

1925

KENYA

1733

C.O.
10376
5 Nov 25

DATE

163 5th Feb, 1925

ATTENTION :-

S. of S.

S. of S.

S. of S.

of State.

Previous Paper

Administration of Justice

Sends copy letter from Kenya Law Society protesting that criticisms by S. of S. on findings of Judge in Abraham case, are likely to interfere with

MINUTES

1. The detahlek about venue has not come, and as it may be held back were then we need not wait for it.

The Attorney General, like the Judge in 5536.3/23, refers to local public opinion in these matters. A perfect jury, as sought, should be more detached, but few juries are perfect. What is important is that the Judge should not measure his sentence by that public opinion will "accept without question".

3. As to the memorial, to the detahlek

41134/24

2 June, 1915 ✓

520 ✓

205 ✓

165 ✓

3014 ✓

Copy to Gov. by Mr. [unclear] 4/14/25

JUN 1925

JUN 1925

JUN 1925

Subsequent Paper

1712452 (Cable)

A.C. 12487

A.C. 4006/15

of the land case, I hope, release the
S. off. where he thinks that the
analogy of a motion for a
change of venue is too lightly

I think it is probable that
Sect may be informed that
his letter has been received.

C. S. 7.3.25

The more I consider the Abraham case the more
impressed I am with the studied moderation of our
despatch on the subject, which as a matter of fact
by no means adequately did justice to the Secretary
of State's views on the subject, but was settled with
a lively regard to the necessity of saying no more
than was necessary upon such delicate topics as the
conduct of a Judge and Jury in a criminal case.

The letter from the Law Society of Kenya would
be pertinent if Kenya were a self-governing Dominion,
but as it is not, and as the Secretary of State is
responsible for the proper administration of justice
there, the letter strikes me as being slightly
ridiculous.

I feel certain that much of the difficulty
which we encounter in these criminal cases in Kenya
is due to the peculiarities of the Indian Code, and
I think we might well enquire how the new English
Code, which they have been directed to pass, is getting
on. The Attorney-General, I know, is in favour of
it, but the Judiciary is steeped in the existing
tradition

See 53363/23
L.S.
Sect. Sec. 53363/23
The at least
with the same

I think one with
pulls about the
of Law law about
and first year to
a confusion with
+ T.T. This
looked up

8615/24
as also come up in
no decided to await
the (Sect. 213/24)
to Dept. the same the
page is holding up
25. 24/3

tradition and law, and I am certain that the new
Code will never see the light of day except
under constant pressure from here.

Their views have been asked for in our
despatch of 18 June 21323/24, do not seem to
have arrived. J.F.B. 11/3

as proposed?
C.S. 20.3.25

In Attorney
How do we stand with regard to the
question of a Suggested Code?
H. 21/3/25

* Sec. 114

We last proposed it on the 20th after
the Abraham case, when the Chief
Justice & the Attorney General were
revising the General Laws here and
might, we thought, have extra leave to
push this through. The Governor
demurred on the ground of pressure
of work locally - chief, and so on
has hampered the local preparation
of a new code.
I should send out June 12 24. Revised
sent March 16 25. C.S. 24.3.

An acknowledgment is requested
by the Solicitor of the not very
pleasantly worded letter with respect.

But we had better again enquire
about the Code - it is not clear that
the local staff is tackling that
question - perhaps because they really
have not sufficient staff to do it.

16/5/25

I am not sure that
it is wise to let Kenyon, with
its more or less competent legal
department, put forward
a new Code in substitution
for the Indian Penal Code.
In any case the new Code
should be for the whole of
East Africa & we should have
a hand in its drafting.

There is a great deal
of feeling in Kenyon about
our reflections on the jury
in the Abraham case. I
had a long talk to the
foreman - an Evans by name -
who satisfied me that on
the evidence the judges
directed the jury could not
have found otherwise. I
could not pursue the matter.

17.5.25

Codes for E Africa 175

Mr Green
Mr Strachey

Mr H. L. ...
Mr J. ...

I have discussed the code with
Mr. Buxton. The preparation of the
Code (Criminal Procedure as
well as Penal) would be quite
impossible here without the ordinary
work of the legal staff, and it is
desirable, too, that the draftsmen
should have a knowledge of
East African conditions.

Mr. Buxton suggests, and he has
obtained Sir J. P. ...
that Mr. Strachey should be
invited to undertake the task
outside his ordinary duties, and
that he should receive an
honorarium of £50 for each code,
the cost being borne equally between
the three or four dependencies
concerned.

If this is approved, and Mr.
Strachey

Shelton is coming, it will be
used, to avoid waste (above,
to telegraph to them a few repetitions
to T.T. & Uganda [Mr. Allison
Russell, Justice, Contingent
handling the job in T.T. & also say
Mr. Abraham, has his eye on it
in Uganda.]

