

EAST AFR. PROT.  
34233

DESPATCH  
C. O.  
34233  
REC.  
RES: 18 OCT 09

Governor. No.  
Musk Conf. 12

1909

25 Sept.

Last Previous Paper.

029  
29580

M. J. G. Stocker

Sends papers rel. to Criminal proceedings agst. him, and letter from M. Stocker. Reports his resignation, & grant of 5m. leave & £50 in lieu of passage money. Asks for approval of

W. Butler.

The Governor has accepted M. Stocker's resignation & treated him generously as to the leave & £50, so there is nothing for us to do but approve. In some ways it seems a pity that W. Stocker is staying on in the P. L. but we can hardly interfere. It appears to be the sort of case where a certain amount of unofficial - but should think also influential - sympathy ~~would~~ may be enlisted; but perhaps a few more paragraphs in the local papers will appear & then the matter will drop.

! approve. accd. 23/9  
W. Reed

29299



Government House,

Nairobi,

September 28th 1909.

EAST AFRICA PROTECTORATE.

CONFIDENTIAL No. 82

(Incl. 5)

C. O.

34233

REC'D  
SEP 18 1909

My Lord,

With reference to Your Lordship's telegram of the 14th instant and previous correspondence respecting Mr. J. F. Stocker, I have the honour to report that the officer in question has resigned his appointment and I have accepted his resignation in anticipation of Your Lordship's approval, which, I feel confident, will not be withheld.

2. I have also granted him the five months' leave to which he would have been entitled together with an allowance of £50 in lieu of passage money, as he is remaining in the Protectorate. I trust that Your Lordship will sanction the action taken in this matter.

3. This is a special case, in which the dismissal of an officer, whose retention in the public service I regard as extremely undesirable, might be difficult to justify, not because it would be undeserved, but because it is the culminating result of a series of incidents, no single one of which, taken by itself would perhaps be sufficiently serious to entail so severe a penalty.

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES.

DOWING STREET,

LONDON, E.C. 4.

C 2  
29540  
Criminal Case  
No. 28/09Criminal Case  
No. 55/09do. do.  
No. 55/09Mr. Stocker  
Sept. 15thEnclosure  
in do.

4. I enclose copies of the Criminal proceedings in which Mr. Stocker has been involved. On each occasion a verdict of Not Guilty was returned but I think Your Lordship will agree with me that, at any rate in the last two cases, the circumstances disclosed are in the highest degree discreditable.

5. I attach copies of a letter addressed by Mr. Stocker to Your Lordship. I need scarcely say that there has been no prejudice against him on the part of his administrative superiors. On the contrary every forbearance has been shown and he was specially brought down to Headquarters to give him a chance of removing the unfavourable impression caused by his conduct in the Kisumu Province. The use he has made of this opportunity is, I submit, shown with sufficient clearness by the evidence given in the files above referred to. He is in my opinion unfitted to discharge the delicate and difficult duties of an administrative officer in the service of this Protectorate.

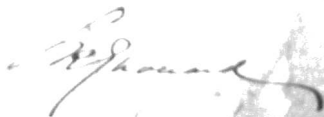
I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,



C. O.  
34233

REC  
Frs. 18 OCT 09

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THE recent case in Nairobi in which a European Official of position was a Defendant and an European Police Corporal Prosecutor, through the Police, is concluded and a Jury after careful consideration have unanimously accepted the Defendant's plea of Self-defence. We have before us the complete record of the preliminary enquiry in the Magistrate's Court and the High Court. From this we gather that after the Roosevelt dinner three or four men stayed in the building longer than the rest and got into conversation with one another. The conversation led to showing feats of strength and the Prosecutor admitted that he performed various gymnastic acts on the table etc. There seems to have been no drink about and from the evidence it is exceedingly doubtful whether any of those remaining behind were in any way worse for liquor, two of them were teetotalers. The last to remain were the Official and the Corporal who either in play or from some motive not known apparently tried each others' powers as wrestlers. Play, if it was play, turned into earnest and a somewhat severe struggle took place in which both parties were damaged as could only be expected when two powerful men get angry and struggle for mastery. The Judge in summing up to the Jury said he did not think either of the contestants were in position to say exactly what really did happen during the final struggle. The Defendant says that the Prosecutor put his two thumbs into his nostrils and when he was nearly choked from the blood rushing down his throat he took the Prosecutors' nostrils in his teeth thus forcing him to remove his thumbs, all other methods having previously failed. He also admits having struck the Prosecutor with his fists severely. He further swore on oath that the Prosecutor was the original aggressor and believes he bore him ill will because he reported him on one occasion for tactless handling of Europeans. The Prosecutor stated that the Defendant was the aggressor and that he nearly blinded him with his hands in his eyes and struck him blows which rendered him insensible, necessitating him to be taken to the Hospital.

