

1928

Kenya

No. 15308

SUBJECT

C O 533/379

"The Fugitive Criminals
Surrender (Amendtt.) Order, 1928
(No. X. of 1928)
"The Extradition Ordinance, 1928"
(No. VIII. of 1928)

Previous

X. 10359/27

Subsequent

1. Genl. Dep. Denham 349. 26 June 1928
Two true authenticated copies of 'The Fugitive Criminals
Surrender (Amendment) Ordinance, 1928,' and of 2
'The Extradition Ordinance, 1928' together with
the legal reports.

General Dep.
Mr. Shepherd
Mr. Allen

? signify non-disallowance
in respect of both orders
J. Gordon
1/8

(An Order in Council is now required?
see para 3 of no. 5 on 10389)

I suppose we should add that steps are being taken
for the issue of an O.C. ref. to the suspending
clause of VIII.

and draft the necessary order

I agree & enclose a draft order.
A.L.
3/8

Please see def attached:
& send off to Council Office in letter
a list of 97 copies of the usual
number of copies.

Mr. Allen

Mr. Gordon

Mr. Shepherd

last points of detail

which I notice:-

(1) Are the schedules to an Order part of an Order? If they are, surely § 3 of Ord. No IX is inoperative as applied to the 2nd schedule of R.L. Chap XI? eg. it wd. be absurd to substitute 'Protectants' for 'Colony' in the phrase 'the Gov. of the Colony and Protectants of Kenya'

~~Language of the Order~~
~~is not clear~~

Again, in § 20 of Chap. XI 'colony' is meant of foreign states, & obviously we do not want to substitute 'protectants' there: but perhaps this is met by the distinction in favor of the capital C - 'Colony'?

(2) In the O.C., do we not now require a final clause as to the giving of the rec^d. directions herein?

Acc. B. M. M.
D/M/8

The Order,

On a literal interpretation of § 3 of Ord. IX, the authorities you point out wd follow. Kenya might well have repealed c. XI & re-enacted its provisions on the lines of S. Leone c. 87. If the Dep. wd. wish to come to be followed I see no objection. But for practical purposes I think Ord. IX will serve its purpose. § 3 wd. have concluded with some such words as "except where such substitution is repugnant to the context." But in my opinion, however, this limitation is implied. A Court is reluctant to put on a statute a construction wh. makes it non-sensical or having regard to its scope & purpose, was clearly not intended.

over,

The substitution of 'protectants' for 'colony' in § 20 wd. be repugnant to the context of the section & is contrary to the purpose & scope of the amending Ord.

The schedules to c. XI are, I think, for this purpose parts of the Ord. but in spite of the amending Ord. the form may still when read the forms describe himself as the Gov. of the Colony & protectants of Kenya

As to (2) a final cl. is not strictly necessary but had better be added.

W.L.
9/11/28.

W.L.
Have you wd. also look at the O.P. Order, wh. I have had 'fair-copied'. Have you any objections, please?
Acc. B. M. M.
13.8.28

W.L.
This had better not come on with all the complete - i.e.

to the P.C.O. with ...
...
...
with No VIII of 1928

Accd
16.10.28
atmos

To Ser. 626 - 1 and - 27 AUG 1928

3
Trans 12 copies of the Fugitive criminals
surrender orders and of "The Extradition
Orders 1928")
[spare copies to library]

The next meeting of the Council
is on 15th Oct.

The letter to the P.C. no. 1
in the packet below no. 3 can now
go, together with a printed
copy.

Plan put by
G. Eastwood
3/10. 30/10

4. To the Lord President of the Council
(w. draft C on E. + copy orders No 8) 5 OCT 1928

Transmit two sealed and twenty-five plain copies
of the Extradition Order to Council.

4

? send one from 2 22 plain
copies to Kenya ref no. 2, requesting
that the O. in C. should be published.
Dft has for course

Remaining copies
(including one sealed)
to February, 28/1/28.

