

EAST AFR. PROT

2000

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Recd
Dec 26 1890

26400

ord 187

1910

44 May

India Paper

10350

Application of Indian & English law to the

case remanded by Judge & Co. Records

Mr. Rinsley

H. J. R.

27/5/87

Mr. Cox

See also further records in the judge's records

I have kept this paper for your reference, as the result
of reading the records and other orders of 1892, in one
of our courts legal papers.

Mr. Cox's name

51. The judge's name in 1892, in the records, is
the person's name for 1892, to mention the Indian
Act - because the last act of 1892, which was
to apply Indian law, removed any doubt as
to the application of Indian law to the
case. But our papers show that whilst mentioning
Indian law, leaves the practice in regard to
the law of the court. It merely says
reference to the provisions of 1892 of the Indian Act
as to Indian law, whilst adding to that

India Paper

2014

favor of a further provision as to English law; our
 object being to combine in one article the provisions
 as to the administration of Indian & English law (see to that
 effect present form of two separate Orders in Council
 (1902 S. 152) Indian Council Reg. 1902 (S. 152))
 and the law will stand in exactly the same position under
 the new Ord. + Ordinance 11 of 1907 as it did under
 the 1902 Ord. + the local Ordinance.
 As time seems to be some understanding as to our
 object & as to the effect of the proposed Ord. we
 must explain as above.

§2 Mr. Combs thinks (and the 2 judges agree with
 him) that the matter should be dealt with by Order
 rather than Ord. & suggests that he & the
 judge should submit a draft.

Mr. Heyden the judge took a similar view
 (see Heyden 1730), but the A-G supported our
 view that an Ord. was desirable and we
 adhered to it. I do not therefore know to what
 in the same manner in para 2 of my draft
 of 23d Feb to Heyden (1730).

I have accordingly offered an Ord. for what
 is in issue, and also it is well known of your
 object that an Ord. is preferable to an Ord.
 in a number of cases it will be the best
 for this reason, with a deep and anxious
 consideration of the objection. as to your view
 of your views.

131
 7/10
 13/10

EAST AFRICA PROTECTORATE

No 1487

C O
23400
GOVERNMENT HOUSE
Nairobi

August 25th, 1910.

103

For
15350

Checked by
The Advocate

By
Judge Hamilton

By
S. S. S. S. S.

My Lord,
I have the honour to report that in the opinion
of all the Judges of the High Court, whom I have consulted in accordance
with your Lordship's instructions, both
questions can be dealt with by Ordinance and
nothing by them demands any amendment of
the Bill in Council.

I attach memoranda on the subject
to the Green Advocate and your Honour's
Judge Hamilton and Mr. ...

I have the honour to be,
Your Lordship's obedient
servant,
G. ...

[Signature]
GOVERNOR.

THE RIGHT HONOURABLE
THE EARL OF CREVE, A.O.S.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

REC-22 416 10
MEMORANDUM

INCLOSURE No 1

Dispatch No. 44/4 8

The Applied Acts Ordinance 1907 removes any uncertainty as to the application of amending and substituting Acts of the Indian Legislature, by providing that no such act passed after the publication of the Ordinance shall apply to this Protectorate unless and until applied by Ordinance.

I do not consider that an amendment of any Order-in-Council is necessary for the purpose of removing doubts as to the application of Indian Acts.

2. I am of opinion that it is desirable that the extent to which English Law is in force in the Protectorate, or should be applied to the Protectorate, should be more clearly defined.

As I am of opinion that the matter could be dealt with by an Ordinance, I do not advise any amendment of the 1902 Order-in-Council, but would suggest that an Ordinance should be drafted by myself in consultation with the Judges and submitted to the Secretary of State for approval.

The draft amendment of Sub-article (2) of article 15 of the 1902 Order-in-Council would require considerable alteration since as drafted it would appear to not only tie us down to the Indian Acts now in force but to apply portions of these Acts which have not hitherto been applied.

Sd/- R.M. Combs
CROWN ATTORNEY

Nairobi,

5th, July 1910.

C O
20400
Rec^d
Rec^d 26 AUG 10

ENCLOSURE No 2

In Despatch No. 46704 8 18/10

MEMORANDUM

105

The question of defining more clearly than at present the extent and manner in which English law should apply to the vessel in case that required attention; and I am of opinion that it would be best dealt with in the manner suggested by the Honourable the Crown Advocate with whose minute I agree.

