He is, as I have told
 you, 52 years of age. He is disappointed
 for promotion, and, if not
 promoted before his leave
 is up, was thinking of re-
 tiring. But has not made
 up his mind to do so
 and thinks that he may
 be promoted. His present
 post is worth £1800 a year.
 Mr Dore is a capable

I explained to him that I could not say whether the appointment if he offered to him, or what terms it be sanctioned by the Treasury. But I asked him to give information about his movements to Col. Hodge Sadler (whom he knows) in order that we might communicate with him if necessary.

~~18/11/1913~~

It is, as the India Office, want info. about him from officers under whom he has served. There are two now in England: - Lt. J. D. Riley, C.S.I., was a member of Council at the India Office (he was Secy. in the Finance Dept. when Lt. Dene was Dep. Secy.) and Sir James Lyall, G.C.S.I., who was Lt. Gen. of the Punjab when Lt. Dene was there.

18/11/1913

Clarendon
Ingleton

24th Dec 1855 29th

Dear Mr. Anstons,

I return with many
thanks the report of
your committee on the
operations of the
and the legends and
East Africa Regulations
for the employment of
officers. A special
consideration of 4 months
leave in the summer and

Col R. M. Dore, C.S.S.
 whose name was suggested
 by Col Hollenback of the
 India Office, as a possible
 candidate for the post of
 President of the Land Board
 in the East African Protectorate,
 called here today.

He was born in 1854,
 entered the Ind. Civil Service
 in 1872; where he rose to the
 rank of Major in the Finance
 Dept of the Govt of India 1895-7,
 and then Commandant N. Ind. Salt
 Revenue, which post he holds
 now.

He is on leave till
 6 Dec 1906. He is disappointed
 for promotion, and, if not
 promoted before his leave
 is up, was thinking of re-
 tiring, but has not made
 up his mind to do so
 and thinks that he may
 be promoted. His present
 post is worth £1000 a year.
 He is married to a daughter

at night
 returned
 on 11/12/06

to release it once from the
Indian Service by ~~the~~
and to buy two boats.
I gathered, unless we offered
him something like £1500
a year; and he also at-
tached importance to getting
home in Aug next, as he has
a son who will then be
leaving Sandhurst (he is,
I understand, a widower with
this son and a married
daughter)

But, curiously enough,
he is starting on the 26th
next for East Africa to
shoot, and ~~is~~
~~if~~ if he could be allowed
to visit England in Aug
he would be willing to
visit during his leave, if
the Govt of India agreed.
In that case he would
probably be content with
£1200 a year.

I explained to him that I
could not say whether the
appointment wd be offered
to him, or what terms wd
be sanctioned by the Treasury.
But I asked him to give
information about his move-
ments to Col. Sturges Sadler
(whom he knows) in order
that we might communicate
with him if necessary.

~~W. D. D. D.~~

If we, or the India Office,
want info about him from
officers under whom he has
served, there are two now
in England: - Lt. J. D. Riley,
C.S.I., was a member of Council
at the India Office (he was
Secy in the Finance Dep. when
Lt. Dene was Dep. Secy) and
Sir James Lyall, G.C.B., who
was Lt. Gov. of the Punjab when
Lt. Dene was there.

~~W. D. D. D.~~

Clarendon
Mullbrook

24th Dec 05 20th

Dear Mr. Anthon,

I return with many
thanks the report of
your Committee on the
type written notes you
and the legends and
East Africa Regulations
for the employment of
Officers. A special
conclusion of 4 months
leave in the summer and

39 West Hill
S^e leuconia - on - Sea
21st Jan 1906

Mr. Autrobus 218

I have been too much
busy since returning
to town to write to you
til today but I wish to
give you the informa-
tion you asked for in respect
to the location of the
mythical person

should I take simply exchange; now $1\frac{1}{4}$ per rupee
in a country where there I should lose £145.16.8
Indian rupee is current - I can only expect
my pension is Rs 7000 that I said to you verbally
announced and while it would be reason-
able to draw in a country where this should be
a good standard I draw into account in fact
it at the privileged rate of the remuneration of it
 $1\frac{1}{4}$ per rupee - If, however, I decided to offer my
Capt a post in East Africa
where the rupee is higher
tender, I should receive
pension in that currency
or cross draw it in England
at the current rate of

