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Governor 690 Belfield	EVIDENCE ORDINANCE NO. XXV OF 1915
1915 10th Sep.	
Last previous Paper.	Tr. copies with Legal Report.

Mr Grindle Smith

Mr Risley

Copies to Library

H. J. R. 1/XI/15

Ans: 8 Dec 30 Nov 15

I have examined the Indian Penal Code 1860, the Indian Evidence Act 1872, and the Indian Code of Criminal Procedure 1898, and agree with A of the Atty. General's Report.

These amendments are, substantially, in effect in the Straits Settlements & Fed. Malay States, where the amendment now proposed is not in force.

Next subsequent Paper: 15387/16

English lines, but there may be some points where Indian and English law differ with regard to which it may be desirable to amend on English lines, and when doing so would not create any confusion.

Our policy of gradually introducing local Ordinances in place of applied Indian Acts has been adopted with a view to moulding East Africa Protectorate legislation in future on English rather than on Indian lines. Where you have the law set out in a local Ordinance (even though in the main drafted on an Indian model) the tie with India has gone and it can be amended on English lines in future. This development has been conspicuous in, e.g., the Straits.

With regard to the particular case before us, however, I think this Ordinance does not represent the English law as to evidence of previous convictions, and it does not appear to differ materially from the Indian - i.e. the previous conviction must be in some way relevant to the issue in order that evidence of it may be given.

Thus where in the East Africa Protectorate a previous conviction is charged in the indictment it is a fact relevant to the issue, and section 54 of the Indian Act requires no amendment.

The present Ordinance, however, enables evidence to be given of other previous convictions (not charged in the indictment) for the purpose of affecting the sentence to be imposed by the Court.

This in English practice is effected far more simply without regard to strict legal evidence. I have obtained from the Home Office certain [illegible] which show that this practice is.

The

The Central Criminal Court "After - Trial Calendar", annexed, (which is, of course, never published but is issued for judicial record and official use) is identical with the "Before - Trial Calendar" used in Court with the following variations.-

In the latter columns 8 to 11 are necessarily left blank and in column 2 the record of previous convictions (if any) against each man's name is left blank in the ordinary copies of the Calendar, these particulars being filled in in manuscript in one copy (on different coloured paper) for the use of the Judge only

Particulars as to previous convictions are filled in by the Governor of the prison on information supplied by the police and in general only previous convictions are entered which the prisoner is unable to contest. Doubtful ones are omitted.

Thus at the trial the Judge alone knows about the previous convictions and the jury are ignorant of them. If the jury convict the prisoner it is usual for an officer of the police to tell the Court what he knows about the prisoner including any previous convictions.

This is, of course, hearsay and not legal evidence, and the duty of the Judge, as indicated by the Lord Chief Justice on 15th February, 1911, (whose observations are quoted in the Home Office circular of July, 1912, annexed) are as follows

"If the prisoner challenges any statement of the police it is the duty of the Judge to enquire into it. If necessary he should adjourn the matter, and if it is of sufficient importance he may require legal proof

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proof of it; or he may ignore it, and if he does so he should state that he is not taking it into consideration. If the prisoner does not challenge the statement the Court may take it into consideration for the purpose of deciding the sentence."

I suggest that this procedure (passages A supra) might be adopted in the East Africa Protectorate in lieu of the present Ordinance on the ground -

(1) of greater simplicity,

(2) of greater efficacy, since strict legal evidence of a previous conviction may be procurable in some cases only with difficulty or delay, or in others may not be procurable at all;

(3) of undesirability of amending the Indian Evidence Act, if the object in view can be attained otherwise.

With regard to previous convictions charged in the indictment, we should point out as at B supra.

The Home Office circular should not be sent out (my quotation from it shows the practice as laid down by the Lord Chief Justice), but the "After - Trial Calendar" should be sent to illustrate and explain the practice described in the despatch.

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE.

No.690.

September 10th, 1915.

Sir,

I have the honour to transmit herewith two authenticated and ten printed copies of "The Evidence Ordinance, 1915" as passed by the Legislative Council on the 23rd ultimo together with a memorandum by the Attorney General.