G. Eastwood
Brix 28

1/11/28
atmos

6 To Ser. 837. 15 NOV 1928
(w/ 1 Seals & 12 plain copies encls 4-5)

Mr. Eastwood 13/11
Mr. Allen 17/11
Mr. Bottomley
Mr. E. Harding
Mr. J. Shuckburgh
Mr. G. Grindle
Mr. C. Davis
Mr. S. Wilson
Mr. Ormsby-Gore

5 X 15 308 28 K.

NOV
D-14

15 Nov 1928

To next mail

Lord Lovat
Mr. Amery
for union

Sir. S 24

DRAFT.

(No 2)

With reference to my draft:

No 626 of the 27 August

I have seen the trans. to
you one sealed & enc.

enclosed plain copies of an
Order of H. M. in Council
directing that ^{the} the Extradition

Ordinance 1928 shall ~~be~~
into force in the Colony.

2. I shall be glad

Henry
No 837
Gen. Gage

1 Nov 1928

O. in C. L. T. sealed copy
12 plain copies

If you will arrange
for the Order to be
published in the official Gazette
of the Colony at an early date

1. That ~~the~~
of the

have effect in the Colony/with
modification or alteration as if
it were part of the Constitution
Act 1871

2. That will no doubt

be consistent with the
publications of the Order
in the Colony

L. S. AMERY

6 15308/19

5

In any communication on this subject please quote No. 134-930 and address

THE CLERK OF THE COUNCIL,
PRIVY COUNCIL OFFICE,
LONDON, S.W.

PRIVY COUNCIL OFFICE,

WHITEHALL, S.W.1.

RECEIVED 3rd November, 1928

SIR,

I am directed by the Lord President of the Council to

2 sealed
& 25 plain
Copies

transmit to you the accompanying Order of His Majesty in

Council of the 12th instant, directing the
*Retraction Ordinance 1928 of the Legislature of
Kenya to have effect in that Colony,*

and I am to request that you will lay the same before the
Secretary of State for the Colonies.

Seals & 12 plain copies
4-50-837-15 NOV 1928

I am

Sir,

Your obedient Servant,

M. P. A. Hankey

The Under Secretary of State,

&c., &c., &c.,

Colonial Office

IN THE COURT AT BUCKINGHAM PALACE,

The 1st day of November, 1928.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY
IN COUNCIL.

WHEREAS by Section 18 of "The Extradition Act, 1870," it is among other things enacted, that if by any law made after the passing of the said Act by the legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in, or suspected of being in, such British possession His Majesty may, by the Order in Council applying the said Act in the case of any foreign state or by any ordinance or other

suspected the operation of that any such British possession of the said Act or of any part thereof so far as it relates to such foreign state, and so long as such law continues in force therein and no longer.

or direct that such law or ordinance or any part thereof shall have effect in such British possession, with or without modifications and alterations, as if it were part of the Act.

AND WHEREAS by an ordinance enacted by the legislature of the colony of Kenya, the short title of which is "The Extradition Ordinance, 1928," it is provided that all powers vested in and acts authorised or required to be done by a Police Magistrate or an Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom under the Extradition Acts 1870 and 1873 are thereby vested in and may in the Colony be exercised and done by any Magistrate holding a Subordinate Court of the first class in relation to the surrender of fugitive criminals under the said Acts.

AND WHEREAS it is further provided by the said ordinance that the said ordinance shall not come into operation until His Majesty shall, by Order in Council direct that the said ordinance shall have effect within the Colony as if it were part of the Extradition Act 1870 and that the said ordinance shall thereafter come into operation as soon as such Order in Council shall have been publicly made known in the Colony.

NOW, THEREFORE His Majesty in pursuance of "The Extradition Act, 1870," and in exercise of the power in that behalf in the said Act contained, doth by this present Order, by and with the advice of His Majesty's Privy Council, direct that

the said ordinance shall have effect in the Colony of Kenya without modification or alteration, as if it were part of The Extradition Act, 1870.

Assy to Right Excellent Leopold Charles Maurice Stennett
Secretary, His Majesty's Principal Secretaries of State, as to
the said Ordinance, hereinafter according.