East Africa 219

arranged, I wrote to
you by this mail to
know whether my ser-
vices were likely to be re-
quired there in connection

With the irrigation scheme
I told you of and have waited
for a reply by cable -

At the same time I
say that my wife & I
all have no very acceptable
at any time of life, but
in a well and well
well country, more especially
as I already have a post
and am not entirely
pendant as it.

We have quite decided
that it would be advised

my wife to the
England with our 250
the girls so that my going
it would be a separa-
and the maintenance
in establishment for her
In the circumstances,
therefore, it would only be
the way while to accept
the part, even if it is of
use to me, provided the
be such as to allow of
having something to
we are our comfort when

I finally settle down
there is a reasonable pro-
bability of a visitable at
his resignation of any
services should I be in-
cluded in Post office.

I have ventured to say
above as you were kind
enough to speak to me
concerning the subject
I shall now wait until
I hear from you whether
the Colonial office de-

over me the appointment

251

Yours truly
Samuel Beeton

Am 12125/06

DRAFT

Telegram to
Saddler
Marsden Nairn.

Ind

Highness
17 January

Please inform
Haratty

MINUTE.

- Mr. Peck. 17 Jan
- Mr.
- Mr. Antrobus.
- Mr. Cox.
- Mr. Lucas.
- Mr. Graham.
- Sir M. Osmanney.
- The Duke of Marlborough.
- Mr. Lytton.

Dandy impracticable to
grillage

offer appointment
aposta

on the contract proposed
clubmen

sent will
17/1/06

By

Comms
93231

6.H.P.

253

DRAFT.

The Sec. to the
Treasury

Indy

20 February '05

MINUTE.

- Mr. White 12/2
- Mr. Reed 11/4
- Mr. Andrews 16/8
- Mr. Cox.
- Mr. Lucas.
- Mr. Graham.
- Sir H. Osmanney.
- The Duke of Marlborough.
- Mr. Lyttelton.

Ans. 2-1767

per room

Sir

I am directed by the Earl of Uxbridge to acquaint you, for the reason of the L.C. of the Treasury, that he considers it advisable to appoint an officer with the title of Commissioner for Land and Chairman of the Board of Land Settlement, under the H.M.S. Commission, the work of Land Settlement in the G.A.P.

Land Board

Copy to Comms 2166

Copy to Comms

2. The

3. The duties of the
Land Board 254
were to comprise the
following:—

- (1) The general supervision of all matters concerning the development and settlement of the land.
- (2) The classification of land, and the assessment of land taxes.
- (3) To make provision for reserved areas, stock and other roads, bridges, drains, water-courses, etc.
- (4) To receive and deal with all applications for land.
- (5) To report to His Majesty's Commissioner on all special applications for land which are not provided for by general land laws of the Protector.
- (6) To give all necessary instructions regarding survey to the Survey Department.
- (7) To have power to take evidence on oath and to enquire into the manner in which land holders carry out the conditions on which they hold land and to make recommendations to His Majesty's Commissioner.
- (8) To decide all matters of dispute relating to land between landholders and the Government, and to act as arbitrator between landholders when so requested by either party.
- (9) To keep records of all their proceedings.
- (10) To file with His Majesty's Commissioner's approval

approval a scale of fees to be
in connection with the ...
the ...
Assessor

4. It has been made
to have begun, but
by the refusal of the
Committee, and by
numerous objections
from intending
that there is a want
system of despatch
the management of
the Land Dept. from
which it has resulted
that applications for
applications for grants
have been to wait
on an average, but
months before their
grants are made
and that in consequence

DRAFT

MINUTE.

- Mr.
- Mr.
- Mr. Astor.
- Mr. Cox.
- Mr. Lucas.
- Mr. Graham.
- Sr. H. Osmalley.
- The Duke of Marlborough.
- Mr. Lytton.

there is likely to be a
considerable deficiency
on the estimated returns
from the sale of land
in the current year.

