

No.

17685

17685

REC
18 MAY 06

No.

177

(Subject.)

1906

Ordinance, No 5 1906.

"Criminal Procedure" [Final of East African Protectorate]

How Paper

Submits

(Minutes)

Mr. Bishop
 The Crown Advocate explains why an Order was necessary instead of an Act under a 274 of the Ord. It was not enough to amend the existing ordinance to avoid any difficulty; but an order could not be made within the code distinguishing as the order does between different cases.

The Order is a step of the general amendment of the Law of Criminal Procedure.

M.C. 2/5

Mr. Cox
Mr. Andrew

Upon this is an indictment inserted in the future
 S. African Code of Criminal Procedure
 But I do not know why Mr. Cox, in referring to...

26

this order has entirely ignored the High Court of E. Africa
I have provided that uniform procedure are to be fixed
for all officers before the Court of Session
I am sure that, at present, the same procedure are followed
in other Courts, but that has been done
not since the 2 Courts.

I don't know how it that officers practised by order
of the Court. I don't think it all Courts have been
used. High Court - of the Court, 1888

Procedure Code -

introduced by clause 15 of the Ordinance
of 1888. What cases does it apply?
I think they keep the Court of Session
Court for removed out there.

I don't know how it is able to work out why
it is not used. I think it refers before the Court of Session
or it is for the High Court.

The Courts of E. Africa will remain a chaotic
jungle to most people until the Courts of Session
and the Courts of Appeal are to have drafted which
have or have not which has not yet reached
us - I am sure here]

see also - of the Court - 1888 of the Ordinance Code - also in 1888

see S-11 of Commission Act 1888

see also 1888, there is a slip Act which is not

S.R. 22/2

In a letter
- give as to the points
raised by Mr. Risley to signify the
non-disaffirmance of the 1888

[Handwritten signature]
W. H. ...

Nairobi,

133

April 20th 1906.

WEST AFRICA PROTECTORATE.

No. 179.

(Incl. B)

C O
17685
REC'D 18 MAY 06

My Lord,

In obedience to the instructions contained in Your Lordship's despatch No. 65 of February 8th, I have the honour to report that I have conferred with the Crown Advocate and have promulgated an Ordinance to be cited as the Criminal Procedure Ordinance 1906 according to the terms of which the numbers of the Jury for trials before a Court of Sessions are fixed.

I have the honour to transmit herewith eight copies of the Ordinance together with an explanatory letter which the Crown Advocate has addressed to me on the subject.

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

My Lord,

Your Lordship's most obedient,

humble servant,

Principal Secretary of State
for the Colonies,
Downing Street,
LONDON, S.W.



No. B.
recd. 24th
No. 5 of 1906.
8 copies.

INCLOSURE *2/1*

In Despatch No. *78* of *apl.* *20* 1906.

C.
1768

CROWN ATTORNEY'S OFFICE.

REC'D
MAY 18 06

BOMBAY.

134

M. RMH 24th 1906.

Sir,
With reference to paragraph 3 of the Secretary of State's despatch No. 68 of February 8th 1906 requesting that an order be made under Section 874 of the Indian Procedure Code fixing the number of the Jury for trials before a Court of Session.

I have the honour to advise that an Ordinance be made legalizing trial by Jury in all cases when an European or American is the person or one of the persons charged, and fixing the number of the Jury by whom such case shall be tried.

The Government has power under Section 874 of the Indian Procedure to fix the number of the Jury by whom a case committed to the Court of Session shall be tried and also to order what class of offence shall be tried by Jury. No power is given to the Government by the Code to order that any particular class of person shall be tried by Jury. It is desirable that Europeans and Americans committed for trial to the Court of Session should be tried by Jury, but it is not desirable that every class of person committed for trial to the Court of Session should be so tried. As it is not possible to make an order under Section 874 of the Code which would not apply to every person of whatever race, committed for trial I would advise that no order should be made under that Section.

4. I have the honour to forward for your approval a draft Ordinance laying down the procedure to be followed in all cases when a European or American is charged with any offence not triable summarily, and would recommend that, if approved the Ordinance should be immediately published as a temporary measure to meet certain doubts and difficulties which will permanently removed on the publication of the Judicature Ordinance.

I have fixed the minimum number of the Jury at five and I do not think that it is possible unless all cases are to be sent for trial to Mombasa or Nairobi that the number can at present be increased. I have, however, given the Commissioner power to fix the number of the Jury by whom a particular class of offence shall be tried and I would recommend that under that power you should order that all offences punishable with death, transportation or imprisonment exceeding seven years should be tried by a Jury of nine.

I have applied the provisions of the Criminal Evidence Act 1898 as I think that it is desirable that accused persons should be free to give evidence if they should wish to do so.

Criminal Evidence Act 1898.

I have the honour to be,

Sir,

Your most obedient

and humble servant,

J. K. [Signature]

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Criminal Evidence Act 1898.

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I have the honour to be,

Sir,

Your most obedient

humble servant,

J. R. [Signature]

DRAFT.

E.A.P. 292

Comm

Ms. d. 30806

May

31st May 1966

Sir

MINUTE.

- Mr. Ladd
- Mr. Tread
- Mr. Andrews
- Mr. Cox
- Mr. Laou
- Mr. Graham
- Sir M. O'Malley
- Mr. Churchill
- The Earl of Egin

Friday, 30
10.30/6/66

I have the honour
to acknowledge the receipt of
your letter of 2:199 of the 20th
of April 1966, ~~concerning~~
~~copying of the minutes~~
~~of the Committee~~, and
to reply to inform you that
the power of disallowance
will not be exercised

2. It is not apparent
however, why the
Comm. does not ^{take} in effect
this O.S., entirely left
out of course the High
Court of S.A., and
has provided that
European & American
are also tried for

with respect to Ord. No.
5 of 1966, published the
Provisional Procedure
Ord. of 1966, a trans.
copy of the ~~minutes~~
you sent.

all officers before
the Court of Session,
and I shall be
glad to learn the
reasons which
dictated the course.

It would, in my
opinion, have been
preferable that
the procedure laid down in
Section 447 & 448 of the Indian

Criminal Procedure Code should
have been ^{strictly} followed
in this ^{order} case and
that officers punishable
by death or penal
imprisonment should have
been made triable
before the High Court.

24. I have to call your
attention to the fact
that in § 8(c) the
word "Admiralty"
should be substituted
for the word "Act",
which is meant.

Yours