The draft specimens would
of course have to be referred to C.A.
for orders, & for this reason as well
as for general convenience I think
that they should be printed, whether
we manage to provide copies for
the substantive issue or not after
enactment or not. If it is best
provide them as Office Papers,
the C.A. should arrange the printing,
the cost being divided like the
honorary.

W.C.S. 25.5.25

Return for
see 5/10/39

W.C.S. 25.5.25

W.C.S.

W.C.S. 26/5/25

as proposed. at once
W.C.S. 26.5.25

Mr. Shelton

176

Will you please say if you
are willing to take on the book prices?

If so - you will see from 8615/24

what models were sent out

W.C.S. 27.5.25

Mr. Kesteven

I shall be glad to do so.

A.S.
27/5/25

Now off to

W.C.S. 27.5.25

at

29

KENYA

No. 163.



177
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

5th February, 1925.

10376

5 MAR 25

Sir,

I have the honour to transmit for your information a copy of a letter addressed to me by the Hon. Secretary of the Law Society of the Colony of Kenya and two copies of their letter addressed to you.

2. I also forward a memorandum prepared by the Attorney General and would refer to my despatch No. 162 of even date in which the question of the venue of the trial of this class of case is discussed.

I have the honour to be,

Sir,

Your most obedient, humble servant,

J. M. Harcourt
GOVERNOR.

HONOURABLE

TENANT COLONEL, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

THE LAW SOCIETY OF THE COLONY OF KENYA.

Nairobi.

November, 27th. 1924.

His Excellency The Governor,
Government House,
Nairobi.

Your Excellency,

I have the honour to enclose herewith a letter which I have been directed by my Society to send to His Majesty's Secretary of State for the Colonies, together with a copy thereof, and I have the honour to request that Your Excellency will be good enough to forward my original letter to the Secretary of State at the earliest opportunity.

I have the honour to be,

Your Excellency's
Obedient servant,

Sgd.H.E. Shwartz.

Hon. Sec.

The Law Society of the Colony of Kenya

THE LAW SOCIETY OF THE COLONY OF KENYA.

N a i r o b i .

Kenya Colony,
November 26th, 1924.

To,

His Majesty's Secretary of State for the Colonies,
Downing Street,
L o n d o n . W . C .

Sir,

The attention of my Society was some time ago drawn to the fact that in the course of a debate which took place in the House of Commons on the 26th February 1924 His Majesty's then Secretary of State for the Colonies expressed his intention of circulating in the Official Report a copy of a despatch sent to His Excellency the Governor of the Colony of Kenya reflecting in a very adverse manner on the administration of Justice in this Colony.

Before forwarding to you any remarks in connection with this matter, my Society thought it essential that it should have before it the Official Report. It has now had the opportunity of perusing the Report in Hansard which sets out the despatch in full.

I am instructed to say that my Society sincerely trusts that no attempt will be made to interfere with the administration of Justice by the Courts in this Colony as at present constituted -

constituted or to allow any sort of dictation to the Judges holding office in such Courts as to the method in which the hearing of jury cases shall be conducted.

The despatch complained of commences by stating that the crime for which Mr. Abraham was convicted appeared to offer no extenuating circumstances.

Considering that the section of the Code under which the sentence was passed upon Mr. Abraham allowed of a much severer penalty it is obvious that the Learned Judge who tried the case did consider that ~~namamam~~ there were such circumstances and the above statement cannot be taken as anything less than a serious reflection on either the Learned Judges's intelligence or his honesty.

Cases have arisen in England and elsewhere from time to time in which the sentences imposed have been the subject of criticism ~~whic~~ by members of the Public but a criticism such as that referred to coming from His Majesty's Secretary of State appears to my Society to tend to establish a very dangerous precedent.

Paragraph 3 of the despatch is a direct reflection on the honesty of the jury and the latter portion of the said paragraph would indicate that due consideration was not given to the distinction between English Law and the Law as to Homicide and Hurt as laid down in the Code which has force in this Colony.

The suggestion in paragraph 5 of the Despatch would appear to be that His Majesty's Secretary of State with the assistance of his

legal advisers is to sit as a permanent board of supervision over trials by Jury in this Colony. It is obvious that the publication of such a suggestion holds over Judges and Jurymen in this country a menace to the effect that unless the findings of the Jury and the sentences imposed by the Judges are such as to meet with the approval of Authorities residing over 6,000 miles away, the Jury system may be abolished.

The experience of the members of my Society has been that in recent years Juries have dealt with the cases that came before them with a genuine desire to render impartial justice to all parties concerned and my Society respectfully submits that the establishment of any system of control such as is indicated in the despatch above referred to would be:-

1. Unjustified.
2. Calculated to result in maladministration of Justice.
3. A serious slur on those in charge of administering justice in this Colony and
4. A very dangerous departure from the sound policy that British Courts must be absolutely free from restraint or interference in the administration of Justice.

