

London to 15 Nov.

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W.C.A. 10/6/16

H.A. 12/6/16

at once

H. J. R.

13/6/16

EAST AFRICA PROTECTORATE.
No. 253.

180
GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.
May 24th, 1916.

27365

REC
REC 9 JUN 16

Sir,

P
54495
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I have the honour to acknowledge the receipt of the duplicate copy of your despatch No. 905 of December 17th respecting Mr. F. J. Pollard's complaint against the Customs Department and in reply to attach copies of reports from the Chief of Customs and Mr. Sheridan, the magistrate who tried the case, and of the Court file.

2. I have been in consultation with the Attorney General and we are of opinion that, as Messrs Porter and Crust very properly observe in their original letter of July 1st 1915, the magistrate had no option in the face of Mr. Pollard's plea of guilty but to convict and fine him the statutory amount.

3. It is not however very clear why he was convicted in relation to the Colobus skin. Evidence was given that that skin had been declared and so far as I am at present advised there is no law in force

Chief of Customs
3. 1916.
Mr. Sheridan
3. 1916.
Court File
30559
15

THE RIGHT HONOURABLE

ANDREW BONAR LAW, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S. W.

force in the Protectorate which provides that a permit shall be produced before the export of any trophy can be allowed. The Game Ordinance 1909 Section 7 prohibits export for sale and gives power to a District Commissioner or Customs Officer for the detention of any of the things mentioned in the Section until he is satisfied that such things are not intended for sale. Section 8 of the Ordinance prohibits, inter alia, the export of the skin of an animal which has been killed, captured or obtained in contravention of the Ordinance. The onus of proof in cases under Section 8 lies on the prosecution and not on the possessor of the trophy. It would thus seem that the prosecution was in fact wrongly brought in relation to the colobus skin.

4. As regards the ostrich feathers and eggs Mr. Pollard was entitled to export them and his right to do so has been admitted, as stated by Messrs Porter and Crust. It is advised however that the exporter of such articles should be in a position to prove that he has such a right and that the onus of establishing this lies upon him. The Customs Department keeps a list of Ostrich farmers as furnished from time to time by Administrative Officers. but this can only be regarded as a preliminary check.

5. Mr. Pollard's statement that he did not know that anything to do with the colobus

colobus

N. 257.

C
27365
REC'D
9 JUN 16

7th March 1916.

The Honourable
The Chief Secretary,
Nairobi.

Re. Mr. F. J. Pollard.

Your memo No. 12557/15 of the 26th February 1916.

+++++

Mr. Pollard declared the Colobus Monkey Skin - but could produce no Game permit for it. The permit has not yet been produced in accordance with the Game Regulations and Mr. Pollard was therefore apparently in unlawful possession of the skin.

2. The other articles found were in the same box as the Colobus Monkey skin.

3. The Customs Department keeps a record of registered Ostrich Farmers on advices received from Administration Officers. See my minute No. 47 of the 19th June 1915. No advice prior to the P.G.'s telegram referred to in the correspondence was received by the Customs. The telegram enquiring from the P.G. whether Mr. Pollard was an Ostrich

Parade

Farmer was sent on the 14th April 1915 the day Mr. Pollard was brought before me.

4. A reference to my report of the 13th September 1915 paragraph 3 will show that Mr. Pollard's right to export the Ostrich Feathers and Eggs had been recognised.

5. The fine was a heavy one but I make no suggestion as to mitigation, as this may well be left to the Magistrate who tried the case but as Mr. Pollard has not produced a Game permit for the Colobus Monkey skin, I suggest that no remission of the fine should be made until he has done so. He has returned to the Country.

6. The Court file will give full particulars of the Goanese Clerk's sworn statement of what took place at the interview with Mr. Pollard.

7. Mr. Pollard when before me, as far as I remember, only pleaded ignorance, showed resentment at Customs interference and maintained that he had done nothing wrong. I then decided that the case was one which it would be better to leave to Magistrate to investigate.