Sd/- R. E. Hamilton.

Principal Judge.

Mombasa.

July 11th 1910.

00123

CONFIDENTIAL

WHEREAS the territories of Africa
situate within the limits of this Order are
under the protection of His Majesty the King
and are known as the ^{East Africa} Protectorate:
AND WHEREAS by Order in Council bearing
sufferance and other lawful ^{of His Majesty}
has power and jurisdiction within the said
territories:
AND WHEREAS by an order of His Majesty
in Council bearing date the 11th day
of August 1922 and entitled "The ^{East Africa} Order
in Council 1922" provision was made for the
exercise of His Majesty's jurisdiction with-
in the said Protectorate:
AND WHEREAS by article 10 of the
said Order in Council 1922 it was
ordered that there should be a court of justice
in the Protectorate with full jurisdiction
civil and criminal over all persons and over
all

W.R. 7/10
RBE 10

10/11/11

E.A.P.

ORDER IN COUNCIL FOR UGANDA

WHEREAS the territories of Africa
situate within the limits of this Order are
under the protection of His Majesty the King
and are known as the ^{East Africa} Protectorate:
AND WHEREAS by Order in Council bearing
sufferance and other lawful ^{of His Majesty}
has power and jurisdiction within the said
territories:
AND WHEREAS by an order of His Majesty
in Council bearing date the 11th day
of August 1922 and entitled "The ^{East Africa} Order
in Council 1922" provision was made for the
exercise of His Majesty's jurisdiction with-
in the said Protectorate:
AND WHEREAS by article 10 of the
said Order in Council 1922 it was
ordered that there should be a court of justice
in the Protectorate with full jurisdiction
civil and criminal over all persons and over
all

AND WHEREAS by an order of His Majesty
in Council bearing date the 11th day
of August 1922 and entitled "The ^{East Africa} Order
in Council 1922" provision was made for the
exercise of His Majesty's jurisdiction with-
in the said Protectorate:
AND WHEREAS by article 10 of the
said Order in Council 1922 it was
ordered that there should be a court of justice
in the Protectorate with full jurisdiction
civil and criminal over all persons and over
all

all matters in the protectorate and that such civil and criminal jurisdiction should so far as circumstances admitted be exercised in conformity with the Civil Procedure, Criminal Procedure, and Penal Codes of India

and the other Indian Acts which are in force in India then as to the application of the order except so far as might otherwise be provided by law

and before the commencement of the said order in Council 1902 and

the provisions of some part or parts of the said order in Council 1902 were cancelled and the provisions of some part or parts of the said order in Council 1902 were cancelled and the provisions of some part or parts of the said order in Council 1902 were cancelled

and by article 13 of the said order in Council 1902 it was ordered that all the said civil and criminal jurisdiction exercisable in any local jurisdiction constituted under that order should so far as circumstances admitted be exercised upon the principles of such law as was in force in conformity with the substance of the law for

in conformity with the substance of the law for the purpose of the said order in Council 1902 and the provisions of some part or parts of the said order in Council 1902 were cancelled and the provisions of some part or parts of the said order in Council 1902 were cancelled and the provisions of some part or parts of the said order in Council 1902 were cancelled

~~the time being in force in and for England~~
~~and with the powers vested in and according~~
~~to the manner of procedure and practice~~
~~observed by and before Courts of Justice and~~
~~Justices of the Peace in England according~~
~~to their respective jurisdictions and~~
~~authorities.~~

AND WHEREAS by article 28 of the
East Africa
 Uganda Order in Council 1902 it was ordered
 that on the commencement of that Order the
East Africa
 Africa Order in Council ¹⁸⁹⁹ should cease to
 apply to Uganda ^{it referred} provided that, where other
 provision was not made by Ordinance, any law
 practice or procedure established by or under
 the ^{said referred} Africa Order in Council 1899 and not
 superseded by the Uganda Order in Council
 1902 should remain in force until such other
 provision was made:

AND WHEREAS doubts have arisen res-
 pecting the extent to which the law of England
 is in force in the ^{East Africa} Uganda Protectorate under
 the

the above recited provisions and it is expedient to remove such courts and to amend article 15 of the ^{East Africa} Uganda Order in Council 1902