## N STANDARD.

Further that he did not bear the Defendant ill-will because of the report. The medical evidence bears out both sides as to the injuries received.

So much for the case but there are one or two matters connected therewith which we think needs comment.

The Jury has very rightly held that the Official could not be found guilty of either "causing grievous hurt as understood by the law nor of the minor offence introduced by the Crown after the Accused had been committed for trial" of causing simple hurt. It is quite apparent that hurts were caused in a fight between two men and on the evidence the Jury came to the conclusion that the Official used no more force to the Corporal than was necessary for his own defence. Neither of the parties were on official duties, in fact they were private citizens, and what is puzzling us for the moment—now we know the facts which should have been known by the prosecuting side—is Why was a serious criminal charge brought against the Official—with the assistance of the Police—and the Corporal turned into a prosecuting witness? We presume as the accused was a Government Official of five years standing he would be invited to give an explanation and having heard the explanation we should think the Crown would have recognized that the Accused could be no more thought guilty of a grave crime, not that the complainant, even if either could be thought guilty of a greater offence than brawling, an offence which has not always been considered a desperate crime in English History. We should have thought that the case would have ended in an action for damages brought by either of the Parties who claimed to have been damaged, not that we think for one moment the Accused would have brought any such action.

We are particularly jealous of actions taken in a criminal Court by the Crown against individuals unless the Crown has a strong case. It would not be forgotten that although a citizen may be able to completely clear himself in the eyes of those of his fellow citizens who are present by not to judge him yet there is always a great stigma on the part of an accused, no matter how innocent he may be, and how easily he may feel he can prove his innocence and further there is always a stigma left if spite of the theoretical contrary.

We are the more jealous in this instance because the recently acquitted Official had only a few months ago undergone another trial of a very serious charge and declared innocent by the Courts of Justice.

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Nairobi,

Sept. 15th, 1909.

Reference:-

EAST AFRICA PROTECTORATE.

Confidential (76)

C. O.  
34233  
REC  
18 OCT 09

My Lord,

I have the honour to address Your Lordship with regard to a letter from His Excellency the Acting Governor of this Protectorate dated 6th August 1909 and numbered Confidential (76) a copy of which was received by me on the 10th of September 1909.

2. On the 29th of July, the first day of the Nairobi Races, I received a letter from the Secretary to the Administration stating that it was His Excellency's intention to recommend to Your Lordship that I should be requested to resign my appointment or, in the event of my refusing to do so, that I should be dismissed from the Service.

3. This letter gave me so little information concerning the charges which were to be brought against me as to make it impossible for me to defend myself on its basis.

Principal Secretary of State  
for the Colonies,

( 2 )

4. On August 3rd, in defending myself against a European Police Corporal, I caused him such injury that he was taken to hospital and on August 4th I was arrested for causing grievous hurt and, in spite of the Corporal's expressed wishes to the contrary, the case was proceeded with against me.

5. On August 5th, in view of this pending charge, I addressed a letter to the Secretary to the Administration requesting that I should be granted time in which to reply to his letter of the 26th July. I received no reply to this letter.

6. On August 28th, the day after I was unanimously acquitted of the charge, I wrote to the Secretary to the Administration asking him to furnish me with copies of all such correspondence as it was intended to forward to Your Lordship.

7. On August 29th I received a letter from him asking me if I proposed to reply to his letter of the 26th July but it was not until Sept 13th that I received a copy of the letter which I mention in para. 1.