Chief of Customs.

MEMORANDUM.

The Court file which is attached shows that the case was tried summarily by me, that the accused pleaded guilty and that the Goanese Clerk who gave evidence swore that only the Colobus skin had been declared. I think I suggested to the accused at the outset of the case the advisability of his being represented by counsel and he decided not to act on my advice stating that he should plead guilty rather than have an adjournment. I accepted his plea of guilty and as well as I can say I came to the conclusion that the Goanese Clerk had spoken the truth. I inflicted the penalty ~~fixed~~ ^{fixed} as I was bound to do so by law finding the accused guilty and no suggestion was made by the accused that I should exercise my statutory power of reducing the penalty.

The accused there and then paid the penalty in English sovereigns.

It must I think be considered that the penalty relatively speaking is not really a very heavy one and the customary penalty under the Ordinance being Rs:1,500/- which sum ~~was~~ if reduced by one-fourth would amount to Rs:1125/- . Again ~~making~~ the accused being an European it was not such a hardship on him to pay the fine imposed as it would have been in the case of an Asiatic or a native.

2. I am not disposed at this stage to make any recommendation that the fine should be mitigated. Had an application to that effect been made to me at the trial I should have considered it. It may be of course that

the

that the District Official responsible should have notified the Chief of Customs that the accused was an Ostrich farmer and failed to do so. If this be the case the portion of the fine relating to the Ostrich feathers and eggs might be remitted, although in my opinion an Ostrich farmer exporting such articles should be in a position to satisfy the Customs Officials that he was an Ostrich farmer by producing his licence. At the same time I believe I did enquire from Mr. Jones in Court whether telegraphic enquiries had been made by the Customs authorities as to Mr. Pollard being an Ostrich farmer and his answer was in the negative.

3. May I draw attention to paragraph 7 of Messrs. Porter & Co's letter of the 17th December 1915 addressed to the Secretary of State in which occur the words "to the fact that he had only held his appointment for a few days". I ^{think} may be excused if I fail to understand what is meant by these words. If they are intended to refer to me I would merely observe that I was Resident Magistrate of Mombasa from January 1914 to July 1915, so that at the date of the hearing of the case in question I had held the appointment for 18 months.

4. Mr. Pollard seems to me to be the sole author of his own misfortune in as much as he pleaded guilty, he paid the penalty imposed without demur and lastly he never appealed - a course which he could have adopted without being put to the inconvenience of losing his steamer.

NAKURU,

27th March 1916.

W. H. M. ...
RESIDENT MAGISTRATE.

EAST AFRICA PROTECTORATE.

In the Court of the Resident Magistrate at MOMBASA

SUMMARY TRIAL—Chapter XX, Criminal Procedure Ordinance.

Number	Criminal Case No. 437/15
Date of report or complaint	14. 4. 15.
Name of complainant if any	H. M. Customs by C. Jones
Name of accused and percentage residence of accused	Ferdinand Joseph Polland
Charge or complaint	Concerned in unshipping or otherwise dealing with prohibited restricted or uncustomed goods Section 210 Custom Ordinance 1910 - monkey skins, Ostrich feathers &c.
Value of property	Value Rs.100/-
Statement of accused	I plead guilty through ignorance. They didn't enumerate anything articles. They said if I had anything to declare and I said I had a colobus skin. I didn't take these things to District Commissioner. They are worth Rs.100/-.
Findings and sentence	On the plea I have got no option but to find Accused guilty. The value is accepted by Customs at Rs. 100/-. Consequently the fine is Rs. 200/- or in default 3 months.
Date and date of sentence	14th day of April 1915.
Signature	(Sgd) Joseph Shariqan

NOTES OF PROCEEDINGS.

14. 4. 15.

Jones for Prosecution.

Accused in person.