5. It does not appear
that any ^{subordinate things} ~~things~~
to the existing officers
of the Land Dept., who
have done their ut-
most to cope with
the growing work
of the office, that
what is needed is
an officer of greater
superior in dealing
with the varied problems
relating to the settlement
of applications on the
land referred to in the
preamble quoted from
the Committee's report
who would organize

Theraputism

The land question in the Protectorate was recently the subject of inquiry by a Committee appointed of local officials & settlers appointed by the late Sir D. Stewart, and one of their recommendations was that a Land Board should be appointed to consist of a Commr. for land, who would be Chairman, a Commissioner for Agriculture & Forests, and a Commr. for Native Affairs. These officers are from the Government & 24 office members of the Board and would have power to appoint to their number two or more persons of local experience.

3. The duties of the Land Board 251 were to comprise the following:—

- (1) The general supervision of all matters concerning the development and settlement of the land.
- (2) The classification of land, and the assessment of land values.
- (3) To make provision for reserved areas, roads and other roads, bridges, drains, &c.
- (4) To receive and deal with all applications for land.
- (5) To report to His Majesty's Commissioner on any special applications for land which are not provided for by general land laws of the Protectorate.
- (6) To give all necessary instructions regarding the survey to the Survey Department.
- (7) To have power to take possession on behalf of the Government of any land which landholders carry out the conditions on which they hold the same and to make recommendations to His Majesty's Commissioner.
- (8) To decide all matters of dispute relating to land held on leasehold and the Government, and to act as arbitrators between landholders when requested by either party.
- (9) To keep records of all their proceedings.
- (10) To act with His Majesty's Commissioner's approval.

There is liability to be a considerable deficiency on the estimated returns from the sale of land in the current year.

DRAFT.

5. It does not appear that any ^{subordinate things} ~~business~~ attaches to the existing offices of the Land Dept., who have done their utmost to cope with the growing work of the office, that what is needed is an office of greater capacities in dealing with the varied problems relating to the settlement of population on the land referred to in the passage quoted from the Committee's report, who would organize

MINUTE.

- Mr.
- Mr.
- Mr. Antrobus.
- Mr. Cox.
- Mr. Lucas.
- Mr. Graham.
- Sir H. Osmundson.
- The Duke of Marlborough.
- Mr. Lytton.

grandmaster the work
of the Dept on right
lines.

Such an officer had
begun steps to obtain
on an ^{engagement} agreement
for 3 years from the
service, of ~~the Dept~~
either active or retired,
of the Govt. of India
with at a salary of
£1500 p.a. and, on
other respects, on the terms
noted in the enclosed
memorandum: and he
would be glad if the
L.C. of the Treasury would
communicate at any early
date, their ^{reply} ~~reply~~ to the
necessary permission
being made on the
behalf of the Govt.
Jan 1907

Memorandum attached
392

Commr
99231/05
L.A.P.
256

W. G. H.



DRAFT

L.A.P. No 159

23 March 06

Commr
Ch. Packer

PRINTED FOR PARLIAMENT
H.L. 158 AUGUST 1907

MINUTE.

- Mr. ~~Whe~~ 2/3
- Mr. ~~Read~~ 2
- Mr. Andrews 10
- Mr. Cox
- Mr. Lucas
- Mr. Graham
- Mr. M. O'Sullivan 12
- Mr. Church 15.3
- Mr. D. G. Thompson
- Mr. ~~Whe~~ 20.3

per union
Per letter on 3253

every good draft
7/16

107

Per Mr. Packer under
my cover the Report
of the Committee
appointed by the
late Sir P. Stewart
to enquire into questions
relating to land
in the L.A.P. & also
his report of the 14th of August
commenting on it
2. In enquiring the case
& ability shown in
the completion of the

248) 6-107-20 part and 107

many points I con-
agree with the
conclusions of the Committee
fully concur in their
recommendation
that a survey of the
Patent Act should be
taken in hand without
delay, as you are aware,
a large portion
has been made in the
estimate of next year
for this ^{sum} and some
of the ^{summers} offices selected
will for the work will
be in this country for
the course of the present
month.

