

MEETING HELD AT NAIROBI ON 16TH NOVEMBER 1908

Present: H.E. The Governor ( Sir J. Hayes Sadler )  
The Treasurer ( Mr Bowring )  
The Crown Advocate ( Mr Combe )  
The General Manager Uganda Railway ( Mr Currie )  
Mr A.C. MacDonald.  
Mr A.C. Hollis  
Captain Cowie  
Major Leggett.

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MINUTES

The meeting minutes of the previous meeting were confirmed.

STATEMENTS BY HIS EXCELLENCY

His Excellency made two statements, the first regarding the supply of labour in the East Africa Protectorate and two despatches were laid on the table. The second statement was regarding the new Land Laws.

QUESTIONS 11, 12 AND 13

Captain Cowie asked:-

1. What is the cost of Jarrah sleepers.
2. What is the cost of native wood.
3. The Government to exhibit the first report of the Conservator of Forests on the trial native wood sleepers.

REPLY

The General Manager Uganda Railway replied:-

I am glad that the Honourable member has asked this question as it enables me to explain a matter which has appeared in a wrong light in the local press.

In 1904 the Railway obtained from the Forest Department, and other persons, samples of almost all the better

class of timbers in East Africa and Uganda and placed them in the Road at various places for trial. They were taken out in the road after three years and three months and carefully weighed and examined with the result that it was found that in the Taru Desert all woods had perished and sleepers were quite useless. At other places only three kinds of East African woods showed any indications of proving useful as sleepers, these were

Mweri ( pygeum Africanum)

Musharagi ( clea Laurifolia)

Muteragua ( jjuniperus procera).

Of these the first, ie Mweri ~~X~~ has since been tried for crossing sleepers but is found to warp and split so badly that over 200 we have obtained are practically useless.

The second Musharagi is being further ~~tired~~ tried in several places in the Highlands and shows signs of being likely to prove a useful timber for us in the cooler parts of the country.

The third, Muteragua, which came best of all in the tests is very difficult to obtain in numbers. The trees near the Railway are so full of flaws and cracks that all private parties I have spoken to have informed me that it would be very difficult to secure any number of sound sleepers without a very great waste of timber.

The 15,000 Jarrah sleepers that have been purchased are required for very difficult parts of the line at the lower end of Taru Desert where on account of the salts in the soil the steel sleepers are corroding. These wooden sleepers ~~shoud~~ <sup>should</sup> have been purchased some two years ago but we postponed getting them until we ascertained the results of the experiments being made with the country woods. As these experiments showed conclusively that all country woods are useless in that part of the country I arranged for the purchase of Jarrah sleepers which in other countries under similar conditions have proved a success.

The Railway have always been anxious to assist local industries specially the timber ones as we will always take the country timbers in preference to foreign provided that the quality is good enough for what it is required. In this case however as sleepers are required for very difficult part of the road on steep gradients and sharp curves we can run no risks and it is cheaper to pay Rs 3.40 per sleeper, which is the price of Jarrah, which should last us ten to twelve ~~years~~ years and be reliable rather than pay Rs 2/- per sleeper for country wood which will not last three years and will be a source of great anxiety to us all the time.

A few Jarrah sleepers are being placed on the approaches to the viaducts and on level crossings on Mau where their great weight is an advantage.

The reply to the Honourable members' questions is there fore:

1. Jarrah sleepers cost Rs 3/40.
2. Native wood sleepers cost Rs 2/-
3. The Conservator of Forrests made ~~a~~ no report.

The sleepers were examined by the Superintendent of the ~~X~~ Ways and Works and myself and I sent a report of the result to the Conservator of Forrests.

#### CUSTOMS BILL -- FIRST READING

The Crown ~~Advocate~~ Advocate moved that the Bill to make better provisions for the entry and clearance through the ~~customs~~ Customs of goods imported or exported into or out of the East Africa Protectorate be read a First time.

The Treasurer seconded and this was agreed to.

The Crown Advocate gave notice of the Second Reading of the Bill at the next meeting of the Council.

K.A.R. ORDINANCE 1902 (AMENDMENT) BILL-- FIRST READING.

The Crown Advocate moved that the Bill to amend the King's Rifles Ordinance 1902 be read a First time.

The Treasurer seconded and this was agreed to.

The Crown Advocate gave notice that he would move the Second Reading of this Bill at the next meeting of the Council

APPROPRIATION BILL-- FIRST READING

The Treasurer moved that a Bill to apply a sum of money for the Service of the year ending 31st March 1909 be read a First time.

