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AN ORDINANCE.

To regulate the inheritance and Convey-
ance of Native Lands on Banaba (Ocean
Island).

Be it enacted by the High Commissioner
as follows:-

Short Title

1. This Ordinance may be cited for all
purposes as the Banaban Native Lands
(inheritance and Conveyance) Ordinance,
1932.

Interpretation.

2. In this Ordinance -

"Banaba" means Ocean Island in the
Gilbert and Ellice Islands Colony.

"Banaban" means any aboriginal native
of Banaba and includes the descend-
ants of any such native whether
wholly or partly of native descent,
and also includes any native adopted
by a Banaban or his or her descend-
ants, together with the descendants
of any native so adopted whether
wholly or partly of native descent.

"Land" includes any sum of money not
being a mineral royalty paid for or
in respect of any Banaban land and
held by the Resident Commissioner
in trust for the landowner, his
heirs and successors.

"the near kindred" means the direct
ascendants

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ascendants of any person up to and including his or her great-grandparents together with all collaterals the issue of such direct ascendants.

"Nati" means a person formally adopted as a son or daughter of the adoptor. "Te aba-n-nati" means any land devised to a nati by his or her adoptor.

"Tibu" means a person formally adopted as a grandson or granddaughter of the adoptor.

"Te aba-n-tibu" means any land devised to a tibu by his or her adoptor.

"Mwi-ni-maane land" means any land not being te aba-n-nati or te aba-n-tibu descended through the father.

"Mwi-n-aine land" means any land not being te aba-n-nati or te aba-n-tibu descended through the mother.

Method of Inheritance.

3. Save as hereinafter prescribed no Banaban shall devise his or her land to any person save his or her issue or, failing issue, to his or her near kindred.

Failing issue, the next of kin of an individual shall be deemed to be, in order of proximity of relationship:-

(1). In the case of "Mwi-ni-maane land"-

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1. remaining issue of father, failing which
2. brothers and sisters of father, failing which
3. issue of brothers and sisters of father, failing which
4. brothers and sisters of father's father (if land originally descended from father's father) or
brothers and sisters of father's mother (if land originally descended from father's mother), failing which
5. issue of 4 above,

failing which the land shall pass to the descendants of the collateral branches of each preceding generation, until an heir be found.

(2). In the case of "Mwi-n-aine land"

1. remaining issue of mother, failing which
2. brothers and sisters of mother, failing which
3. issue of brothers and sisters of mother, failing which
4. brothers and sisters of mother's father (if land originally descended from mother's father) or
brothers and sisters of mother's mother (if land originally descended from mother's mother), failing which
5. issue of 4 above,

failing which the land shall pass to the descendants of the collateral branches of each preceding generation, until an heir be found.

In the event of no heir being found the land shall revert to the Crown, to be held for the common benefit of the islanders.

Save as hereinafter mentioned a Banaban shall devise his or her land in equal shares to his or her issue or, failing issue, to his or her

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next of kin, provided that, with the consent of all the issue, a man or woman may devise a larger portion of land to his or her eldest issue or to his or her male issue.

"Te Aba-n-Nati" and
 "Te Aba-n-Tibu"

4. (1). It shall be lawful for an adoptive parent to devise to his or her Nati or Tibu under the Banaban titles known as te aba-n-nati and te aba-n-tibu respectively a portion of his or her mwi-ni-maane or mwi-n-aine land not exceeding the maximum portion due to any of his or her natural issue. Failing natural issue, the adoptive parent may devise the whole of his or her mwi-ni-maane or mwi-n-aine lands to the adopted Nati or Tibu.

(2) All lands held by an adopted Nati or Tibu under the titles known as te aba-n-nati and te aba-n-tibu are perpetually entailed to his or her lineal descendants. Failing such descendants the land shall revert to the adoptor or if the adoptor be deceased to such persons of the adoptor's kin defined in section 3 of this Ordinance as would have been entitled to inherit had the adoption never been effected.

5. If any person be adopted as a Tibu he or she shall thereby lose the right to inherit or otherwise receive

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the share of adoptive lands to which the person adopted is justly entitled.

