

1921-22

KFNYA

4636

FROM

GOVERNOR  
MORTHEY

1821

DATE

30TH DECEMBER 1921

REC.  
REG. 30 DIV.

FOR CIRCULATION:

- Mr. *Payson*
- Mr. *Kealy*
- Mr.
- Mr. Grindle
- Sir H. Lambert
- Sir H. Read
- Sir G. Fiddes
- Mr. Wood
- Mr. Churchill

SUBJECT

CRIMINAL PROCEDURE AMENDY ORDCE

NO XLVIII OF 1921

Enclosee copies with usual legal report.

*Spec. copies to Library*

Previous Paper

MINUTES

Sec.  
3609 21/22  
3/6 a.

On 25/12/21 we told Kenya that the S. P. S. was prepared to approve legislation on the lines of Section 323 of the Uganda Criminal Procedure Ordinance, 1919, and the Masaland Ordinance No. 17406 (High Court Practice and Procedure), Section 204, providing for appeal from a decision by a subordinate Court in cases of acquittal, the present Ordinance is evidently the result.

Kenya has followed Uganda rather closely and the new sections 331, 332, 333 are identical except from sections 326, 327, 328 of the Uganda Ordinance, except that at the end of 333 (1b) the relative Uganda section has the words "not subject to the provisions of section 96 not to enhance the same" Section 89 of the Kenya Ordinance corresponds to section 96 of Uganda Ord. and empowers the Court to order a person convicted of rioting, etc. to execute a bond or

*Handwritten notes on left margin: 337, 7 Feb 22, 1922*

Subsequent Paper

Res.  
6959 22  
Lbon

Security for keeping the peace, such bonds become void of the conviction is set aside otherwise. The new Kenya ordinance would not appear to differ by the manner of the offence

As regards the amendments to Section 323, the Uganda model has not been followed quite so literally. The "by order" The first may direct the Attorney General to present an appeal at 323. Kenya says "The Attorney General may appeal" in this respect being with the Uganda Ordinance

Section 323 (4) is new, and provides for the arrest of the accused upon an appeal from acquittal. ~~Section 323 (4) is new~~

7. Judge Murray legal officer on case - Mr. Smith, act and ~~there~~ <sup>say that</sup> will not be dismissed because his name is followed. 7.2.22

MR. There is up this small point of difference between the new Kenya Ordinance & the Uganda Ordinance, 1917. In the new Section 331 (1) in line 2 of the 2nd sub para the words "if not in custody" appear after "appellant" these words do not occur in the Uganda Ordinance Sec. 326(1)

4. Christian the case of the Indian & the Provision Act. We will say that 2/11. See it is also in the Uganda Ord. No 302 2/11

W. P. Kelly  
Would you be good enough also to examine the Ordinance - & say whether you have any observations?  
all?  
12/22

Mr. P. S. S. S.  
I think the Ord. is all right & may be considered  
J.S.S.  
2/22

W. P. Kelly  
Function of 3.  
all?  
6.2.22  
12/22 attached

KENYA.

No 1821.



493

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

30th December, 1921.

REC'D  
REC'D  
JAN 22

Sir,

With reference to your despatch No. 952 dated the 16th of June, 1921, I have the honour to transmit herewith two authenticated and ten printed copies of the Criminal Procedure Amendment Ordinance 1921 which was passed by the Legislative Council on the 8th of December, 1921, together with a Statement of Objects and Reasons and a Comparative Table prepared by the Attorney General.

2. I have assented to the Ordinance in the name of His Majesty.

I have the honour to be,

Sir,

Your humble, obedient servant,

*Edward Northey*

G O V E R N O R .

THE RIGHT HONOURABLE

WINSTON CHURCHILL, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

*Gr 25454/21*  
~~Ordinance.~~  
~~Statement.~~  
~~Comp. Table.~~

ENCLOSURE

THE CRIMINAL PROCEDURE AMENDMENT ORDINANCE, 1921.

STATEMENT OF OBJECTS AND REASONS.

This Ordinance has been passed in order to replace certain provisions relating to the power of the Crown to appeal from acquittals in Subordinate Courts which exist under the Indian Code but were omitted from the Criminal Procedure Ordinance, 1918. Similar provisions exist in Uganda and in a fuller form in Nyassaland. Provision has been <sup>made</sup> enabling the Supreme Court to increase a sentence on an appeal from a conviction. The Court of Criminal Appeal in England has such powers and it is found to be a useful check on frivolous appeals.

Nairobi,

1st December, 1921.

Sd. R. W. LYALL-GRANT.  
ATTORNEY GENERAL.

Section.	Remarks.
1.	Short title.
2.	Amendment to Section 523 of Principal Ordinance. Attorney General may appeal from acquittal by Subordinate Court. Arrest of accused on appeal from acquittal.
3.	Replaces Section 531 of Principal Ordinance. If no sufficient ground for interfering Court may summarily dismiss appeal. Before dismissing appeal the Court may call for record.
4.	Replaces Section 532 of Principal Ordinance. If appeal not dismissed summarily notice of appeal to be given to appellant or advocate and to Attorney General.
5.	Replaces Section 533 of Principal Ordinance. Powers of Appellate Court on appeal. In case of appeal from acquittal may reserve acquittal and direct further inquiry or direct accused be retried. Appellant not entitled to be present where appeal involves question of law only.

Lahore,

21st December, 1921.

ATTORNEY GENERAL.