

1933

1933

3049

CO 533/432
KENYA

3049

Complaint by Lt Col Bethwell regarding
unjust treatment of a squatter by European P. C. Potter

Previous

78

18 318/30

Subsequent

Griffin
Mr. ...
Mr. ...

142

Mr. ...

152

Mr. ...

172

Mr. ...

123

Mr. ...

1/3

Mr. ...

2/3

Mr. ...

1/3

Mr. ...

22/5

Room 109

W/S

Mr. ...

22

FILE A

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1. Governor Byrne H.C. 13 January 33
 furnishes a report on the complaint of Lt. Col. Wetherell
 & states is satisfied that no injustice was done & that the
 matter does not demand any further action.

Lt. Col. Wetherell's complaints in B.C.
 and I enclosed with file 18318/32 are
 that the sheep were not put in the pound
 that he heard that they were being sold
 that a ^{chattel} charge was made against the boy
 because he demanded the return of 3 passing
 sheep that when the boy was convicted he
 (H.C. Colby) was ~~was~~ informed by the P.C. in table that
 the boy had paid his fine and fine where
 the boy was in goal.

It looks as if the boy was not given
 a reasonable opportunity to pay the fine
 The former is satisfied however that
 no injustice was done.
 Convey the fact of to Sir James
 Dormanville

H.C. Colby
 13/1/33

Infor Sir J.F. that Gov. has now reported
 add as at 15 and A (in that order) in the sup.
 and say that Sigs. has formed the opinion which
 his trust will be shared by Sir J.F. that no
 good purpose will be served by pursuing the
 matter further.

It may get them
 off the gold.

(Possibly Sir J. Dormanville will ask a
 question in the House.)
 Draft here with
 J.F. Colby
 14/2/33
 12/2/33

Sec of State.

For sorry for the delay in
replying to you, but I have had
a number of things which did not
allow me to do so.

J.H.G.
25.1.33

2
In F. Fremantle
Cac. Off.

? Why
H.S. Fremantle
1/2/33

J. W. ...

1/3. Sir F. Fremantle 5/6
Encloses thanks for No 27, for the investigation

DESTROYED UNDER STATUTE

? Why
H.S. Fremantle
2/2/33
at once

4 H.S. Fremantle 5/6
Encs. a further letter from Col. Wetherell &
requests further investigation of certain points maybe made.

DESTROYED UNDER STATUTE
H.S. Fremantle 5/6 - unrecd - 26 Feb. 33

1831 8/32 12/32

Mr. Davies 27/4
Mr. Freeman 28
Mr. Flood.
Sir C. Bottomley
S. S. ...
953
Head of ...
De of ...

Please see correspondence with Sir Francis

(14). Fremantle, M.P. attached. Perhaps the Department
will kindly consider the further points raised in
the letter of the 26th of April and advise whether
a further reference to the Governor of Kenya is
required. If not, perhaps I can have the draft
of a letter for the Secretary of State's signature
next week?

J. W. ...
28.4.33

This major perhaps be answered with our
further reference with to ...

of Sir F. Fremantle's 3 points. The first could
be met by saying that it is understood
that the F.P.C. concerned was referred to
by the ... of his Dept. for his ...
... generally in the case ...
... proceedings. The ...
... by saying that in view of the fact that
the ... had already been fully investigated
by the P.C. (as it is on No 14 3049/33)
... Mr. ... lawyer ... to call on
Col. Wetherell for a statement. We might add
that the S.P. ... Sir F.F. will agree that no
good purpose will be served by pursuing the
matter further & least unanswerable the fact
about the Gov. refusing to see Col. Wetherell.

Mr. Davies 27/4
Col. Wetherell, through Sir F. Fremantle, is trying
to use the S.P. as an unofficial Court of Appeal

from the Governor's findings.

Reply that Sps. do not think that any useful purpose would be served by further informal correspondence on this subject. That if Col. W. is still dissatisfied he has his remedy in a petition to the Sps. through the Governor. ~~What the letter is bound to forward~~ and which will be impartially considered by Sps. if & when received.