My Society trusts that this reference to you may be given due consideration and assures you that the question of referring to you was very fully considered and the decision to communicate with you was only arrived at under a firm conviction that the adoption of a policy such as outlined in your predecessor's despatch might seriously affect the interests of this Colony as a whole.

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I am asked to state that in view of the somewhat invidious position in which the Law Officers to the Crown and Crown Counsel find themselves, as being on the one hand members of the Colonial Service and on the other members of my Society, they have taken no part whatever in the discussions which have resulted in the despatch of this letter.

I have the honour to be,

Sir,

Your humble obedient servant

Sd. W.E. Shwartz

Hon. Secy.

The Law Society of the Colony of
Kenya.

I am asked to state that in view of the somewhat invidious position in which the Law Officers to the Crown and Crown Counsel find themselves, as being on the one hand members of the Colonial Service and on the other members of my Society, they have taken no part whatever in the discussions which have resulted in the despatch of this letter.

I have the honour to be,

Sir,

Your humble obedient servant

Sd. W. E. Shwartz

Hon. Secy.

The Law Society of the Colony of
Kenya.

No. B. 1999/24.

ATTORNEY GENERAL'S OFFICE,
Nairobi,
24th December, 1924.

The Hon'ble Colonial Secretary,

N a i r o b i .

re: ADMINISTRATION OF JUSTICE - KENYA.Ref. Your No. "C" 2248/4 of the 15th inst.

On the main point raised in the Law Society letter viz. the question of the abolition of the system, I am in agreement with the Society and with all who take part in the administration in the Colony that, on the whole the system and juries as a rule are conscientious. I believe that conditions are improving. In the particular case I have reason to believe that the jury honestly attempted to do its duty. Though it is that a verdict of culpable homicide would be more in consonance with the facts yet, having regard to the evidence led for the defence and in view of the peculiarities of the Indian Penal Code I do not think the verdict was perverse. The term "culpable homicide" as defined in the Code is not so extensive as the term "manslaughter" under English law, and in India it is not uncommon for a verdict of grievous or even simple hurt to be approved by the Courts where the only proper English verdict would be manslaughter. The verdict negatived sudden and grave provocation which would have reduced the maximum sentence to four years and it allowed a maximum sentence of seven years' imprisonment plus fine.

2. On the other hand the Law Society raises objections which cannot possibly be justified to

Secretary of State's lawful and proper supervision over the administration of justice in the Colony. If the Secretary of State wishes accurate records of trials and of Judge's summings up it is obvious that he has a right to have them. He has stated that they are for the purpose of enabling him to form an opinion as to whether fresh legislation is required to ensure that the highest traditions of British justice are maintained in Ceylon. In objecting to this the Law Society seems to me to have put itself in a false position. The Society is of course unaware of the subsequent correspondence between His Excellency and the Secretary of State.

3. I suppose the point on which my advice is particularly required is as to whether the petition is properly and respectfully worded. I am of opinion that it is sufficiently correct and that His Excellency has no option but to forward it under Colonial Regulation. It should be in triplicate. ^{vide} Colonial Regulation

4. I should like to refer to the question of changing the venue of trials. The present attitude of the Supreme Court is that it will not make an order changing the venue without affidavits that a fair trial cannot otherwise be secured. A recent application to this office for a change of venue was refused.

To carry out the Secretary of State's instructions therefore legislation will be required. It would deprecate the introduction of such legislation which is certain to be strongly opposed and when passed would be of doubtful value. Perhaps the Secretary of

State will in the meantime accept an assurance that I will watch such cases carefully when they come to this Office and will apply for a change of venue when the interests of justice appear to demand it.

5. In regard to the last paragraph of the Law Society's letter I should like to say that so far as I know no member of this Department has discussed the Secretary of State's action with any member of the Law Society.

6. In conclusion may I be permitted respectfully to say that I share the views expressed by the Secretary of State in regard to the inadequacy of sentences in cases of this sort but I feel convinced that local public feeling in the matter has changed and that the country is prepared to accept without question sentence of a more severe nature.

7. I shall be glad if a copy of this memorandum may be forwarded to the Secretary of State.

R. D. Lyall, Esq.

ATTORNEY-GENERAL.

No. 10376 / 25 Kenya

GD

C. D.
B. 2 JUN
D. S.

*Code book 186 159
3.15 pm 2.6 189*

DRAFT. Code Book

Governor *per*

26 JUN 1955

May & June 150

Nairobi.

MINUTE.