There are, however,
other questions upon
which I am unable

as at present advised
to concur in the pro-
-posals of the Committee ²⁵⁷
and, having regard
to the immense impor-
-tance to the public
-property of the Public-
-trusts of procuring
adopting a right
policy in questions
relating to land,
has decided to take
no further action in
regard to the pro-
-posal of ~~the Committee~~
funding the report
of an officer of ^{the} ~~the~~
-land whether above
I proposed to appoint
under the title of
Commissioner for Land,
and also selection
I hope to be able to
procure to you at no
distant date. Y^{rs}

them of the general
conditions of obliga-
-tions for development:
Again they regret
that capitalists have
refrained from in-
vesting their capital
in the country on the
account of - the restric-
-tions placed by the
Govt. on freedom of
transfer of the ownership
of the lands offered to
them.

On these passages
and on the general
tenor of this part of
the Report, I would
draw that, while I
am as anxious as the
Committee can be to
encourage the better
management of the
-ment of development

of the productive
forms either of land
or small capital, I
consider the need of
unrestricted speculation
in land much more
serious than the
Committee appear to
regard them as being.
It is not merely
the question of the
discreditible incidents
which characterize
the periods of inflated
speculation known as
land booms, as the
before mentioned dealers
who may attempt
to speculate on the further land
at artificially inflated
-red prices. If this
were all, the dangers
referred to might be
removed, as the Committee
70

price (to us) on the
side of land on the
simple, & by granting
leases only for short
periods.

" This policy was, however,
strongly opposed by
an influential section
of the Aborigines, especially by
those who occupied
large areas under
long-term leases,
which they wished to
convert into freehold
or long leasehold tenure.

Their persons fought
for what was known
in N.S.W. as the
"Three F's": - Freed
Tenure, Freed Rents,
and Free Poles.

Their views eventually
triumphed in all
States, Australia,
so that from about

1850 onwards, enormous
areas of land were
alienated from the ²⁶¹
Crown without any
adequate return either
in the way of purchase
money or in the
improvement of the
lands granted.

¹⁵ The result was that
in N.S.W. alone in 1891
42 million acres
had been alienated
in freehold, 22 million
of which were in the
hands of only 500
persons: white only
2 percent of the 42
million & $\frac{1}{10}$ the per-
cent of the 22 million
were with aboriginal
ownership figures
as recorded in the
other colonies.

The effect of this was
that they were regarded
as a separate
class.

instead of selling or
 the land, the best
 part of which was
 alienated to people
 who made little or none
 of it, and driven to the
 towns, and the progress
 of the country has been
 seriously impeded.
 The present of the Govt's
 has been, ^{in my view,}
 further ^{to} ~~to~~ ^{bring} a view
^{down} ~~down~~ ^{to}
 better settlements,
 lands which were unjustly
 attached for irregular
 -rent owners, while New
 Zealand has endeavored
 to check the further progress
 of the land by creating
 that no person holding
 more than 3,000 acres
 shall be allowed to
 acquire any further
 shall obtain any further
 grant of Crown lands
 (other than a small quantity from a private

DRAFT.

MINUTE.

- Mr.
- Mr.
- Mr. Anrobus.
- Mr. Cox.
- Mr. Lucas.
- Mr. Graham.
- Sr. H. Osmanney.
- The Duke of Marlborough.
- Mr. Lyttelton.

16. With these exceptions
 before me, I give this
 in the interest of the
 future prosperity of
 the Colonies, I shall
 be unable to assent
 to any legislation
 which frustrates the
 holding of land
 in large areas for
 settlement purposes,
 either by granting
 large grants of land
 without adequate
 securities for its
 development, or by
 frustrating the holding
 of smaller areas
 to meet with these
 holdings without
 imposing on the holder
 a similar restriction
 towards use of the
 land.