AP Fremantle
28/4

There is rather more in this than meets the eye. Colonel Wetherell may be level-headed and disinterested, but what Sir F. Fremantle wants is that the Secretary of State should call upon the Governor to make explanations as to why he refused (if he did refuse) to see Colonel Wetherell, and why Colonel Wetherell was not asked to state his case. Further the question is raised as to why no mention is made of the action of the Constable. As regards the last point, the action of the Constable was thoroughly well dealt with in the despatch and the Constable has been duly reprimanded. I submit that it is scarcely justifiable that the Governor should be called upon for any explanation as to why he did or did not choose to see any particular local unofficial. The Governor

is not at the beck and call of people like Colonel Wetherell, and it is for him to decide whether he will see them or not. I think the reply might simply be that the S. of S. does not think that any useful purpose would be served by further correspondence, that the Governor and everybody else who has fully investigated the matter is satisfied that justice was done in the case, and it is for the Governor to make such disciplinary arrangements with regard to the Police Constable as he thinks fit and it is for him to decide whether or not he should see Colonel Wetherell. That won't please Sir F. Fremantle, but I think it's the proper course to adopt.

J. W. Hood
1-5-33

I have looked at the report of the Sps. and do not see any ground for a reply from the Secy of State. I am not sure that it is worth the trouble.

I don't think (see my answer of Nov. 1932) that there is probably a good explanation of the Governor's refusal to fix another appointment, but whether we should give Sir Col. Wetherell's demands by further bothering a harassed Governor is another matter. a. the Hood questions?

W. H. Hood, 5-33.

Sec of State
(through Lord Alington)
I don't believe that this further

is not at the beck and call of people like Colonel Wetherell, and it is for him to decide whether he will see them or not. I think the reply might simply be that the S. of S. does not think that any useful purpose would be served by further correspondence that the Governor and everybody else who has fully investigated the matter is satisfied that justice was done in the case, and it is for the Governor to make such disciplinary arrangements with regard to the Police Constable as he thinks fit and it is for him to decide whether or not he should see Colonel Wetherell. That won't please Sir F. Fremantle, but I think its the proper course to adopt.

S. E. W. Flood
1-5-33

I believe this case my opinion of Nov. 1932) that there is probably a good explanation of the Gov's refusal to fix another appointment, but whether or should someone Col. Wetherell's conduct by further bothering a harassed Governor is another matter. a, but Flood questions?

*Good 1-5-33
Sec of State
(through Lord Plymouth)
I don't believe that this further*

I have looked through my files & I don't think there is any further reply from Sir J. Agnew to my letter no. 15.

4. Sir F. Fremantle ^{5/10} _____ 11/2/33
Adm. Nov. 9 states as to reply he will give to Col Wetherell.

*Put by
P. J. Davis 22/5*

*S. E. W. Flood
22-5-33*

(M)

76

SIR FRANCIS FREMANTLE
D.O.E. M.P.RECEIVED
20 MAY 1933
COL. OFFICE
*R*BEDWELL PARK,
HATFIELD,
HERTS.

May 19th., 1933.

*Dear Councillor Lister*N06

Many thanks for your letter of the 12th. inst. regarding the question raised by Lt.-Col. M. C. Wetherell of Naivasha, Kenya.

As you say, Wetherell was hoping that you would act as a court of appeal from the Governor's findings; and I shall tell him that in effect you have done so and he must be content with the result.

No doubt such independent settlers who are keen to see justice done to the natives are liable to be a thorn in the side of the administration and need tactful handling. Obviously, in the ultimate interest of the British Empire and credit, they are to be encouraged.

Yours sincerely,

Francis Fremantle

Rt. Hon. Sir F. Cunniffe-Lister, GBE., MP.,
Colonial Office,
Downing Street, S.W.1.

C. O.

67

Mr. Boyd 9/8
Mr. Flood 9/5

Quarto, for S. of S's signature

12 May 1933.

Mr. Parkin
Mr. Tomlinson

X Sir C. Bannister 10/5

Sir J. Shackleton
Permit U.S. of S.

Party U.S. of S.
Secretary of State

Gen. Fremantle

I have now had a chance of

reading your letter of the 26th of April

with which you enclosed further letters
from Lt.-Col. M.C. Wetherell, of Naivasha,
Kenya.