SANI MATHIAS (sworn):-

Yesterday 4.45 p.m. on duty at Customs House. The Accused came and asked me to pass his baggage. I asked him if he had anything to declare such as skins, Ostrich feathers. He said he had only Colobus skins.

I asked if he had any permit for the Colobus skins. He said no. I took Accused to Superintendent of Customs at Kilindini. Superintendent asked if he had got any permit. He said no. Superintendent asked if he had anything to declare. He enumerated things. He said only Colobus skin. I told Accused to give me Colobus skin. You can get permit next day. I went to take Colobus skin from box and I found Ostrich feathers &c. I asked why he didn't declare these things and he said he was an Ostrich Farmer.

END

Before I went to Superintendent of Customs I had looked in box.

INFORMATION

COUNT "10"

In the Town Magistrate's Court of Mombasa J. G. Jones of Mombasa an Officer of Customs under the direction of the Chief of Customs, informs the Court:-

That Ferdinand Joseph Pollard was concerned in unshipping or otherwise dealing with prohibited, restricted, or uncustomed goods, to wit

- 1 Colobus Monkey Skins.
- 2 Leopard Skins.
- Wild Cat Skins.
- Ostrich Feathers.
- 3 Ostrich Egg Shells.

Section 210. Contrary to Section 210, of the Customs Ordinance, 1910, whereby the said Ferdinand Joseph Pollard has forfeited the sum of Rs.330/- being treble the value of the said goods (or the penalty of fifteen hundred Rupees), for which the Chief of Customs has elected to sue.

EAST AFRICA PROTECTORATE.

No. 77655.

M O M B A S A,

14. 4. 1916.

Received from F. J. Pollard the sum of Rupees Three
~~hundred~~ and thirty only on account of Fine Criminal Case
No. 437/15.

Rs. 300

(Sgd) Warren S. Wright

(Sgd) G. A. Dato.

Gen. E.A.P.
27365
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and 29609

16 June 1916

Sir,

I have the honor to acknowledge

the recd. of your despatch No 253 of the 4th of May, with its enclosures,

regarding the complaint made by Mr. F. J. Pollard against the Customs Dept of the Protectorate, and

to transmit to you a copy of a letter which has been addressed to Messrs Arthur Porter & Co Ltd on the subject.

2. I approve of your giving

direction for the issue of the Form 330 form to be submitted to Mr. Pollard.

DRAFT.

A.P. No 408

Belfield

MINUTE.

- Mr. Jewell 14/6/16
- Mr. Bottomley 14.6.16
- Mr.
- Mr.
- Mr. Read.
- Sir H. Just.
- Sir G. Fiddes.
- Mr. Steel-Maitland.
- Mr. Bonar Law.

Mr. Arthur Porter & Co Ltd June 1916

Edwards

27365
16

S.S.

16 June 1916

Gentlemen,

DRAFT

(15418)

Arthur Portey & Co. Ltd

With ref to the letter from
the Dept of the 7th of April, I am to
inform you that a despatch has now
been rec'd from the Gen of the I.P.P.,
with regard to the complaint made by
Mr. F. J. Pollard against the Customs
Dept of the Protectorate.

14/6/16

Thursday 14.6.16 fr

2. The Gov. states that he ^{is} of the
^{advised and is} ~~the~~ ~~Gen~~ ~~is~~ of opinion that, as you
observe in your letter of the 1st of July
1915, the magistrates had no option,
in the face of Mr. Pollard's plea of
guilty, but to award ~~it~~ ~~fine~~ ~~him~~
the statutory amount. With regard
to the colonial ~~is~~ ~~however~~, the
Gov. expresses the opinion that the
prosecution was wrongly brought.

(30559/15)

Copy for 408. 109/11/16

drafts

3. As regards the attached

the whole of the fine being paid by

remitted and he has requested Mr. H. Balfour to
give directions accordingly.

The Jan told that the
Magistrate, so far from having told his wife for

only a few days expenses, had
as Resident Magistrate at
been stationed at Mombasa for
fifteen months.