

EAST AFR. PROT.
1952

1952
AN 14

covered 1963
self-Ed
1913
10th December
Last previous Paper
No. of 3
1913

MERCHANT SHIPPING ACTS

This memo. by the Attorney General suggesting words "Subordinate Judge" should be omitted from the dft order amending Art 13 of the O.inC. 1902. Concurs and submits amending draft order. Recommends also that depositions should in future be taken by a Magistrate instead of Chief of Customs and that necessary amendment be made.

W^r T. J. J. J.

W. A. A. H. J. J.
L. E. J. J. 20/1/14

We can accept the A.G.'s alterations, it is no reason why he should not make the amendment in the O.in.C. of 1902 which the A.G. suggests. Before we do this we must obtain concurrence of B.C. and we might now send the dft to B.C. for concurrence amending it as follows to as to cover this new suggestion.

add a test verbal

to be done by you the
to be done by you the
to be done by you the

Next subsequent Paper

as follows

And whereas by an order of His late Majesty in Council dated the 4th Day of July 1808 made under s. 737 of the Merchant Shipping Act 1794, His Majesty was pleased to direct that the taking of certain depositions therein mentioned with regard to under, certain acts might be done in the East India Company's to be done by or before a British Consular Officer

And whereas the Chief of Customs and whereas it is expedient to amend the said order so as to provide that the taking of the said depositions in the East India Company's may be done by or before a magistrate holding a subordinate court of the first class as aforesaid

And add section 7 of the Merchant Shipping Act 1794 after s. 737 in the meaning paragraph

and add article a new article after article 2 of draft as follows

(3) In the Schedule to the order of His late Majesty in Council dated the 4th Day of July, 1808 & providing for the Exercise in Various British Possessions of the powers of a British Consular Officer under the Merchant Shipping Act, 1794 as applied by s. 7 of the Workmen's Compensation Act, 1906 the words "The Chief of Customs shall be omitted & the following words substituted, namely" a magistrate holding a subordinate court of the first class constituted under the

Courts and magistrates 1507
of the East Africa
Protectorate or any
law substituted for
or amending the
same, & duly ap-
pointed by the Governor
in that behalf.

Art (5) must
then be renumbered (4)

B.F. may object to this all
being done in the same
order, but it seems a
policy to have two orders.

CS 20/11/14

? But if we take up the
order for the...
... it would not...
... to subordinate Judge...

W.A. 20/11/14

Almond

20/11/14

EAST AFRICA PROTECTORATE

December 10th 1913.
1952

No. 963

Sir,

With reference to your despatch No. 366 of October 14th, I have the honour to transmit herewith a copy of a Memorandum by the Attorney General in which he suggests the words "Subordinate Judge" should be omitted from the draft order amending Article 17 of the Order-in-Council 1902 in so far as it relates to the jurisdiction to be exercised by the Subordinate Court under the order shall be exercised by an officer sitting as a Magistrate and not as a Judge.

2. I concur with the Attorney General's opinion and have the honour to submit an amended copy of the draft order with the necessary alterations for favour of consideration.

3. I take this opportunity of referring to the Order-in-Council dated July 4th 1908 which confers certain powers on the Chief of Customs to take depositions under the Merchant Shipping Act 1894. I think it would be more suitable that such depositions should be taken by a Magistrate so that all matters which would be dealt with under the Merchant Shipping Acts by a Magistrate in British possession

B/S
22-189
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Memorandum
Nov. 11/13
Amended copy
Order-in-Council

THE RIGHT HONOURABLE
LEWIS HARCOURT, B.A., F.R.S.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

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(2)

possession would in future be dealt with by one authority in the Protectorate, viz: a Magistrate of the 1st class appointed by the Governor.

4. If you concur in this view I recommend that the necessary amendment be made to the Schedule to the Order-in-Council above mentioned.

I have the honour to be,

Sir,

Your humble, obedient servant,

Almoner Bayfield

GOVERNOR.

1333/18

INCLOSURE No. 1

In Despatch No 963 of 18 12 1952

C O
1952

Honourable Chief Secretary,

Reference No. S. 76 - Your memo of Nov. 7th.

Draft Order amending Article 13 of the
East Africa Order-in-Council 1952.

1. The Subordinate Courts under the Courts Ordinance 1907 exercise both civil and criminal jurisdiction. The officer holding a Subordinate Court exercising civil jurisdiction is referred to as a Subordinate Judge.

The officer holding a Subordinate Court exercising original jurisdiction is referred to as a Magistrate. The Subordinate Judge exercises his jurisdiction in accordance with civil procedure. The Magistrate exercises his jurisdiction in accordance with criminal procedure.

The powers and duties conferred by divisions of Justice of the Peace or Magistrates under the provisions described in the Schedule to the Foreign Jurisdiction Act should be exercised by an officer sitting in a District Court.

In order to make it clear that the jurisdiction to be exercised in a Subordinate Court under the Order shall be exercised by an officer sitting as a Magistrate and not as a Judge, I would suggest that the words "Subordinate Judge" should be omitted from the Order.

I return herewith the copy of the draft Order
in which will be found the alterations which I would put
forward for consideration.

NAIROBI,

November, 1915.

ATTORNEY GENERAL.

In Despatch No 461 of 10/12/1913

1352

Draft Order in Council

REC-17 JAN 14

WHEREAS by Article 12 of the East Africa Order in Council 1902 the enactments described in the First Schedule to the Foreign Jurisdiction Act 1890 were applied to the East Africa Protectorate subject as therein mentioned and for the purpose of such application the High Court of East Africa was substituted for Magistrate or Justice of the Peace of a Colony or British Possession.