*My despatch 16 March - 243
my Conf despatch 5 May
I have now
have decided that*

*See 28/5/25
Mr. Allen
Mr. G. W. 30/5
Mr. Davis*

*Preparation of model
Penal
and Criminal
Codes shall be undertaken*

*Sir G. Grindle.
Sir H. Read.
Sir J. Masterton Smith.
Mr. Ormsby Gore.
Viscount of Devonshire.*

*here at once - Please
inform Uganda Tanganyika
with ref to my Conf despatch 5 May
and also Nyasaland
Despatches
follow.*

copy to Gov

Secur

Gov 10376/25 Kenya

6 JUN 1925

DRAFT.

Kenya

No 521

AG.

MINUTE.

See 28/5/25

Cullen 30/5

Bottomley 30/5

Mr. Harris.

Mr. G. Grindle.

Mr. J. Read.

Mr. J. Masterton Smith.

Mr. Dransby Gore.

Bank of Devonshire.

Mr.

Sir

I have etc. to ack.
 the receipt of your despatch
 No 163, of the 5th of Feb^y,
 transmitting a copy of
 a letter from the Hon. Sec^y
 of the Law Society of
 Kenya, on the subject
 of the administration of
 justice in the Colony ©

2. I have to request
 that the Hon. Sec^y of the

Society may be informed
that I have received his
letter.

(Signed) L. S. AMERY

30/5
Tomley 30/5

Kenya
10326
25

188

g.
ackburgh.
s.
dle.
erton Smith.
y-Dore.

6 JUN 1925

192

T.

Ys

SIR,

Ys

da

err:
Conf (2)

land

Conf

* follow

Conf

with ref: bony ash

520

No 205 1 even date 14

394
165

regarding the drafting of

model Penal & Criminal

Procedure Codes than

re to infinite alteration

Kenya
(Conf off)

ly

4 af

to my tel of the 20th June

X file in

[to the D.D.S. Kenya, to
whose copy is enclosed]

To (2), (3) & (4) and

to my confidential
despatch (2) X
(3) X of the

To (1), (2) & (3) and

X to Kenya and

X to Nairobi and

5th May

(a 12447/25)

(Signed) L. S. AMERY



are amon des sps on
of Cap Comra
(2222)

576. No. 570
S.W. 10376/25 Kenya

Sw. Javers No. 205
944
6 June 1925

AFT. [With reference to previous correspondence]

Camera No. 304
[With reference to my

telegram of the 18th day]. I have etc. to

inform you that I have decided that

the preparation of Penal and

model ~~Books of Law~~ Criminal Procedure Codes

and ~~Criminal Law~~

based on the principles of English Law, shall

be undertaken under the

on 3/15

to my's minute

to whether both T.I.

and want both T.I. Dept. well say.

to Kenya only.

perhaps by agreement with the Home Secy. I will say.

- Seal 28/5
- Allen 30/5
- Ormerod 30/5
- Green 2.6/3
- Paris.

- G. Grindle.
- H. Read.
- Masterton Smith.
- Ormsby Gore.
- of Devonshire.

auspices of the Legal Dept.
of the Colonial Office, with
a view to the replacement of
the existing codes in
~~Kenya, Uganda, the F.T., and~~
~~Uganda~~
~~Kenya~~

~~Nyasaland~~, which are based
upon the Indian Law.

2. The preparation of the
Codes will be undertaken
by Mr. D. F. Ehrhardt ^{h.c.} formerly
Puisne Judge, Kenya, who is
at present employed as a
temporary Assistant ⁱⁿ to the
Legal Adviser ^{Dep't of} the Colonial

Office. It will be necessary
for Mr. Ehrhardt to do
this work in addition
to the ordinary duties
of his appointment,
and I have therefore
sanctioned the payment
to him of an honorarium
of £50 in respect of
each code. This
expenditure, together with
any ~~other~~ expenditure
which may be incurred ^{here}
for printing ^{or} other
services, will be charged

DRAFT.

MINUTE.

- Mr. Gurnea.
- Mr. Grindle.
- Mr. Read.
- Mr. Masterton Smith.
- Mr. Glyn.
- Mr. Devonshire.

equally between the C. A.

four dependencies ^{in which they are adopted} considered.
~~either or both of these.~~

3. The model Codes

will be submitted to you for
your views. before any steps
are taken to arrange for their
enactment in any of the
territories to which it is
proposed that they should be
applied.

4. A similar ^{E. A.} ~~copy~~ ^{copy} has been
addressed to the other ^{territories} ~~territories~~
concerned

having

(Signed) L. S. AMERY.

equally between the L. A.

from dependencies ^{in which they are adopted} concerned.
~~either or both of them~~

3. The model Codes

will be submitted to you for
your views before any steps
are taken to arrange for their
enactment in any of the
territories to which it is
proposed that they should be
applied.

4. A similar copy has been
addressed to the other ^{L. A.} Governments
concerned

Harry

(Signed) L. S. AMERY