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For
Gouverneur
Conf
19.

Land Laws.

1910

17 Feb

Last previous Paper.

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41992/9

Leads mem. by Crown Advocate, & submits
news resp. incremental values and excessive
accumulations of land by individuals. After
consider of proposed law, strongly recommends its
approval & promulgation.

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41992/9
Feb 3 1911
C.O.
3452
C.O.
1894

The Governor now pronounces for the Crown Lands
Ordinance as submitted in Gov/17033/9. That is, he is prepared
to throw over, in deference to the wishes of the white
settlers, the two ~~conditions~~ conditions imposed by the
Secretary of State, namely, the revaluation of lease-holds
at the end of the 33rd and 66th years of the full term of
99 years, and the surtax on large holdings.

This is a question fraught with the greatest im-
portance for the future of the Protectorate, and it should
therefore be maturely considered. It was originally pro-
posed to decide upon the Crown Lands Ordinance in the last
At that time it was suggested that ^{the Ordinance} should be laid before
a Sub-committee of the Commissions Committee, consisting
of the Chairman, Mr Cox, Mr Andrews, Mr Deed, Mr Ellis, and
myself; ^{Action} ~~the matter~~ was deferred in accordance with the
wish of Sir Percy Girouard that he should have some months
in which to consider the question and put his views before

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Next subsequent Paper.

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the Secretary of State. I would now propose that this Committee should be assembled, with the substitution of Mr. Fiddes for Mr. Antrobus. Mr. Batterbee might be asked to act as Secretary to the Committee. It is desirable that one of the juniors of the East African Department should be intimate with this Lands question.

H.A.S.

March 18.

Mr Fiddes

So proceed?

H.S.R.

18/3

Sir J. Stobbes

Apart from the point that my time is very fully occupied, I think there will be advantage in having one of the juniors - wh. I wd. much prefer.

H.S.R. 21/3

Very wch

Sydney

21.3

at the

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GOVERNMENT HOUSE,
NAIROBI.
BRITISH EAST AFRICA.

February 17th 1910.

EAST AFRICA PROTECTORATE.

Confidential (10)

(Inst. 1.)



My Lord,

I have the honour to acknowledge the receipt of Your Lordship's telegram of October 18th 1909 with reference to the Land Laws of the Protectorate. Your Lordship will be aware of my request, prior to my departure from England, that the proposed Crown Lands Ordinance should not receive your assent until I had been enabled to review the position in the Protectorate. I have sought the opinion of the Executive Council and of several leading Colonists, and in consequence of your above mentioned telegram, requested the Crown Advocate to furnish me with a memorandum on the subject, which is attached.

2.

THE RIGHT HONOURABLE,

THE EARL OF CREWE, K.G.,

Secretary of State for the Colonies,

DOWNING STREET, LONDON, S.W.

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2. There is no doubt whatever that a very strong feeling obtains in the country entirely adverse to any revision of rentals within the period of a 99 years lease. The term of lease itself is regarded as one which will tend to hamper the early development of the country, and, though it has, I think, been accepted, largely owing to the attitude of the more influential settlers and particularly of Lord Delamere, any attempt to revive the former proposal of revision would give rise to general discontent and bitter opposition.

3. Personally I am of opinion that the colonist is reasoning on false premises in this opposition and that Your Lordship's proposals would undoubtedly prove of lasting benefit to the Community, but, as matters stand, I see no hope of any alteration in sentiment in regard to this phase of the question.

4. I would suggest that, as very probably within the first period of 55 years this Colony may have attained self government, it should be left to the good sense of the future population to deal with these incremental values, and that we are to-day sufficiently protecting

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the rights of future generations by retaining practically the whole of the land as leasehold. To force upon an unwilling people a policy which they may be quite free to upset in an assembly of their own at some future date would appear to be an unnecessary aggravation of the situation, which is accentuated by the fact that Government has consented to the freeholding at two rupees per acre of over 300,000 acres of land allotted to the British East Africa Syndicate.

5. With regard to the accumulation of land in the hands of individuals, I cannot see that the same objections prevail here as in other Colonies. Here practically all land is being granted as leasehold, and the sooner it is taken up the sooner Government will receive the rentals due upon it. Provided always that development is undertaken, I can see no very great objections to reasonable accumulations in the hands of reputable capitalists. It is entirely in their interest to part with the land, and

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this is already being done in the case of Lord Delamere's estate, where he has been the means not only of introducing smaller farmers but of assisting them in early development with his experience and his plant.

