

EAST AFR. PROT.
No. 41733

C O
41733
14 NOV. 08

Governor No.
Jackson 577

(Subject)

1908

21 Feb

Last previous Paper

C
33117

Complaint of Mr. Chillingworth

re: shooting of ^{two} ~~some~~ horses
See report. Not caused animal liability
& Mr. Chillingworth has been so kept.

(Minutes)

~~Mr. Heath~~
Mr. Heath

Mr. Chillingworth allowed his
animals to stray at night on the
public road. A native boy
coming along the road carrying a
message for Mr. Hill of the East
Agricultural Dept. thought they were
was a captured ^{profuse} ~~specimens~~. They
thought they were ruminous
and fired shots with their rifles
killing one horse & fatally
injuring another. Mr. Chillingworth
has left at Rs 1000 + Rs 750
No doubt in E. Africa as in the
making the laws is not
repeatedly resorted to in order for
the better acts of its members

Copy taken into ...
To Gen. N. 30. 15 Jan 09
573/09

Next subsequent Paper

44020

148
But I think that what is in the
case of the negro is that the
law usually is an act of grace
making some exception; and I am
inclined to send the papers to the
Treasury and ask what was
the practice in such cases in this
country, & if it would be the practice
to make some exception and then
to appear of compensation on a
similar scale being made to
Mr. Chatterworth.

Apart from this I don't think the
matter has been well handled
by the Govt. No steps seem to have
been taken to render such accidents
less likely in future; & at any
rate Mr. C. was not informed of
any such steps.

W. M. 17/11

W. M.
17/11

The Union is not liable in tort in S. Africa. [It
may be also] liable in contract as it may be
made so liable by statute.

Similarly, public officers cannot be sued in
tort and as teachers in their official capacity
cannot be sued in tort individually,
for acts purporting to be done officially.
See *Robinson v. Barton* (1876) 1 Q.B. 73.

I am by no means clear that the Chillingworth had
not kept remedy. I doubt whether shooting wild
birds was part of the official duty of those nation
parks or executive duty. Even if it was, they were
on the principle of Robert's & Co. has been made
individually for negligence and if it were not, they
were in the position of ordinary citizens with the
ordinary liability, as to trespass, negligence etc.

These nation parks however, are doubtless users of streams
the best remedy if it fails is illegal
in these circumstances I incline to agree with
Wickham that the Govt might have made
some reparation on the principles of the doctrine
of contributory negligence, but Chillingworth
owed no negligence by allowing the game
to stray was a remote cause of the damage
the proximate cause being the negligence or
neglect of the nation parks in shooting
without any necessity of all industrial machinery
which is not known to be wild birds.

Yes. I think that he should be ^{held} liable for ^{some} compensation. 11/11/02

H. J. R. 17/11
Let us do our parts all what the
Parliament say.

Wm. A. R. 18
at once

Governor's Office,

Nairobi.

October 21st 1908.

EAST AFRICA PROTECTORATE.

No. 517

(Incl. 1)

My Lord,

C
3.5.117

In reply to Your Lordship's despatch No. 487 of September 18th, I have the honour to report that the accidental shooting of these horses has already formed the subject of correspondence between Mr. Chillingworth and my office, and I enclose a report by the Assistant District Superintendent of Police at Naivasha on the matter.

Mr. Tew
Dec. 18th 1907

2. I am advised that in the absence of any general or specific instructions to the Police, which instructions were not issued, the Government cannot be held responsible for the act of its servant.

3. I have seen Mr. Chillingworth personally and have caused him to be informed by letter that

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

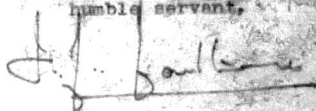
LONDON, E.C.

while sympathising with his loss, the Government
cannot admit any liability.

I have the honour to be,
With the highest respect,

My Lord,

Your Lordship's most obedient,
humble servant,

A handwritten signature in dark ink, appearing to read "J. G. Boulton". The signature is written in a cursive style and is positioned above a horizontal line.

(In the absence of H.E. the Governor.)

COPY.

A.D.S. Police's Office 41733

Naiyasha, ...

December 25th 1908

Sir,

With reference to Mr. Chillingworth's letter dated 14th instant and returned herewith, I have the honour to inform you that there has been no wanton destruction of horses, the shooting of which was purely accidental. The facts of the case are as follows:-

On Sunday, November 24th, Mr. Hill sent a man into Naiyasha with letter at about 10 p.m.; this man after passing the Masera bridge where there are two askaris doing quarantine duty, saw two large animals standing in the middle of the road, it was a cloudy and rainy night and the man was afraid, he returned to the bridge which was not far ^{away} and called out one of the askaris, who accompanied him down the road and they found the animals still standing in the middle of it. The askari thought they were wild animals and fired at them with the result that one was shot dead and the other wounded. The askari came in the same night and reported that he had shot these horses, having mistaken them for wild animals. After I had ascertained who these animals belonged to I wrote and informed Mr. Chillingworth of the accident.

In conclusion I would point out that on one occasion Mr. Chillingworth's mare while straying was nearly killed by a lion, and another time both horses were seen near the Railway line close to this station all by themselves.

I have &c.

Sd/- G. M. TEW.

The Dist. Commissioner,

Asst. Dist. Supdt. of Police.

Naiyasha.

E.

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For
9/1793

11/3

20.

JW

DRAFT

The Serv. to the
Treasury

ansd 5/14

3 December 08

Sir
I am directed by
the Comr of Cruce to
transmit to you, for the
reason of the L.C. of
the Treasury, the accom-
panying copies of re-
-reference, as noted in
the margin, relative to
the shooting by the
native police of the
S.A.P. of two houses
the property of
Mr. Chillingworth &
Mr. Amos Parry
respectively.

MINUTE.

Mr. ~~...~~ 30/11
Mr. ~~...~~ 30

Mr. Just.

X Mr. Antrobus. Dec. 1

X Mr. Coe. 30

Sir C. Lucas.

X Sir F. Hopwood. 1.12.

X Col. Seely. 1.12.

X The Earl of Crewe. 1.12.

C 2. x11

Mr. Chillingworth to C.O. 9 P. 4/10
for S.A.P. to P.P. House 2/10/10

Copy 30. 15/10 5/12/10

2. The Crown is advised
that the Crown is not
liable in the E.A.P. for
the tortious acts of its
agents, and that, al-
though there might
be a remedy against
the fiduciary individuals,
such remedy would be
in favor of the financial
status of the offenders,
alway.

3. In the circumstances
to consider that some
compensation might
well be awarded to
Messrs Clitlingworth
& Co., and to enquire
what rate of compensation
could be allowed in
a matter of this
nature, and

whether the E.A.P. is
affairs of importance
the same rate of
awards in the like

75. 11