Ordinance

Memorandum

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

I have the honour to be,

Sir,

Your humble, obedient servant,

H. Conway Belfield

GOVERNOR.

THE RIGHT HONOURABLE
ANDREW BONAR LAW, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

INCLOSURE [illegible]
690 [illegible] Sept [illegible]

THE EVIDENCE ORDINANCE, 1915.

STATEMENT OF OBJECTS AND REASONS

The Indian Evidence Act, 1872, applied to the Protectorate does not permit evidence of a previous conviction being given at a trial unless such conviction is a fact in issue or is evidence of a state of mind or becomes admissible to rebut evidence of good character or is otherwise a relevant fact. The result is that in most trials evidence of previous convictions cannot be produced unless the facts come within Section 75 of the Indian Penal Code. In many such cases, however, the maximum sentence provided by the Section of the Code dealing with the offence is sufficiently high to allow a range of sentences severe enough to cover cases where previous convictions do in fact exist without having recourse to the enhanced sentence provided by Section 75, Indian Penal Code.

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2. The Chief Justice has asked that provision be made whereby previous convictions can be proved [illegible] after the accused has been [illegible] for the purpose of [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

of evidence on the subject more in line with the practice in England.

3. The Bill is one to which, in my opinion, His Excellency can, properly, give his assent without prior reference to the Secretary of State.

SIR J. W. BARTH

ATTORNEY GENERAL.

Nairobi,

The 9th day of September, 1915.

THE EVIDENCE ORDINANCE, 1938.

COMPARATIVE TABLE.

Section.	Remarks.
1.	Short title.
2.	Proviso to Section 54 of the Indian Evidence Act, 1872, for the purpose of providing that evidence of previous convictions shall be admissible in evidence after the conviction of the accused.

[illegible] 895/96.

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HOME OFFICE,
WHITEHALL, S.W.,
3rd July, 1913.

SIR,

I AM directed by the Secretary of State to send herewith for your information copy of a circular he issued in January, 1911, to Chairmen of Quarter Sessions and Recorders of boroughs on the subject of the information supplied to them by the Police [illegible] prisoners. He is most anxious [illegible] the practice of supplying information [illegible] take measures to ensure that when [illegible] prisoner's general [illegible] prejudice [illegible]

[illegible] by the Court of Criminal Appeal on this subject. At the hearing of the appeal by Douglas Campbell on the 13th February, 1911, the Lord Chief Justice made the following observations:—

"We have been asked to say something about the practice of police officers giving [illegible] the result of their inquiries about prisoners. In ordinary circumstances we should not accede to such a request, but as the matter has recently been under the [illegible] and the Home Office, we think it right to [illegible]. For many years it has been [illegible] that after the conviction of a prisoner [illegible] of some responsible officer [illegible] tell the Court what he knows about the prisoner as the result of inquiry, which it would involve great difficulty and expense to prove the facts [illegible]. Some years ago I gave instructions that [illegible] steps [illegible] to give accurate information of this character [illegible] Court. The [illegible] statute in section 10 [illegible] Crime Act, [illegible] procedure under that Act for the [illegible] habitual criminal's [illegible] practice which has long been recognised [illegible]. It [illegible] should be when it is suggested that some of the statements are not correct [illegible] prisoner wishes to [illegible] anything he can [illegible] represented by counsel [illegible] at the time [illegible]. If the prisoner challenges any statement it is the duty of the judge to [illegible] necessary he should adjourn the matter [illegible] sufficient importance he may require legal proof of it. Or he may [illegible] and if he does so he should state that he is not taking it into consideration. If the prisoner does not challenge the statements, the Court may take them into consideration and no injustice is likely to be done. [illegible] in the prisoner's interest that his antecedents should be [illegible] not the fault of the police [illegible] the antecedents."

In connection with this subject I am to say the Governors of prisons are now [illegible] by the Central Association for the Aid of Discharged Convicts with reports on the conduct of prisoners in their custody who have been at large on licence under the Penal Servitude Acts, and (b) by the Borstal Association with similar reports [illegible] discharged from a Borstal Institution. The information contained [illegible] available for [illegible] Police Forces if they will apply to the [illegible] prisoners belonging to either of these two classes.

[illegible]

[illegible] Servant,
EDWARD TROUP.