The General Manager Uganda Railway seconded and this was agreed to.

The Treasurer gave notice that he would move the Second Reading of the Bill at the next meeting of the Council.

REMOVAL OF NATIVES BILL-- FIRST READING

The Crown Advocate moved that the Bill to make provision for the removal of Natives from one District to another within the East Africa Protectorate be read a First time.

Mr Hollis seconded and this was agreed to.

The Crown Advocate gave notice that he would move the Second Reading of the Bill at the next meeting of the Council.

IDENTIFICATION OF PRISONERS-- THIRD READING

The Crown Advocate moved that this Bill be read a Third time.

Capt. Cowie seconded and this was agreed to.

The Bill was read a Third time.

COURTS ORDINANCE 1907 (AMENDMENT)

The Crown Advocate moved that the Council go into Committee to consider amendments he proposed to make in this Bill.

Mr Hollis seconded and this was agreed to.

COUNCIL INTO COMMITTEE

Sections 1,2 & 3

The Crown Advocate moved to delete Sections 1,2 & 3 and substitute the following:

- "1. This Ordinance may be cited as the Courts Amendment Ordinance 1908, and shall be read as one with the Courts Ordinance 1907 hereinafter referred to as the Principal Ordinance.
2. Wherever in the Principal Ordinance there shall appear the word 'European' there shall be read thereafter the words 'or American'.
3. In the Principal Ordinance the terms 'European' and 'American' shall have the same meaning as in the Criminal Procedure Ordinance 1906 or in any Ordinance which may hereafter be substituted for the said Criminal Procedure Ordinance. "

Mr Hollis seconded and this was agreed to.

The Crown Advocate moved that the Bill be now reported to the Council.

Mr Hollis seconded and this was agreed to.

The Crown Advocate moved that the Bill be read a Third time.

Mr MacDonald seconded and this was ~~ag~~ agreed to.

The Bill was read a Third time.

SURRENDER OF FUGITIVE CRIMINALS BILL ( COMMITTEE)

The Crown Advocate moved that the Council go into Committee on this Bill.

The General Manager Uganda Railway seconded and this agreed to.

COUNCIL INTO COMMITTEE

Section 1

No deletion.

Section 3

The Crown Advocate moved to delete in Section 3 subsection 1, line 5, the words " specially appointed".

Mr Hollis seconded and this was agreed to.

The Crown Advocate moved to insert in the same section line 7 after " habeas corpus" " or by other like proceedings".

Mr ~~MacDonald~~ <sup>MacDonald</sup> seconded and this was agreed to.

Section 4

The Crown Advocate moved to substitute in Section 4 " of such period being not less than 15 days as the Governor may determine " for " fifteen days".

Section 9

The Crown Advocate moved in Section 9, lines 1 and 4 to substitute " period" for " fifteen days", and in line 4 second paragraph to insert after the word " writ" " or such other like proceedings ".

Mr MacDonald seconded and this was agreed to.

Section 10

The Crown Advocate moved in Section 10 to insert after " Habeas Corpus" " is issued" and to substitute " insitute" for " issued " in line 5.

Mr ~~MacDonald~~ <sup>MacDonald</sup> seconded and this was agreed to.

Section 17

The Crown Advocate moved in Section 17 to delete " Code of Criminal Procedure 1898" substitute " in the law for the time being in force in the Protectorate relating to Criminal Procedure. " and in line 15 to insert a comma after " any".

Mr Hollis seconded and this was agreed to.

Section 20

The Crown Advocate moved in Section 20 after the definition of " Fugitive Criminal" the following definition of the term "Court":

" The term 'Court' means either the full Court of one or more Judges of the High Court for Est Africa according as the matter is one which under the Rules and Practice of the High Court properly appertains to the full Court or to one or more Judges."

Schedule II

The Crown Advocate in Schedule II at the end of Form 2, to insert " (signed)" and at the end of Form 4, to delete "( signed)" and also that 5th and 6th forms should be placed before Form 3 and 4.

Mr Hollis seconded and this was agreed to.

The Crown Advocate moved that the Bill be now reported to the Council.

The General Manager seconded and this was agreed to.

The Crown Advocate moved that the Bill be now read a Third time.

Mr MacDonald seconded and this was agreed to.

The Bill was read a Third time.

VOLUNTEER BILL.

The Crown Advocate moved the postponement of this Bill until the next meeting of the Council.

The Treasurer seconded and this was agreed to.