8. (1) The following gifts of land from a Banaban to another Banaban or to any person defined as a native in the Gilbert and Ellice (Consolidation) Amendment Ordinance 1925 shall be lawful-

- (a) Te aba-n-tara: a gift of land made in return for nursing services rendered to the giver by a person who is not of his or her near kindred;
- (b) Te aba-ni-karaure: a gift of land made to any other native person as a token of the giver's particular esteem, gratitude, or affection;
- (c) Te aba-ni-kamamma: a gift of land made to the wet nurse or foster mother of the giver's child when the natural mother is unable to suckle it.

(2) Provided that no gift of te aba-n-tara shall be valid unless it be first proved to the satisfaction of the Native Magistrate assisted by a council of Banaban elders that the near kindred of the owner refused to care for or otherwise grossly neglected him or her during sickness or old age; provided also that no gift of te aba-ni-karaure shall be valid unless the near kindred of the owner have first unanimously consented to such gift in the presence of the Native Magistrate and the council of Banaban elders.

(3) All gifts of land made according to the provisions of this section shall be held by the receiver in fee simple and



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and may be given by such receiver at his absolute discretion to any other native whatsoever either in fee simple or under any Banaban title defined in this Ordinance.

9. No conveyance of land shall be valid unless it be duly registered in the Lands Register in the presence of all interested parties before the council of Banaban elders and ratified by the signatures of an administrative officer, of the Native Magistrate and of the Chief Kaubure appended thereto. Should the conveyance be made during the lifetime of the conveyor, the title to the lands conveyed shall not pass until his or her death, provided that the title to land given as "Te Iria" shall pass at the time of the adoption, and the title to land given as "Te Aba-ni-kamamma" shall pass on the completion of the services of the wet nurse or foster mother.

Registration of
Adoptions.

10. No adoption made subsequent to the coming into force of this Ordinance shall be lawful unless the adoptor, the natural parents of the adopted, and the near kindred of the adoptor certify their agreement to the adoption in the form prescribed in the Schedule to this Ordinance.

11. The council of Banaban elders
authorised


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authorised to assist the Native Magistrate in matters pertaining to this Ordinance shall consist of twelve disinterested Banabans elected as councillors by the adult members of the Banaban community. No person shall continue in office as a councillor after the 31st December in each year unless he or she be re-elected by the community.

(2) The Native Magistrate shall be guided by the majority vote of the councillors in determining any case before him. In the event of an equal division the Native Magistrate shall give the casting vote.

12. (A section enabling the Native Magistrate and council to give effect to wills and testamentary documents concerning Banaban lands, in so far as such documents are not contrary to the terms of this Ordinance; and to distribute estates of Banabans deceased intestate, according to the law.)

13. Subject to the approval of the Resident Commissioner, the Native Magistrate and council shall enquire into and determine all cases at issue under this Ordinance, or under any custom connected with land not specifically defined herein and not contrary to the sense of anything herein contained. Provided that if a judgment of the Native Magistrate and council


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council be based upon a custom not already defined herein the said custom shall be thereupon defined in writing and the judgment shall not begin to operate until the High Commissioner has assented thereto.

14. Any person feeling himself aggrieved by any record of the Native Magistrate and Council shall within three days of the meeting at which the said record was made give notice of his desire to appeal, which notice shall be signed by the appellant or his duly authorised agent before the Native Magistrate and forwarded to the Resident Commissioner. Any appeal as to any record of the Native Magistrate and Council shall be heard and determined by the Resident Commissioner whose decision shall be final if his finding upholds the record of the Native Magistrate and Council. When the finding of the Resident Commissioner on appeal does not uphold the record the Resident Commissioner shall forward to the High Commissioner a copy of the record together with a copy of the evidence taken on appeal and the decision of the High Commissioner in the matter shall be final.

15. If no notice of desire to appeal is given within the specified time the record of the Native Magistrate and Council shall be conclusive and final.

16. For the purposes of any inquiry the Native Magistrate and Council shall have
such



such powers as are vested in the Native Court to call and examine any person who may be thought able to give relevant evidence and to require the attendance of all claimants to any land the title to which is the subject of inquiry and of all persons likely to be interested in the title to such land.