M. P. A. H. 1870

Mr. [unclear] 1918
[unclear] (has affairs of [unclear])
[unclear] 2/18
[unclear] 20/18

Downing Street,

5 OCT 1928
1928

Aboul
MSWD. 5

My Lord,

I have the honour to transmit to your Lordship the draft of an Order in Council to bring into effect the Extradition Ordinance, 1928, of the Legislature of Kenya. A copy of the Ordinance referred to is ~~also~~ enclosed.

Proposed
h.w.
Order in view of 1928
[unclear]
copy last

I have to request that your Lordship will submit this ¹ draft for the approval of the King in Council, and that ² sealed copies and ²⁵ plain copies of the Order in Council may be supplied for the use of the Colonial Office.

Printed copy to be obtained from Library.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

[Signature]

(For the Secretary of State.)

The Lord President
of the Council.

(For the Secretary of State.)

D R A F T

A.E. 3.8.28

H.V. Allen 4.8.28 & 8.8.

Mr. Parkinson 13.8.28

Mr. Parkin 20/1/28

Copy to the Hon. Member of the Council

Wap.

WHEREAS by Section 18 of "The Extradition

Act, 1870", it is among other things enacted, That
if by any law made after the passing of the said Act
by the Legislature of any British possession,
provision is made for carrying into effect within
such possession, the surrender of fugitive criminals
who are in, or suspected of being in, such British
possession, His Majesty may, by the Order in Council
applying the said Act in the case of any foreign
state, or by any subsequent Order, either -
suspend the operation within any such British
possession of the said Act, or of any part thereof
so far as it relates to such foreign state, and
so long as such law continues in force there and
no longer:-
or direct that such law or ordinance or any
part thereof shall have effect in such British
possession, with or without modifications and

alterations

alterations, as if it were part of the Act:

AND whereas by an ordinance enacted by the
Legislature of the Colony of Kenya, the short title
of which is "The Extradition Ordinance, 1928"

it is provided that all powers vested in and acts
authorised or required to be done by a Police
Magistrate or any Justice of the Peace in relation
to the surrender of fugitive criminals in the United
Kingdom under the Extradition Acts, 1870 and 1873,
and thereby vested in and may in the Colony be
exercised and done by any Magistrate holding a
subordinate Court of the first class in relation
to the surrender of fugitive criminals under
said Acts:

AND whereas it is further provided by the said
ordinance that the said ordinance shall not come into
operation until His Majesty shall by Order in Council
direct that the said Ordinance shall have effect within
the Colony as if it were part of the Extradition
Act 1870, but that the said Ordinance shall thereafter
come into operation as soon as such Order in Council
shall have been publicly made known in the Colony:

NOW THEREFORE, His Majesty, in
pursuance of The Extradition Act,
and in exercise of the powers in that behalf
in the said Act contained, doth by this
present Order, by and with the advice
of His Majesty's Privy Council, direct that
the said Ordinance shall have effect in the
Colony of Kenya without modification or
alteration, as if it were part of The
Extradition Act, 1870.

And the Right Honourable Leopold Charles
Maurice Stennett Amery, one of His Majesty's
Principal Secretaries of State, is to give
the necessary directions herein accordingly.



THE SECRETARIAT.
NAIROBI.

KENYA.

8th September, 1928.

WHEN REPLYING
PLEASE QUOTE
No. & DATE
AND DATE

LEG. 1/31/1/35.

RECEIVED
OCT 1928

With reference to Kenya despatch No. 349 of

the 26th June, 1928, the Acting Colonial Secretary

of the Colony and Protectorate of Kenya presents

his compliments to the Under Secretary of State

for the Colonies and has the honour to transmit

twelve copies of each of the following Ordinances:-

"An Ordinance to Amend the Fugitive Criminals
Surrender Ordinance - No. IX of 1928."

"An Ordinance to Provide for the more Conven-
ient Administration of the Extradition Acts,
1870 and 1873 - No. VIII of 1928."