DRAFT

**SIR FRANCIS FREMANTLE,
OBE., MP.**

I hope you will not mind my
saying that I feel that Col. Wetherell is
trying through you to use the S. of S. as
an unofficial court of appeal from the
Governor's findings in this particular
case. I doubt very much whether any
useful purpose will be served by
continuing the correspondence. You will
remember that I told you that in my last
letter

letter the case had been fully
investigated by the Provincial
Commissioner, the Commissioner of Police,
the Conservator of Forests, the Chief
Native Commissioner and the Supreme Court.
I may say quite frankly that there
may be some truth in the allegation that
neither the forester nor the European
constable acted with great discretion in
the matter. In particular it seems that
the proceedings were unduly protracted and
both men were reprimanded by the Heads of
their Departments. But the Governor and
everybody else who has fully investigated
the matter is satisfied that justice was
done in the case. It is of course for
the Governor to make such disciplinary
arrangements with regard to the Police
Constable as he thinks fit, and I should

not

not be prepared to dictate to him

whether he should or should not receive

Col. Wetherell personally.

(In original)

I return the correspondence

and copies of these
to be kept for
record on the
file.

which accompanied your letter.

P. Cunliffe-Lister

(Sgd.) P. CUNLIFFE-LISTER

SIR FRANCIS FREMANTLE,
C.S.E. M.P.

BEDWELL PARK
HATFIELD.

HERTS.

26th. April, 1933.

4
9

Entered
Dear Mr. Fremantle

No 1

15318/32

No 5

15318/32

No 9

15318/32

On 14th. November, 1932, and again on 11th. January, 1933, I wrote to you regarding a matter raised by Lt.-Col. M.C. Wetherell, of Naivasha, Kenya, and - after provisional replies on Nov. 24th. and Jan. 12th. - you sent me in due course a considered reply, giving the result of your enquiries.

No 2

I sent your reply to Col. Wetherell, who sends me by Air-mail the enclosed letter, urging me to approach you again. This I should not care to do, if it were a case of a personal grievance or if I thought Colonel Wetherell was not level-headed and disinterested in his determination, if possible, to see justice done to the natives. But, on the face of it, the Governor's reply seems to call for the comments ; (1) Why is no mention made of the action of the constable, which is the subject of Colonel Wetherell's complaint ? ; (2) Why did His Excellency refuse to see Col. Wetherell twice at appointments made by him; (3) why was Col. Wetherell not asked to

Recd. 26 April 33 4 12 PM '33

SIR FRANCIS FREMANTLE
O.B.E. M.P.

BEDWELL PARK
MATFIELD,
HERTS. 10

state his case ?

I hope you will call for further reply on these points if, as it seems to me, a disinterested English settler feels justice has not been done in the defence of elementary native rights.

Yours sincerely,

Francis Fremantle

Rt. Hon. Sir Philip Cunliffe-Lister GBE., MP.,
Colonial Office,
S.W.1.

Copy

NAIVASHA,
Kenya.

19.4.34.

Dear Sir Francis Fremantle,

I thank you for your note enclosing S. of S. letter to you re my complaint against E.P.C. Potter of the Kenya Police.

After my Squatter had at my instigation had his sheep back for a considerable time, I personally took him to the Police Constable to see if I could get satisfaction for 3 that had been eaten. The European Constable resenting my action under pretence of taking the boys evidence charged him with a crime without the boys knowing it. The alleged wandering of sheep occurred at the end of August 1931: this was on November 10th 1931. The offence if any had been condoned when the boy received his first lot of sheep back. Had I not taken the boy down no question of prosecution would have arisen.

He was told to go to the Court House on November 19th. There he was asked: "Did you lose some sheep?" He answered "Yes". That was his plea of guilty. E.P.C. Potter told me four times the boy had paid his fine and gone.

The fine was reduced because the Magistrate was horrified at the way he had been misled. After dealing thoroughly with the case, the Provincial Commissioner, admittedly a very able man, said to me, in effect, "with regard to the Police Constable, I must leave you to deal direct with the Commissioner of Police." I inferred he considered only the Head of Police could deal with an incident so grave.

I agreed with that view and accepted the responsibility.

I was, however, given no opportunity after that of stating my case with regard to the constable, at any personal interview.

His Excellency, at Mr. Welby's instigation, gave two appointments which I kept but he did not. He then refused me any appointment. This is not touched on in the reply.

When the S. of S. requested a re-opening of the case, I imagine he thought I should at least be called on to give my evidence, or clearly state my complaint.