CRIMINAL PROCEDURE BILL-- SECOND READING

The Crown Advocate moved that this Bill be read a Second time.

Captain Cowie seconded and this was agreed to.

The Crown Advocate said that he proposed to amend this Bill so that Juries of 5 or 9 should both be unanimous in their verdicts, and moved that the Council go into Committee to consider this Bill.

Mr MacDonald seconded and this was agreed to.

COUNCIL INTO COMMITTEE

Title:

The Crown Advocate moved that the title of the Bill be altered to " A Bill to amend the Procedure on trial by Jury in criminal cases ".

Mr MacDonald seconded and this was agreed to.

Section 2

The Crown Advocate moved to delete Section and substitute the following :-

" Sections 301, 302 and 305 of the Indian Criminal Procedure Code shall cease to apply to the East Africa Protectorate and there shall be substituted therefor the provisions following:

When the Jury have considered their verdict, the Foreman shall inform the Judge what is their verdict, or that they are not unanimous.

If the Jury are not unanimous, the Judge may require them to retire for further consideration.

When in a case tried before a High Court, the Jury are unanimous in their opinion the Judge shall give Judgment in accordance with such opinion.

If the Jury are not unanimous, the Judge shall after a lapse of such time as he thinks reasonable discharge the Jury. "

Captain Cowie seconded and this was agreed to.



Section 3

The Crown Advocate moved to delete Section 3 and substitute the following:

" This Ordinance shall not come into operation until its publication in the Official Gazette ".

Mr MacDonald seconded and this was agreed to.

The Crown Advocate moved that the Bill be now reported to the Council.

The General Manager Uganda Railway seconded and this was agreed to.

The Crown Advocate gave notice that he would move the Third Reading of the Bill at the next meeting of the Council.

MINING BILL-- SECOND READING

The Crown Advocate moved to postpone the Second Reading of this Bill.

Captain Cowie seconded and this was agreed to.

PRISONS BILL-- SECOND READING

The Crown Advocate moved to postpone the Second Reading of this Bill.

Captain Cowie seconded and this was agreed to.

MUNICIPAL COUNCIL BILL ( COMMITTEE)

The Crown Advocate proposed to return this Bill for further amendment and that Council go into committee to consider this Bill.

COUNCIL INTO COMMITTEE

Section 6

The Crown Advocate moved in Section 6, line 2 to delete " as shall hereafter be " and substitute " hereinafter ".

Capt. Cowie opposed this and moved that the section stand.

The Treasurer moved that the Bill should be amended by the Crown Advocate and provision made for the election of the Municipal Council, not nomination.

The Crown Advocate explained that this would cause considerable delay, and it was urgent that the present Bill should pass in order to give the present Municipal body the necessary powers, and he again moved his original amendment.

This was however not seconded.

His Excellency, on Capt. Cowie again urging that the section should stand, said that he did not consider the time was ripe for the election of Councillors-- later on, he thought there would be no objection to the question being considered.

Major Leggett thereupon moved that the second line ~~the~~ in the section should read " Council thereof constituted and nominated as hereinafter provided or elected as hereinafter provided ."

Capt. Cowie then withdrew his motion.

The Treasurer again put his motion. Whilst admitting the urgency of the Bill he considered it of even greater importance to have the Bill complete and in a form which would appeal to the public.

This motion was not seconded.

Votes were taken on Major Leggett's motion.

There voted for the motion the Crown Advocate, Capt. Cowie, the General Manager Uganda Railway, Mr Hollis, Major Leggett and Mr MacDonald. The Treasurer voted against the motion.

The motion was carried.

#### Section 37

The Crown Advocate moved to insert in Section 37, last line of first paragraph after " compensation " the words "for

" damage done ".

The General Manager seconded and this was agreed to.

The Crown Advocate moved that the Bill be now reported to the Council.

The General Manager Uganda Railway seconded.

On the question being put there voted for the motion all the members with the exception of the Treasurer.

The motion was carried and the Bill was passed as amended.

LAND TITLES BILL (COMMITTEE)

The Crown Advocate proposed that the Council go into Committee to consider the amendments he proposed to make to this Bill.

The Treasurer seconded <sup>and was agreed</sup> ~~and~~ this ~~was agreed~~ to.