*Copy to be sent No. 8 to the Lord President
of the Council 5 OCT 1928*

=====

(L.S.)

EDWARD GRIGG.

[9TH JUNE, 1928.]

No. VIII.

1928



Colony and Protectorate of Kenya.

IN THE NINETEENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.

EDWARD WILLIAM MACLEAY GRIGG,

Governor.

[9TH JUNE 1928.] Date of Assent

An Ordinance to Provide for the more Convenient Administration of the Extradition Acts, 1870 and 1873.

WHEREAS by the Act of the Imperial Parliament known as the Extradition Act, 1870, it is amongst other things enacted that the said Act, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British possession, but with the following among other modifications, namely:—

Preamble.
33 and 34
Vict., c.52

No warrant of a Secretary of State shall be required, and all powers vested in, or acts authorised or required to be done under the said Act by the Police Magistrates and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone.

and any prison in the British possession may be substituted for a prison in Middlesex.

AND WHEREAS by the said Act it is also enacted that—

If by any law or Ordinance made before or after the passing of the said Act by the legislature of any British possession, provision is made for carrying into effect, within such possession, the surrender of fugitive criminals who are in, or suspected of being in, such British possession. His Majesty may, by the Order in Council applying the said Act in the case of any foreign State, or by any subsequent order, either

Suspend the operation, within any such British possession, of the said Act, or of any part thereof, so far as it relates to such foreign State, and so long as such law or Ordinance continues in force there, and no longer.

or provide that such law or Ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of the said Act.

AND WHEREAS by another Act of the Imperial Parliament known as the Extradition Act, 1873, it is enacted that the said Act shall be construed as one with the Extradition Act, 1870, and that the said two Acts may be cited together as the Extradition Acts, 1870 and 1873.

AND WHEREAS it is expedient to provide for the more convenient administration within the Colony of Kenya of the Extradition Acts, 1870 and 1873, by conferring on Magistrates the like powers and authorities in relation to the surrender of fugitive criminals as are by the said Acts vested in Police Magistrates and Justices of the Peace in the United Kingdom.

BE IT THEREFORE ENACTED by His Majesty the Governor of Kenya in that behalf with the assent and consent of the Legislative Council thereof, as follows:—

- 1. The provisions of the said Act, the Extradition Act, 1870, shall apply to the Colony.
- 2. The provisions of the said Act, the Extradition Act, 1870, shall apply to the Colony, as if the Colony were a county in England.
- 3. Any law or Ordinance made by the Governor of Kenya, or by any Magistrate or any Justice of the Peace in Kenya, in relation to the surrender of fugitive criminals in the United Kingdom, and the Extradition Acts, 1870 and 1873, are

2 and 37
1928

Magistrate
Co-operation

Power of
Magistrate
relation to
extradition
under the
Imperial Act

hereby vested in, and may in the Colony be exercised and done by, any magistrate holding a subordinate court of the first class in relation to the surrender of fugitive criminals under the said Acts.

4. This Ordinance shall not come into operation until His Majesty shall by Order in Council direct that this Ordinance shall have effect within the Colony as if it were part of the Extradition Act, 1870, but this Ordinance shall thereafter come into operation as soon as such Order in Council shall have been publicly made known in the Colony.

Suspending
clause.

Passed in the Legislative Council the sixteenth day of May in the year of Our Lord one thousand nine hundred and twenty-eight.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct printed copy of the said Bill.

R. W. LAMBERT,
Clerk of the Legislative Council.

(L.S.)

EDWARD GRIGG.

[9th JUNE, 1928.]

No. IX.

1928



Colony and Protectorate of Kenya.

IN THE NINETEENTH YEAR OF THE REIGN OF

HIS MAJESTY KING GEORGE V.

EDWARD WILLIAM MACLEAY GRIGG.

K.C.M.G., K.C.V.O., D.S.O., M.C.

Governor.

[9th JUNE, 1928.]

Date of Assent.

An Ordinance to Amend the Fugitive Criminals Surrender Ordinance.