May I refer you to "I" of my original file - a letter written to Secretary to the Governor - 2nd page, line 5. Mr. Welby has adjusted the matter of the 'Magistrate's mistake' etc. to the end. It shows H.E.'s explanation completely misses the main issue.

The contention in that letter "I" is that E.P.C. Potter, by his action, showed himself unfitted to be a police constable in Keryd. To reiterate, I personally took to him a to be a ped. He at once prosecuted the boy for an alleged offence three months old.

Possibly anticipating a remission of the fine, he made sure the boy did 3 days imprisonment by telling me untruly that he was not in prison.

The omission of H.E. to call for my evidence when asked to re-open the case by the S. of S. is not inconsistent with his attitude in refusing to see me after giving me two appointment which I kept but he did not.

I note this is not commented on. The penultimate sentence of letter "I" of file referred to above appears to cover the final sentence of S. of S.'s letter to you.

Yours faithfully,

(SD.) M. C. WETHERELL.

Lt. Col. late R.A.M.C.

16.5.32.

Dear Major Clinton Wells,

My case against the Kenya Police is as follows:-

A squatter on mine "Tumbo" during September and October last year had his sheep taken and kept by a forest askari "Kagwema". I did eight things in the way of letters and interviews with the R.C. and Police in my efforts to get them back for him.

Hearing the sheep were being eaten I sent a letter to the Police enumerating my efforts.

Tumbo received back his sheep, being sent down by me to get them. They were three short; I renewed my efforts to find out what had happened to the three. I was referred to the R.C. to Forest Officer and from Forest Officer to Police. On November 16th, 1931, 14 days after Tumbo had received back his sheep I went to E.P.C. Potter. He already knew all about the affair. He referred me back to the Forest Officer. I said he must arrest "Kagwema" the forest askari and discover the whereabouts of the lost sheep. E.P.C. Potter said "Have you the boy with you?" I replied "Yes". He said "Leave him with me". I did so.

E.P.C. Potter, without my knowledge, at once made out a crime against the boy for allowing his sheep to stray. The crime, if any, was two and a half months old. It was falsely dated. Four days later, Oate, the Magistrate, who knew the case well, did not recognise it, and fined the boy 20/- or 10 days.

Hearing

Hearing of this gross travesty of justice, I hurried down to pay the fine. I met E.P.C. Potter within 50 yards of the gaol, about 5.30 p.m. He was the only European Official in Naivasha at the time.

He four times stated the boy had paid his fine and gone, and that he had made no enquiries in reference to the lost sheep. The boy was still in gaol. He had been put on the road gang at midday of the day he was tried, and did hard labour for 3 days.

Mr. Welby had adjusted the matter of the Magistrate's mistake and the forest Officer's action, as one would expect. He referred me to the Commissioner of Police with regard to E.P.C. Potter. The Commissioner of Police said he was willing to see me. I was prepared to go to considerable lengths to meet him. I even suggested Eldoret. I was not given the opportunity.

When I called at the Commissioner's office in Nairobi I was told the case had been closed on the morning of the day on which I called.

I contend that acting as he did, E.P.C. Potter has rendered himself unfit to act as a point of contact between British justice and the Native.

I contend that he acted as he did because he knew that in the Kenya Police he could do so with impunity.

I have heard nothing after Mr. Welby referred me to the Commissioner of Police, except that the case was closed.

E.P.C. Potter is still in Naivasha. I have no complaint against the P.C., Nakuru, rather the reverse.

I trust H.E. will pardon me if I refer him to what Solon the Athenian Legislator said 3,000 years ago, describing good Government, i.e., as a condition "where the least injury to the meanest individual is an insult to the whole constitution".

My own ideas as to the standard of honour expected from the British "Raj" have been rudely shaken by this incident and its official reception of my report.

Yours truly,
(SD.) M.C. WETHERELL.

Mr. ~~29~~ (15/2).

For a/s by the S. A. S.

Mr. ~~1~~

Mr. Parkinson

Mr. Tomlinson

X Sir C. Dalton (s) 15/2

X Sir J. Shickel

X Perm. ~~15/2~~

Party U.S. of S.