Section 34

The Crown Advocate moved to delete Section 34 and substitute therefor the following:

" Any person claiming to be wrongfully deprived of immoveable property or of any estate or interest therein by fraud or by any error, commission or misdescription in any Certificate of Title granted under this Ordinance may bring and prosecute an action at law for the recovery of such property or of any estate or interest therein against (a) the person to whom a Certificate of title in respect of such property or estate or interest therein shall have been granted under this Ordinance by reason of such fraud or with such error omission or misdescription therein (b) any person who shall have acquired a title to such property or estate or interest therein with knowledge of such fraud, error, omission or misdescription.

The General Manager Uganda T Railway seconded and this was agreed to.

Section 35

The Crown Advocate moved to delete Section 35 and substitute therefor the following :

" No action for recovery of immoveable property or any estate or interest therein shall lie or be sustained against such person as provided in the preceding section unless notice of such action shall have been given to the Recorder of Titles and such action is commenced within 12 years from the grant of the Certificate of Title under this Ordinance in respect of such immoveable property estate or interest.

Provided always that the person who at the time of the grant of the Certificate shall be under the disability of infancy or unsoundness of mind may bring such action within 12 years from the date upon which such disability ceases. And provided further that the time hereby fixed for prosecuting claims shall only begin to run against persons claiming estates in remainder or reversion from the time when such persons <sup>acquired</sup> ~~acquired~~ a right of possession or enjoyment of the immoveable property or estate or interest therein which forms the subject of their claims.

The General Manager Uganda Railway seconded and this was agreed to.

Section 36

The Crown Advocate moved to delete Section 36 and substitute therefor the following:

" Whenever the person against whom an action could be brought under the provisions of Section 34

" shall, before the notice shall have been given to the Recorder of Titles as provided in the preceding section, have alienated, demised or incumbered the immoveable property for valuable consideration, and should the alienee, lessee or mortgagee have duly registered such alienation, demise or incumbrance, all rights and claims in or to such immoveable property or any interest therein under the provisions of this Ordinance should be the subject of a Certificate of Title or an endorsement thereon, shall unless evidenced by a Certificate of Title or an endorsement thereon granted or made under this Ordinance be deemed to be extinguished and null and void, as against alienee, lessee or mortgagee for valuable consideration.

Saving however the right of any person to proceed against the person to ~~whom~~ whom the Certificate shall have been granted or his estate, to recover such sum as may, in the opinion of the Court before which the claim is prosecuted, be equivalent to the injury which he has sustained by the loss of immoveable property, interest or estate.

The General Manager Uganda Railway seconded and this was agreed to.

The Crown Advocate moved that the Bill be now reported to the Council.

Mr Hollis seconded and this was agreed to and the Bill was passed as amended.

MOTION No. 7

Captain Cowie moved that His Excellency be asked to favourably consider the question of reduction of duty of 10 per cent on export of fibre from British East Africa, and advisability of recommending the rescinding the rule now in force compelling the grantee to deposit £1,000 for each 50 sq. miles of fibre land granted.

REPLY

In absence of the Land Commissioner, the Treasurer replied as follows:

In the first place it should be ~~reminded~~ remarked that there is no export duty on fibre. There is a royalty which is levied by the Customs Authorities at port of export as being the most convenient method of realising the amount.

The fibre concessions have been given over large areas, from 50 to 100 sq. miles; the rent fixed is very low, only one pound (Rs 15/-) per sq. mile and the agreement specifies that on all fibre produced there shall be paid, in addition to the rent, a royalty of five per cent ad valorem for the first two years of the lease, and ten per cent afterwards.

It must be remembered that the Sanseveira is a wild plant which must be treated in the same manner as other natural products, such as forest produce, for all of which it is usual to charge a royalty.

For the rest it is ~~sure~~ true that it has been the custom heretofore to insist on a deposit of £1,000 for every 50 sq. miles concession. The deposit is held by the Government unless and until the lessee proves that he has spent £5,000 on his business when it is refunded.

Almost invariably the first concessionaires have been persons of no financial status and the deposits were insisted on to insure that someone of means was associated with them.

But it may be admitted that it is no good to plan to lock up capital in the manner indicated.

In cases of future applications I propose to insist that every applicant should produce within a given time, say three months, good evidence that he possessed of sufficient means (not less than £ 5,000 for 50 sq. miles) to carry out the conditions. Given such proof we might dispense with the deposit.

The approval of the Secretary of State must be obtained to this proposal.

Captain Cowie said that from the grantee's point of view he considered that it was preferable to have a deposit of £ 1,000 rather than show proof of means up to £ 5,000.

Captain Cowie then withdrew his motion.

#### ADJOURNMENT

The Council adjourned until December 1908.