

EAST AFR. PROT

REC-
PAGE 18 FEB 14

6272

Ver. or
el. field '91

1914

7th January

at previous Paper.
No 52

COLLECTIVE PUNISHMENTS ORDINANCE
FINE OF IL MERISIA CLAN OF PUREO (MATAI MORAN)

States circumstances in which fine as rec
collected. Provides for part of its collection in due
course.

Dr. G. Fieldes

approve of the pro: action?

J. R.
19/1/14
M 20 2 11

Put by

The true value of the stolen property
is very heavy, and I should be disposed
to say that while we are not prepared to
interfere with the Governor's discretion
the ~~proposed~~ punishment is severe, and
that there is a risk which we presume
he has kept before him of a disproportionate
punishment causing permanent feelings
of resentment among the tribe and

at subsequent Paper.

40349

Phasia fund. The main object of collective
punishment is to establish the sense of
collective responsibility, and its resources
should be the what is necessary for
that purpose rather than the resources
of the tribe.

Ch. 702.14

Agree

{ 20.2 14

If, as the ...
...
... Agree

but the ... is stated to be
230 dead and in time 1,000
heads or about 4 times.

...

Dr. G. Fiddler

8ft. reply below, but
we have already had ...
regarding the fine of 10 times the
value of the stock - see para. 4 of
our conf. decp. of the 17th of Feb^y/13
in Dr^r 1874/12-13 + para. 4 of the ...
decp.

of 10th April /13 (ⁱⁿ 1611 /13) in which
he states that the prescribed maximum
of ten times the value of stock or
produce stolen would not be considered
excessive under native law and which
is frequently exceeded for crimes
considered less serious by civilized
nations.

673

With regard to the accounts
denote ~~about~~ the words of the
Ord^{ce} are "ten times the value"
I take it that the discrepancy
is explained by the fact that
the more cattle are more valuable
than those stolen (see above
cattle = 2350 of the stolen)

H. J. R.
25/7/14

I think that the earlier minutes were
written in forgetfulness of the Ord^{ce} and
was applied to in 1611/13. And I submit
that in the case of a series of cattle thefts
accompanied by murders the punishment
imposed is hardly excessive. Recollecting

The sole case it is hardly desirable to
challenge the application of the same
but we are quite clear that the enforcement
of the minimum penalty is oppressive

I therefore don't pass }
the 50% below pending } Pr. 26 2 14
further course }

I was not aware of this decision on 16/11/13
In view of that decision we cannot
write as proposed

Pat by.
Vh. 27.2.14
E. 28.2.14

I agree
I had forgotten. 1/11/13
2-3-14

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

C 272

January 27th 1914.

EAST AFRICA PROTECTORATE.

No. 91

Sir,

I have the honour to report the circumstances under which I now deemed it advisable to inflict a communal fine on the Il Meriano clan of the Purko (Masai) Moraa under the Collective Punishment Ordinance 1909.

2. It appears that a series of cattle thefts, in connection with one of which a Somali was murdered, were perpetrated between November 1912 and April of last year during the transit from Laikipia and at a time when the Masai were moving freely between that place and the new Reserve. Suspicion at first fell on natives of another tribe and a military patrol was despatched to the North of Laikipia with the object of recovering the stolen stock, which by this time numbered more than 230 head, and punishing the offenders. As a result information was elicited which served to establish the fact that the Masai were the real perpetrators of the thefts and that the stolen cattle had been taken to the Southern Reserve. Certain animals were subsequently recovered and these were identified as having been among those stolen at various times.

3.

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES.

DOWNING STREET, LONDON, S.W.

3. At the same time insufficient evidence was adduced to warrant the conviction of individual members of the clan, though there can be but little doubt that the actual offenders were permitted to move freely and at will among their own people, who not only on every occasion displayed the utmost apathy, but withheld any information which might have incriminated the guilty parties, and made no effort to assist in the recapture of thieves who had escaped from custody.

4. The cases were tried by the Officer in Charge Masai Reserve, a Magistrate of the 2nd class, and the evidence taken and his findings were referred to the Attorney General, who has expressed the opinion that a communal fine may be levied with propriety. I have, therefore, sanctioned its infliction to the extent of ten times the value of the stock stolen, or 1,000 head, on the "Moran" of the Il Merisho clan.

5. The fine is in no way disproportionate to their means and I will not fail to furnish you in due course with the report on its collection required by Section 8 of the Collective Punishment Ordinance 1909.

I have the honour to be,

Sir,

Your humble, obedient servant,

A. Lindsay

GOVERNOR.