8. With regard to this letter:- In para. 2. His Excellency states that Sir James Hayes Sadler consented

to overlook a disgraceful outbreak of rowdyism on the condition that my future behavior should give no cause for unfavourable criticism. His Excellency came to the conclusion that what he terms a disgraceful outbreak of rowdyism had occurred from the evidence of one man only. The other side of the case was not heard. I was not called upon to give any explanation whatever. This is a system all too much in vogue in this Protectorate. A senior officer reports his junior to the Governor confidentially. The junior is asked for no explanation nor is he acquainted with the terms of the report but, nevertheless, the report is filed against him. So it is in this case. I do not know the particulars of any of the unfavourable reports to which His Excellency refers. I have never been called upon to explain or to defend myself nor have I ever requested His Excellency to overlook any conduct of mine. The rowdyism complained of was, in fact, a gathering of three or four friends in a house occupied by myself and another officer when the gramophone was played, a few songs sung and other harmless amusements engaged in with which we contrived to amuse ourselves in that deadly, fever-stricken hole, Kisumu. Mr Ainsworth, the Provincial Commissioner, exasperated by a paper war between himself and Mr Foran, then Assistant Superinten-



gent of Police, Kisumu, reported me to His Excellency. This, after I had apologised to him for having inadvertently broken his sleep and he had accepted my apology and had declared that he would take no further notice of the matter. Furthermore he informed me that he had been in my compound while the alleged rowdiness was in course.

If so, why then, if he considered our conduct to be ill-advised, did he not, as a brother officer, interfere in the matter?

9. If our conduct on this occasion could be termed rowdiness how much more so could entertainments at the Nairobi Club be so called, when the big drum of the King's African Rifles beats continuously into the night and can be heard for miles around, breaking the sleep of many of and not one only.

10. Para 4 of His Excellency's letter states that I had admitted that I had serious misgivings as to the consequences of a blow given to my cook. I had no such misgivings and it was proved to the hilt that I had nothing to do with causing his death.

11. Para 5. As regards the case of Criminal House Trespass:- His Excellency must be aware that this case was practically fabricated by two Public Officers one of whom, the magistrate who took the first steps in the matter

behaved in such an obviously unjust manner, breaking nearly every possible law of the Indian Criminal Procedure Code, that I refused to permit him to try the case and applied for trial by the High Court. The magistrate resigned before the hearing and left the country and the other officer left the service very shortly after. I was acquitted. It was perfectly clear that no offence had been committed.

12. With reference to Para 6. His Excellency states that I have been spoken to on more than one occasion with regard to associating with subordinates. This is not the fact. I have never been approached on the subject. By subordinates possibly His Excellency refers to my having one or two friends among the Inspectors of police. I have and they are gentlemen. Several of them have held commissions in His Majesty's forces and here they wear the star of a sub-lieutenant. I do not understand the position.

13. With regard to Para 9. I inclose cuttings from The East African Standard, the premier paper of the country. These cuttings will give Your Lordship some idea of public opinion on the subject.

14. With regard to the proper fulfilment of the duties of my office:- This is a matter that has never been in

(6)

question and I would refer to the high opinion held of me by the late Sir Donald Stewart, to the fact that Sir James Hayes Sadler on several occasions complimented me on the excellence of my work and to the fact that all officers under whom I have served in this Protectorate or in South Africa have expressed their highest satisfaction with the way in which I have done my duty to the Crown. With regard to my work in this Protectorate I am sure that His Excellency can confirm my statements.

15. I have now served the Crown for eleven years and during all that time I have never been found to have failed in any duty which has been entrusted to me.

My health has suffered considerably by long terms of office in Rabai, Mumias and Kisumu, the most unhealthy stations in the Protectorate and in each of which the death rate from tropical diseases is abnormally high.

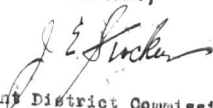
16. I do not, however, desire to remain any longer in the uncomfortable position in which I have been placed. I am, therefore, applying for the leave which is now due to me pending my resignation and, as I wish to remain for the present in this country, for the sum of fifty pounds in lieu of my passage to England.

I trust that this letter may meet with Your Lordship's approval and consideration and that the injustices to which I have referred may be remedied so that other officers may not be, in the future, affected by them.

I have the honour to be, My Lord,

Your Lordship's most obedient,

Humble servant,



Assistant District Commissioner.