9th June, 1928

Date of commencement.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "the Fugitive Criminals ~~Surrender~~ (Amendment) Ordinance, 1928," and shall be read as one with the Fugitive Criminals Surrender Ordinance (Chapter 11 of the Revised Edition), hereinafter referred to as "the Principal Ordinance."

Short title.

2. The Principal Ordinance is hereby amended by adding immediately after section 1 thereof the following new section:—

Principal Ordinance only applies to Protectorate of Kenya.

" 1a. This Ordinance applies only to the Protectorate of Kenya."

No. IX

Fugitive Criminals

1928

" Protectorate " substituted for " Colony " throughout Principal Ordinance.

3. The Principal Ordinance is hereby further amended by deleting the word " Colony " wherever it occurs and by substituting therefor the word " Protectorate. "

Passed in the Legislative Council the sixteenth day of May in the year of Our Lord one thousand nine hundred and twenty-eight.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct printed copy of the said Bill.

R. W. LAMBERT,

Clerk of the Legislative Council.

KENYA.

No. 349



GOVERNMENT HOUSE

NAIROBI

KENYA

23rd June, 1928.

Sir,

With reference to Mr. Ormsby Gore's

X 11359/27

11/5

despatch No. 856 of October 7th last, I have the honour to transmit two authenticated copies of an Ordinance intituled "The Fugitive Criminals Surrender (Amendment) Ordinance, 1928," and of an Ordinance intituled "The Extradition Ordinance, 1928" which passed their third reading in Legislative Council on the 16th May and to which the Governor duly assented on the 9th June, 1928. The Legal Reports are also enclosed.

Also 1 book

2. These Ordinances were enacted in compliance with the directions given in the despatch under reference. The opinion of the Chief Justice was that the powers of a Police Magistrate or Justice of the Peace in the United Kingdom under the Extradition Acts, 1870 and 1873, should be restricted in this Colony to first class Magistrates and his view was endorsed by this Government and incorporated in the Extradition Ordinance.

3. Ten printed copies will be forwarded in due course.

I have the honour to be,
Sir,

Your most obedient, humble servant,

John D. Sullivan

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE,
LIEUTENANT COLONEL LC.M.S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,

LEGAL REPORT

THE FUGITIVE CRIMINALS SURRENDER (AMENDMENT)
BILL, 1928.

The Fugitive Criminals Surrender Ordinance (Chapter 11 of the Revised Edition) was passed in 1908, when what is now the Colony of Kenya was a Protectorate.

The Colony of Kenya was constituted on 23rd July, 1920, and thereupon became a British possession.

By the Imperial Extradition Act, 1870, it is provided that when an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, His Majesty may, by Order in Council direct that the Act shall apply in the case of such foreign State.

It is also provided that the Act when applied by Order in Council shall extend to every British possession.

The local Ordinance so far as the Colony is concerned is superfluous and as the Imperial Act applies and over-rides any local provisions it is necessary to make it quite clear that the local Ordinance applies only to the Protectorate which is not technically a British "possession".

In my opinion His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

9th June, 1927.

ACTING ATTORNEY GENERAL.

17
661

LEGAL REPORT

THE EXTRADITION BILL, 1938.

This Bill provides that certain persons in the Colony of Kenya may exercise the powers under the Extradition Acts of 1870-1875, which are in England exercised by Police Magistrates.

Most of the judicial duties under the Act are discharged in England by a Chief Magistrate of the Metropolitan Police Courts or by a magistrate of the Metropolitan Police Court in Bow Street, in the Act referred to as "a police magistrate".

The Bill provides that a Kenya magistrate of the first class shall, when acting under the Extradition Act, have the powers of a London police magistrate.

As this involves a local amendment to an Act of the Imperial Parliament in force here, it requires sanction under the Act.

Section 18 of the Extradition Act, 1870, provides that His Majesty may by Order in Council direct that the local Ordinance shall have effect in Kenya as if it were part of the Imperial Act.

In my opinion His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

T. D. H. [Signature]