AND WHEREAS by an Ordinance of the East Africa Protectorate shortly entitled the Courts Ordinance 1907 there were constituted Courts with jurisdiction in criminal matters to be known as Subordinate Courts of the first second and third class and to be held by Magistrates as in the said Ordinance provided.

THE WHEREAS it is expedient that the powers and duties conferred and imposed by the enactments described in the said Schedule on a Magistrate or a Justice of the Peace of a Colony or British Possession should be exercisable by Magistrates holding Subordinate Courts of the first class as provided by the said Ordinance and duly committed by the Governor of the East Africa Protectorate in that behalf.

Now KNOW ALL MEN that I, His Majesty King George V, in exercise of the powers in this behalf by the Foreign Jurisdiction Act 1890 or otherwise in His Majesty vested, do hereby, by and with the advice of His Privy Council, give order, and it is hereby ordered as follows:-

1. This order may be cited as the East Africa Order

DRAFT ORDER IN COUNCIL

WHEREAS by Article 13 of the East Africa Order in Council 1902 the enactments described in the First Schedule to the Foreign Jurisdiction Act 1890 were applied to the East Africa Protectorate subject as therein mentioned and for the purpose of such application the High Court of East Africa was substituted for Magistrate or Justice of the Peace of a Colony or British Possession.

AND WHEREAS by an Ordinance of the East Africa Protectorate shortly entitled the Courts Ordinance 1907 there were constituted courts with jurisdiction in criminal matters to be known as subordinate courts of the first second and third class to be held by Magistrates as in the said Ordinance provided.

AND WHEREAS it is expedient that the powers and duties conferred and imposed by the

Enactments

Enactments described in the said Schedule
 as a Magistrate or a Justice of the Peace by
 a Colony or British Possession should be
 exercisable by Magistrates holding Sub-
 ordinate Courts of the first class as pro-
 vided by the said Ordinance and duly
 appointed by the Governor of the East Africa
 Protectorate in that behalf.

AND WHEREAS by an Order of His
 late Majesty in Council dated the 4th day
 of July 1906 and made under section 727 of
 the Merchant Shipping Act 1894 His Majesty
 was pleased to direct that the taking of
 certain depositions, authorised under certain
 Acts therein mentioned to be done by or before
 a British Consular Officer, might be done in
 the East Africa Protectorate by or before the
 Chief of Customs, and whereas it is expedient
 to amend the said Order so as to provide that
 the taking of the said depositions may in the
 East Africa Protectorate be done by or before

a Magistrate holding a Subordinate Court of the first class as aforesaid.

NOT THEREFORE His Majesty by virtue and in exercise of the powers in this behalf by the Foreign Jurisdiction Act 1890 and Section 737 of the Merchant Shipping Act 1894 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 Order in Council 1913".

2. Article 13 of the East Africa Order in Council 1902 is hereby amended by deleting the last fifteen words of the Exceptions adaptations and modifications contained in paragraph (1) thereof and substituting therefor the words "and a Magistrate holding a subordinate Court of the first class constituted under the Courts Ordinance 1907 of the East Africa Protectorate or any law substituted for or amending the

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same, and duly appointed by the Governor
in that behalf, for a Magistrate or
Justice of the Peace of a Colony or British
Possession".

3. In the Schedule to the Order of
His late Majesty in Council dated the 4th
day of July 1908, and providing for the
exercise in various British Protectorates of
the powers of a British Consular Officer
under the Merchant Shipping Act, 1894, as
applied by section 7 of the Workmen's Com-
pensation Act, 1906, the words "The Chief
of Customs" shall be omitted, and the
following words substituted, namely: "A
Magistrate holding a Subordinate Court of
the first class constituted under the Courts
Ordinance 1907 of the East Africa Protectorate
or any law substituted for or amending the
same, and duly appointed, by the Governor

in that behalf".

This order shall be published in the Official Gazette of the East Africa Protectorate and shall thereupon commence and come into operation.

AND the Right Honourable Lewis Harcourt, one of His Majesty's Principal Secretaries of State is to give the necessary directions herein.

27 Jan 1914

With reference to your letter of 26/1/14

of the 19th of September 1913 I have the honor to inform you that...

At the request of the Government of the East Africa...

copy of a report on the subject of the proposed...

amending the East Africa...

of the 19th of September 1913...

and prepared...

I have the honor to refer to the...

referred to in the Schedule to the...

of the 19th of September 1913...

should be exercised by the...

holding subordinate posts of...

the first class in the E.A.P.

I have the honor to refer to the...

of the 19th of September 1913...

in accordance with a suggestion...

of the Government that the power...

to take decisions...

MINUTE
Discussed 23/1/14
T. M. ...

and F. Minott.
Harcourt.

[Faint handwritten notes and scribbles in the left margin]

under the Merchant Shipping
Act 1854, &c. by the Order
of the Board, which was conferred on the
Chief of Customs, under the
provision suitably amended by
a Magistrate, so that all
matters which would be dealt
with under the Merchant Shipping
Act, by a Magistrate or a
British possession would in
future be dealt with by one
authority in the District, viz.
a Magistrate of the 1st class
appointed by the Governor.

3. J. A. H. would be
glad to know whether the
Board concur in the
proposed draft B. C.

I am