Secretary of State

27 Feb 1933

DRAFT

FOR GOVT. FILE

S. A. S. ~~15/2~~ O. B. C. A. P.

In continuation of my letter of the

18th of Jan. I write to say that I have

now heard from the Governor of Kenya

about Col. Wellersall's complaint. It

appears that the squatter in question

did let twenty five animals stray on

the Forest Reserve where they were

impounded. He was told he could have

his animals back on payment of 25/-

or if he liked, be prosecuted. He chose

the latter and was fined 20/- on ten

days (He pleaded guilty). He had no

money but Col. Wellersall paid the fine and

he was released after three days.

Meanwhile three of the animals had

died and when this fact was brought to

the notice of the magistrate who had tried the case he took steps to have the fine reduced to 2/6 (two shillings & pence).

C. O.

3049 / ^{Kenya} 33

16

Mr. ~~29~~ (15/2).

For a.s. by the S.D.S.

Mr.

Mr.

Mr. Parkinson

Mr. Tomlinson

X Sir C. ... 15/2

Sir J. ...

Mr. ...

Parry, U.S. of S.

Secretary of State

DRAET

Kenya

Sir T. ... O.B.C., N.P.

27 / 26th 1933

In continuation of my letter of the

16th of June I write to say that I have

now heard from the Governor of Kenya about Col. Wetherall's complaint. It

appears that the squatter in question did let twenty five animals stray

into the Forest Reserve where they were impounded. He was told he could have

his animals back on payment of 25/- or if he liked, be prosecuted. He chose

the latter and was fined 20/- or ten days (He pleaded guilty).

He had no money but Col. Wetherall paid the fine and he was released after three days.

Meanwhile three of the animals had died and when this fact was brought to

the notice of the magistrate who had tried the case he took steps to have the fine reduced to 2/- (two shillings & pips cents).

Sen Joseph Byrne tells me that the

matter has now been fully investigated

by the Provincial Commissioner, the

Commissioner of Police, the Conservator of forests,

the Chief Native Commissioner, and the Supreme

Court which reversed the fine. The Governor

says that he is satisfied that no injustice

has been done. The action in impounding

the animals was lawful and the man

was rightly convicted and the penalty was

not unduly penal. He has lost these animals

whose value the Governor says would probably

not exceed five shillings each. He has been

in detention for three days for five

half a crown.

Yours

KENYA

NO 44



16
GOVERNMENT HOUSE,
NAIROBI,
KENYA.



13 January, 1933.

Sir,

No 6.
10316/32
I have the honour to refer to your despatch No. 858 of the 24th November, 1932, on the subject of a complaint by Lt. Col. M.C. Wetherell against European Police Constable Potter in regard to the treatment of a man known as "Tumbo", one of Colonel Wetherell's squatters, and to inform you that the facts of the case are as follows:

2. In September, 1931, Tumbo allowed 25 goats and sheep to stray into the Forest Reserve. These animals were impounded by a Forest Guard and Tumbo was informed that he could have them back on payment of Shs. 25/- or, alternatively, could submit to a criminal trial for the offence in the Court of the Magistrate at Naivasha. Tumbo chose the latter alternative and was convicted on his own plea of guilty and sentenced to a fine of Shs. 20/- or 10 days' detention in default of payment. He had no money with which to pay the fine and was accordingly detained. Three days later Col. Wetherell paid the fine and Tumbo was released.

3. In the meantime, however, 3 of Tumbo's animals had died while impounded at the Forest Station, a fact of which the Magistrate who tried the case was ignorant at the time of the trial. On being informed of this the Magistrate sent

his/

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

his case to the Supreme Court for revision asking that the fine might be reduced to a nominal sum. The Supreme Court reduced the fine from Shs.20/- to Shs.2/50 cents.

4. I am satisfied that no injustice was done. The goats and sheep were lawfully impounded and Jambo was rightly convicted. The penalty which he suffered was not unduly harsh. He has lost three animals whose value probably did not exceed Shs.5/- per head, has undergone 3 days' detention, and has been fined Shs. 2/50 cents.

5. There is, however, some truth in the allegation that neither the Forester nor the European Police Constable acted with great discretion in the matter. In particular it seems that proceedings were unduly protracted, and both were reprimanded by the Heads of their Departments. I am not of opinion that the matter demands any further action; it has been fully investigated by the Provincial Commissioner, the Commissioner of Police, Conservator of Forests and the Chief Native Commissioner, and the Magistrate's case has been referred to and revised by the Supreme Court.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL.
GOVERNOR.