NOR THEREFORE His Majesty by virtue and in exercise of the powers on that behalf by the Foreign Jurisdiction Act 1890, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:-

1. This Order may be cited as the ^{East Africa} Uganda Order in Council 1910.
2. Sub-article (2) of article 15 of the ^{East Africa} Uganda Order in Council 1902 is hereby revoked without prejudice to anything lawfully done thereunder and in place of the said sub-article the following shall be substituted:

*(2) Such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised in conformity with the Civil Procedure, Criminal Procedure and Penal Codes and the ^{East Africa} Indian Acts which are in force in East Africa of India in force at the date of the commencement

Note. Is the principal
part of 1902, & had
any amendments in that Order
if it had, it would be noted
there.

any other to take it down
to England to be taken
out of the Order then
the same to other to be
to the Order to England
1902

Justice
C. H. ...
1902

commencement of this Order⁺ and subject
thereto and so far as the same shall not
extend or apply shall be exercised in con-
formity with the substance of the common law
the doctrines of equity and the statutes of
general application in force in England on
the 11th day of August 1902, and with the
powers vested in and according to the pro-
cedure and practice observed by and before
Courts of Justice and Justices of the Peace in
England according to their respective juris-
dictions and authorities at that date, save
in so far as the same may at any time before
the commencement of this Order have been, or
hereafter may be, modified or amended by or
under the authority of any Order of His Majesty
in Council or by any Ordinance or Ordinances
passed in and for the Protectorate. Provided
always that the said common law doctrines of
equity and statutes of general application
shall be in force in the Protectorate so far

only

only in the circumstances of the Proclamation
and its incidents and the limits of his
Majesty's jurisdiction, permit and enact to
be made in such cases as the circumstances
render necessary.

3. This Order shall be published in
Official Gazette of India and shall there-
upon come into operation.

and the Right Honourable the Earl
of Crewe, K.G., one of His Majesty's Principal
Secretaries of State is to give the necessary
directions herein.

for
18400

SAR

113

1700
4 October 1910

Sir

I have the honor
to acknowledge the receipt of your
despatch no 467 of the 6th
of August, forwarding
memoranda by the Crown
Advocate and by Judge
Dummett & other relations
to the application of Indian
legislation & English law
to the SAR

Ans. 2914

JS

I note regard to para 1
of the Comtee's memo
referring to Captain that
the proposed action (which
while mentioning India
does not have the position
note regard to that part

DRAFT

P. no 67
to the SAR

MINUTE

- Mr. 1875 N/A
- Mr. Patten 28
- Mr. Reilly 31
- Mr. Linton 31
- Mr. J. S. Fielder off
- Mr. Cox
- Sir C. Lucas
- Sir F. Hopwood
- Col. Baily
- Lord Cross

and to SAR

It also on 2002

Just wanted. In
purpose that it should
merely retract the promise
of Article 15 of the 1902
Treaty and Indian law
which giving to that promise
a further promise as to
English law, the object
being to combine the old
article the provisions as
to the application of Indian
law, but to the last
at present found in
the Indian Old
Council, by Article 15
of the 1902 Treaty and a
regards the application of
Indian law, Article
15 of the 1902 Treaty and
regards the

difficultly, nature, error, 111
concern with the 1007 since
of the 111, 111, 111, 111
the 111, 111, 111, 111
111, 111, 111, 111, 111
111, 111, 111, 111, 111

I Johnson that the
Clerk suggests (and that
the Judge agree with him)
that the matter should
be dealt with by advice
rather than by Oul C,
and suggest that the
the Judge should present
a draft. What I admit
that under article 28
of the East Ord 1902
the necessary action could
be taken by passing an
advice. I am of
opinion that it would
be preferable to proceed
by Oul C. In the case
of Maryland in 1902

Mr. Curriden's death,
and I think that the
same procedure should
be followed in the present
instance

If I enclose the draft
of my Am C which I
have caused to be prepared,
and I shall be glad to
hear any observations that

you may have to offer
with respect to it

Yours etc

I have pointed out that the date of
the report to Congress has been
retained of the report since the date
of the report. So as to have
the same date with respect to
English and Indian law. If
you desire to retain the date
of the report. In case of the
law I shall have no objection
to the report being made
accordingly