6. The Crown Advocate has pointed out the possibility of introducing a land tax to meet any such eventuality as the unprofitable retention of undeveloped leaseholds, and I cannot but think that such a measure would, if it is found necessary to adopt it, meet any difficult situation which may arise.

7. After consideration of the Law proposed I must unhesitatingly recommend its approval and promulgation.

I have, the honour to be,

Your Lordship's humble,

obedient servant,


GOVERNOR.

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In Despatch No. 19 of 17/1/1910

MEMORANDUM.

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The Secretary of State in his despatch No. 16 of January 7th 1908 writes that means must be found

- (1) of securing to the community a share in the future increased value of the land and
- (2) of restraining by law excessive accumulations of land in the hands of individuals.

Your Excellency has desired me to write a memorandum setting forth:-

- (1) How these two principles have been maintained in the Ordinances under consideration.
- (2) If sufficient provision has not been made in the Ordinance itself to maintain these principles
 - (a) the reason why such provision was not made and
 - (b) whether the power to deal by future legislation with these two matters in the best interest of the Community is sufficiently reserved.

2. In dealing first with the provisions made in the Ordinance or which can hereafter be made to restrain "excessive accumulation" of land in the hands of individuals it is advisable to ascertain what is intended by the term "excessive accumulation."

In an earlier despatch the Secretary of State suggested for consideration that a means of checking excessive accumulation of land in the hands of individuals

excessive
accumulation.

individuals might be found by imposing a sur-tax on all holdings exceeding in area a normal farm, the tax to be small on the smaller holdings but increasing in proportion to the extent to which the holding taxed exceeds the normal farm, until it arrives at a sum which, under conditions now existing and likely to continue for some years to come, would compel the landholder to part with a considerable portion of his land. The Secretary of State further suggested that an individual or corporation should be prohibited from holding more than 100,000 acres of land.

From the means suggested for restraining excessive accumulation of land by individuals or companies I gather that the Secretary of State considers that persons should be discouraged or prevented from acquiring a larger area of land than is contained in a normal farm, and that accumulation of land exceeding in extent a normal farm must be deemed to be an excessive accumulation even if the land is fully developed and is being used for purposes to the best of interest, not only of the holder but also of the community as a whole.

It this is the meaning of "excessive accumulation" I may state at once that no provision has been inserted in the Ordinance which will prevent or discourage "undue accumulation of land" in the hands of individuals.

It was and I believe still is, the unanimous opinion of the Legislative Council that persons of substance should not be discouraged from investing their capital in land and in the improvement of land in this

Freetown

Protectorate. It is ^{now} generally admitted that the small man without capital should not in his own interest be encouraged to come to this Protectorate at the present time and under the conditions now existing in the Protectorate. The man with capital and who intends to invest his capital in the Protectorate, must be welcomed and the more capital which he has to invest the greater must be the welcome.

It is quite certain that the man with capital will not be attracted to this Protectorate if he is to be discouraged from acquiring such area of land as will allow him to make a substantial profit as a return for his enterprise, and capital risked. If members of the Council held the settled conviction that this Protectorate or any considerable portion of it is a country to which the small man should be encouraged to come and make a home for himself and his heirs, it might be possible to convince them that it would be sound policy to now distribute and regulate the future distribution of land so that the Protectorate should carry the largest number possible of small but prosperous landholders.

It is certain that the man with capital has in some instances proved to be a most useful resident in the Protectorate. It is believed that he will continue to be a useful resident.

It is by no means certain that the man with capital, if he is permitted to hold large areas of developed land, will be excluding from the Protectorate a large number of small men who in their own interest and also for the benefit of the Protectorate should be encouraged to make a home in the Protectorate. Such considerations

as these induced the members of the Legislative Council to the conclusion that the accumulation of land in the hands of individuals who are financially in a position to develop the land, and who in fact use the land for purposes which are to the best interest of the Community is not an evil to be discouraged or prevented.

3. If "excessive accumulation" is to be interpreted as meaning "the accumulation and holding of an excessive quantity of undeveloped land". I think everyone must agree that "excessive accumulation of land" is an evil and means should, if possible, be found to prevent it.

In this definition the word "excessive" requires explanation.

I think it should be admitted that any person coming to an unproved country such as this and intending to reside in the country and sink capital in the development of the land is justified in asking to be allowed to hold for a reasonable time more land than he may be in a position to immediately develop to a full extent.