17. If any person wilfully obstructs or insults a member of the council appointed in pursuance of this Ordinance while engaged in taking evidence for the purpose of an inquiry held under this Ordinance or interrupts the proceedings or in any way interferes in the inspection of land or boundaries or otherwise misbehaves during the holding of such an inquiry or fails to attend an inquiry or to give evidence when required to do so under the provisions of this Ordinance he shall be liable on conviction to a penalty not exceeding £10 or to imprisonment for a period not exceeding six months.

18. If any person being required to make a statement as a witness in the course of any inquiry under this Ordinance wilfully makes a statement material for the purposes of such inquiry which he knows to be false or does not believe to be true he shall be liable on conviction to imprisonment for a period not exceeding twelve months.

19. The future alienation of lands under
any

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any of the native titles defined in Schedule B to this Ordinance is hereby prohibited.

20. This Ordinance shall not take effect until it has been ratified by the Banaban community.

Schedule A.

The form to be used in all cases of adoption.

No....

Adoption of the child of by
.....

We agree that our child shall be adopted by and that from this day he (or she) shall be called and known as the child of

We Father of Child.
..... Mother of Child.

I agree to adopt from his(or her) parents and from this day shall be called and known as my child.

I Adopter.

We, the near kindred of agree that he (or she) shall adopt and that shall from this day be entitled to his (or her) share of the land of in accordance with the provisions of Ordinance No.of 1932.

We The Near Kindred
of the Adopter.

Witnesses:-

..... Native Magistrate.

..... Chief of Kaubure.

..... Date.


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Schedule B.

Banaban land-titles under which conveyances
are expressly forbidden.

1. Te aba-ni-butirake. Land given away by an elderly or old native to a young person of opposite sex in return for the adornment of the elder by the younger with wreaths of flowers.
(Note. Often used in the past for immoral purposes. Now in total desuetude)
2. Te aba-n-ran. The forfeit of land paid by an adulterer to the wronged husband in commutation of the death penalty.
(Note. Often used formerly in the manner of a legal fiction, as a basis for the hiring out of a wife. Now in total desuetude.)
3. Te nenebo. The forfeit of land paid by a murderer to the near kindred of the murdered man in commutation of the death penalty.
(Note. Now in total desuetude.)
4. Nenebo-n te man. The forfeit of land paid by the killer of a frigate-bird to the owner of the bird.
(Note. Now in total desuetude.)
5. Te bora or te aba-n-tinaba. A gift of land made to a young woman, or her husband or betrothed, in payment for sexual relations with her, under the custom of tinaba.
(Note. Tinaba in very early days was the sexual relationship existing between a man and the wife of his sister's son. At the coming of the Flag, the custom had become generalised, and included the following reciprocal sex-relationships:-
 - (a) Man with wife of his sister's son;
 - (b) " " wife of his brother's son;
 - (c) " " mother of his wife;
 - (d) Woman with husband of her daughter;
 - (e) " " brother of her husband's mother;
 - (f) Woman with brother of her husband's father.

A gift of land seems to have passed only in cases (a) and (b), when it was made by the senior man to the young husband or, very exceptionally, to the young woman herself. The custom is now dead.)


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6. Te aba-n-ira. The forfeit of land paid by a thief to the owner of the property stolen by him or her.

(Note. Now in total desuetude.)

7. Te aba-n-iein. A forfeit of land paid by the parents of a boy to the parents of a girl to whom the boy was betrothed, in the event of a rupture of the betrothal by the boy or his parents.

(Note. The amount of land formerly paid under this title depended upon whether the boy had or had not entered into sexual relations with his betrothed before the rupture of the betrothal. The betrothal and rupture thereof might take place before either party thereto had been born: the land passing in such a case would be small. The custom is now in total abeyance.)

8. Te aba-n-riring. The fee of land paid to a bone-setter for treating a dislocation or fracture.

(Note. Now in total desuetude.)

9. Te aba-ni-kamaiu. A fee of land paid for sustenance received during a time of drought.

(Note. Formerly, when a drought occurred, those who were destitute would go to live with such as had food, or were good fishermen, or owned a large water-hole. These persons were entitled to take all the lands of the destitute parties under the title aba-ni-kamaiu, which signifies land-of-keeping-alive. The destitute might feed from the forfeited lands during life, but the ownership and usufruct passed irrevocably at their death. The custom is now in total desuetude.)