

1924

KENYA

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C. O.  
42204

DATE

12th August 1924

4 SEP 24

CIRCULATION:—

Mr.

Mr. *Bush* ✓

Mr.

U.S. of S.

Mr. *Stobey*

U.S. of S.

U.S. of S.

Secretary of State.

Trial of Asiatics by jury

Submits tentative proposals including the creation of a non-European & non-native jury with a view to strongly of the opinion that the question should be allowed to remain in abeyance at the present

Previous Paper

MINUTES

Doc. 46814

22

*Mr. Bush* ✓

We tried several times (some months ago) to meet and discuss this, but could not find each other free. It does not press, but unless we are to let it drop altogether then in a good opportunity for disposing of it, we could tell Sir E. Grey & let it be taken up at once.

*Put by ✓*

Trial of joint charges by a mixed  
jury (as done in West Coast)

or separate hearing of the two  
cases. This latter is undoubtedly  
the best political solution - if  
not too cumbersome as a matter of  
procedure.

The last para. of the draft is  
for you, but I cannot understand  
why it should be supposed that the  
trial of an Article 10 should be  
by jury in the case of offences against  
the State, or corruption <sup>not</sup> by  
public officials, just as in the case of  
offences against the human body or  
against property.

If it is decided to refer to

he claims to think that the matter  
will always be a side-issue, forgotten  
in times of tranquillity and of  
minor importance in times of  
distress. If this view is taken,  
we may partly?

C. C. S. 15. 8. 25

As regards B I have throughout been  
under the impression that trial by jury for  
Indians was to be on the same grounds as  
trial by jury for Europeans - especially.

I think, if disagreeable, it would  
be better to let the dog sleep as long as  
it will.

H. B.

22/8

Jacques. Mark he 5 frigs has got  
more than enough to consider before he goes

ok

OS

partly

done

KENYA.

No.

SECRET.



2204

545  
GOVERNMENT HOUSE  
NAIROBI,  
KENYA.

12th August, 1924.

Sir,

I have the honour to refer to your Secret despatch of the 7th of December, 1923, regarding the introduction of a Bill to amend the Criminal Procedure Ordinance in the matter of the trial of Asiatics by jury.

2. I regret that a reply has not been sent to your despatch before, but beyond a brief request from the East African Indian National Congress in December 1923 that the question should receive attention, no representations have been received by Government. I have given prolonged consideration to the problem, and am again impressed by the difficulty of reconciling these conflicting racial prejudices if the full Indian claims are to be acceded to without further and perhaps prolonged examination.

3. I have discussed this matter on two occasions with my Executive Council and I am now prepared to make the following recommendations:-

- (a) The system of the European jury for the trial of Europeans to remain as at present.
- (b) The creation of a non-European and non-native jury roll, with linguistic qualifications, for the trial of Indians and other non-natives.

(c).....

THE RIGHT HONOURABLE

J.H. THOMAS, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

- (a) An accused person of any race other than a native to be allowed to choose whether he shall be tried by a European or by a non-European or a non-native jury.
- (d) Where a European and a person who is neither a European nor a native are jointly charged, the jury to be European.

4. I have suggested in sub-paragraph (b) above a second jury, all of persons who are neither Europeans nor natives partly in order to avoid pointed reference to Indians, and partly by introducing Arabs and a few other residents (for instance, a West Indian negro lawyer at Mombasa) to combat the well known tendency of Indian juries to acquit.

I do not like the provision, for it is difficult to justify a measure which sets up different juries on anything approaching a racial basis, but in the absence of mixed juries it seems the only compromise possible. It is moreover open to the objection that it introduces a system which may work in favour of Indian criminals.

5. It may indeed be that the creation of separate juries may, as I am at present advised, operate in favour of Indian criminals; I am more inclined to express the hope, however, that the creation of these juries, in common with other forms of acceptance of the duties of citizenship by the Indian community, will give birth to a higher sense of civic responsibility. In any case, if action is now desirable, it is the only course open.

6. I do not think, however, that action is now desirable. I am strongly of the opinion that the best course is to allow this question to remain in abeyance until it is brought up in a manner which will necessitate a decision somewhat on the above lines.

7. Am I to assume that the jury trials now under discussion are to be general, or only in respect of offences dealt with in Chapters XVI and XVII of the Indian Penal Code?

I have the honour to be,

Sir,

Your most obedient,

humble servant,

*R. J. Gouraud*

GOVERNOR.

*General of the Army*

*1904*