Having regard to the small sum which a landholder is required to spend on his farm in order to obtain a lease for 99 years it would appear that this principle is admitted in the case of land acquired on lease direct from the Government. If the principle is to apply not only to the original lessee from the Crown but also to his assignees or landholders should be permitted to hold for a reasonable time some undeveloped land and should not be penalised for so doing.

The questions now arise as to whether under the Ordinance as passed by the Legislative Council the evil which should be prevented is likely to arise and if so

will the Community be able to deal with it in a satisfactory manner by future legislation.

The general opinion is that the evil cannot arise. Colonel Montgomery in paragraph 6 of his letter of April 27th 1909 which was forwarded to the Secretary of State with the Ordinance states the grounds on which members of the Council formed that opinion. Beyond the consideration therein set forth there is a further matter which should not be overlooked. As leaseholds alone are granted of agricultural land it is highly improbable that any person will hold up for any considerable time undeveloped land in respect of which he will be paying rent, and possibly a land tax, and in which his saleable interest is depreciating each year as the term of his lease nears completion.

Should, contrary to expectation, individuals or companies acquire an excessive amount of undeveloped land the imposition of a land tax should compel them either to develop the land or to part with some portion of it. As all land under the Ordinance will have been classified the imposition of a tax on land at such sum per acre, varying according to the class of the land, as may be determined could be imposed without the necessity of a special valuation of unimproved land for the purposes of the tax. As it is most improbable that persons will acquire and hold up large areas of agricultural land for speculative purposes until such time as farming has been proved to be a paying proposition such tax would not weigh unfairly on the bona fide farmer whilst it would render the holding of unimproved land an expensive luxury.

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4. The means proposed by the Secretary of State for securing to the Community a share in the future increased value of land appeared at first sight to be so logically sound that one was surprised at the storm of opposition with which the proposal was met in this Protectorate. An opposition which emanated not only from particular individual but from every section and class of Europeans. In fact I believe that it would be impossible to find any single European in the Protectorate outside the officials in favour of the proposal.

As we found amongst the persons opposing the proposed means for securing to the Community a share in the future increased value of land persons who had no intention of acquiring land in the Protectorate but who were financially and sentimentally interested in the future prosperity of the country the members of the Council had to ask themselves whether it was in the best interest of the future of the country that the proposed measures should be passed in the face of this opposition. Since there appeared no sufficient reason to believe that the present Community did not voice the opinion of those desirable settlers who should be attracted to the Protectorate one could but come to the conclusion that a form of land tenure so unacceptable to the people already in the country would not attract other persons who might be seeking new lands in which to exercise their energies and invest their capital.

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The logical soundness of the proposal is of no value unless apparent to the persons concerned. It was not apparent to settlers in the Protectorate and even now after months of consideration is not recognised. It was therefore scarcely to be expected that the person who might be considering whether the conditions of land tenure are such as to attract him to East Africa in preference to other Colonies ready to welcome him, would recognise on what fair and proper conditions land was offered to him in East Africa.

The conclusion to which one was driven was that the proposed conditions of land tenure were not such as to attract the persons who could by their energies and capital make farming in the Protectorate a paying proposition, and that, that being the case, the logical soundness of the Land law would do nothing to advance the prosperity of the country.

It is believed that the conditions of land tenure as provided for by the Ordinance will attract desirable settlers and that the land having been acquired and developed under these conditions will increase in value.

After 99 years the whole of the land so increased in value will revert to the Community who can deal with it in such manner as may then be considered to be to the best advantage of the Community.

Ninety nine years is a long time to wait and doubtless the Community will long before the expiration of that period seek a means of obtaining for itself some share in the increased value of the land. A land tax such

as it suggested before in reference to excessive accumulation of land could be imposed. Perhaps not an entirely satisfactory means of procuring to the Community a fair share in the increased value of land, but it would bring in a substantial revenue pending the happy day when the Community can make its own terms with the landholders.

A further consideration is the position of the Community 33 years hence when if the rents on land are increased, fancy properties are returned by the lessees who seize upon the opportunity of getting rid of the land for which they have no further use and for which no purchasers can be found in the ordinary market. The community would have to pay the outgoing tenant for improvements which no one would take off the community at the price paid.

I have in my mind a certain property in this Protectorate the compensation payable in respect of which if, through the foresight of an earlier administration it was not surrendered to the Government on the terms proposed for the new Ordinance would leave but a poor margin of profit on all rents received by the Government during the year the property was surrendered whilst the property would remain a white elephant in the possession of the Government for many years.

~~W. M.~~ R. M. COMBE
CROWN ADVOCATE

Nairobi.

February 14th 1910.

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