[illegible] Chief [illegible]
Borough Police.

101,321/5.

HOME OFFICE,
WHITEHALL,
23rd January, 1911

Sir,

I am directed by the Secretary of State to say that certain cases have recently come before his notice which raised some doubt in his mind whether prisoners have always sufficient opportunity of answering the statements as to their general character and antecedents which are made in Court by the police after the prisoner's conviction and before sentence is passed. While Mr. Churchill recognises that it is of great advantage that full and trustworthy information with regard to a prisoner's antecedents and character should be in the possession of the Court before sentence is passed, and that it is often to a prisoner's benefit that such information should be given by the Court, it appeared possible that in the cases brought to his notice the prisoners had not had an adequate opportunity of rebutting such of the statements as were unfavourable to them, and he therefore consulted His Majesty's Judges as to the best means of preventing any injustice to a prisoner arising through this practice.

His Majesty's Judges have expressed the opinion that every opportunity should be given to a prisoner to answer or rebut any statements made to his prejudice by the police or others, and that, if necessary, judgment should be postponed so as to allow of further enquiry being made. It appears to Mr. Churchill that the careful observance of such a rule is most necessary in the interests of justice, especially when a prisoner has had no opportunity beforehand of knowing what will be said of him. He has no reason to doubt that it is, in fact, commonly acted on in Courts of Justice, but he ventures to think that the importance of the matter justifies him in inviting your special attention to it.

I am,
Sir,
Your obedient Servant,
EDWARD TROUP.

The Recorder for the Borough of

Gov^r 50248/1915

1386

30 November 1915

Sir,

I have the honour to acknowledge the receipt of your desp. No 600 of the 10th of Sept. forwarding copies of the Evidence Ord^ce, 1915.

2. ~~I am advised that~~ The procedure adopted in this country to permit of previous convictions being mentioned in Court after an accused person has been convicted, for the purpose of affecting the sentence to be imposed, is as follows.

a. Before Trial Calendars are

DRAFT.

Gov.

No 874

Sir H. C. Belfield

MINUTE

Mr. Fiddian

Mr. Bottomley 25/11/15

Mr. Risley 25/11/15

Mr. Read 25

Sir G. Fiddes

Sir H. Just

Sir J. Anderson

Mr. Steel-Maitland

Mr. Bonar Law

is ~~issued~~ used in Court which is identical with the "After-Trial Calendar" a specimen of which is enclosed, except that columns 9 to 11 are necessarily left blank [illegible] in column 2 & that the record of previous convictions of [illegible] is omitted. On the copy on different coloured paper, provided for the use of the Judge only, the particulars of previous convictions are ~~entered in~~ manuscript ~~from~~ by the Clerk of the Assize on info. supplied by the police. [illegible] general only previous convictions are entered which the prisoner is unable to contest, doubtful ones being omitted.

Thus at the trial the Judge alone knows about the previous convictions & the jury are ignorant of them. If the jury convict the prisoner it is usual for an officer of the police to inform the Court what he knows about the prisoner including any previous convictions.

In the event of the prisoner challenging any statement made by the police, it is the duty of the Judge to enquire into it. If necessary he should adjourn the matter & if it is of sufficient importance he may require legal ~~proof of it~~, or he may ignore it in which case he should state that he is not taking it into consideration. If the prisoner does not challenge the statement th-

Court may take it into consideration for the purpose of tracing [illegible]

3. I am advised that it would be preferable to adopt this procedure in the Bill in lieu of the present Order on the ground of

1. greater simplicity,
2. greater efficacy, since strict legal evidence of a previous conviction may be procurable in some cases only with difficulty or delay, and in others may not be procurable at all,
3. the undesirability of amending the Indian Evidence Act if the object in view can be attained otherwise.

[illegible]

4. Still, a record of previous convictions charged in the indictment [illegible] the [illegible] these are facts deemed to be relevant to the issue, and section 54 of the Indian Evidence Act requires no amendment in order to enable evidence of such previous convictions to be given.

[illegible]

5. [illegible] the "After-Trial [illegible]" is not [illegible] to consider [illegible] previous [illegible] offence [illegible]

Signed A. BONAR [illegible]