

EAST AFR. PROT  
28473

28473  
Recd  
JUN 15

Governor  
Belfield 401  
1915  
15th May  
Last previous Paper  
~~Council~~  
26629

AMENDMENT OF E. A. PROTECTORATES (APPEAR TO PRIVY COUNCIL) ORDER IN COUNCIL 1909

States as to necessity for amendment of Article 6(a)

Mr Rodley

A. J. R.  
23/6/15

~~Mr [unclear]~~  
In C. J. [unclear]

There is no hurry about this. We have got to amendment of Art 5 through (26529) & collect with view to a further amendment of the Privy Council Order from this suggestion

There are precedents for making an Amendment to the P. O. via 'security' to the satisfaction of the Colonial Court which grants leave to appeal (C. J. Walter, St Helena, Mauritius others but speaking generally as regards wrong colonial protectorates it

is no hurry here, agreed

Copy to Privy Council via Rodley  
Anno 537 22 July 1915

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32315

is more usual for the D.C. & other  
instruments. Legislation, applied to the  
to keep down a maximum for the amount  
which may be paid by the Colonial  
Court & as in the case of the  
Court of Appeal at present.

The maximum varies in the case of  
D.C., Colonial & Probate Courts from  
£300 to £500, though in the case  
of some of the Indian Courts it is  
Rs 10,000.

If the present maximum of Rs 5000  
for S.A. Court is to be raised  
do not think it should be a like the  
provision in Dominion & Indian  
Courts, and rather than fix  
it at Rs 15,000 I would prefer  
the other alternative in para 6  
of the draft. (Leave it to the  
discretion of the Court).

Send to Clerk of Council, asking  
for doing of the legal standard  
specimens.

A.R.

5/1/15

2/2/15

5/2/15

Almond

11.7.15

28473

GOVERNMENT HOUSE,  
NAIROBI,  
BRITISH EAST AFRICA.

21 JUN 15

EAST AFRICA PROTECTORATE

No. 401

May 13th 1915.

Sir,

*Gov  
1/1006*

I have the honour to refer to my despatch No.188 of March 12th on the subject of an amendment to Article 5 of the Eastern African Protectorates (Appeal to Privy Council) Order-in-Council 1909.

2. The provisions of Article 6 (a) of the Order-in-Council have recently formed the subject of discussion when the Judges of the Court of Appeal were unanimously of opinion that they should be amended in the following manner.

3. Article 6 (a) provides for security being ordered on leave to appeal being granted under Article 3. As the article now stands (such security) shall be "in a sum not exceeding Rs.5,000 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the appellant not obtaining an

THE RIGHT HONOURABLE

LEWIS HARGREAVES, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal (as the case may be)".

4. The sum of Rs. 5,000 is therefore the maximum for which the Court can order security to be given and it is apparent that such a sum might and probably would be in most cases insufficient to pay the Respondent's costs where an unsuccessful appellant was ordered by the Privy Council to pay the Respondent's costs throughout in that Court, the Court of Appeal and the High Court.

No. 35A  
5. It is considered that the more usual practice would be to leave the fixing of the amount of security to be ordered to the discretion of the Court and thus preclude the possibility of affecting detrimentally the interests of the very person for whose safe-guard the security is designed.

6. I suggest therefore that the article in question should be amended by deleting the words "in a sum not exceeding Rs. 5,000" and the substitution therefor of the words "in such sum as the Court may think fit".

If for any reason however it is considered desirable to retain a maximum limit I would ask that it should be placed at Rs. 15,000 at least.

7. If

7. If you approve of this amendment it may perhaps be possible to effect it simultaneously with the proposed amendment to Article 3.

I have the honor to be,

Sir,

Your humble, obedient servant,

Alauy Beyid.

GOVERNOR.

7. If you approve of this amendment it may perhaps be possible to effect it simultaneously with the proposed amendment to Article 5.

I have the honour to be,

Sir,

Your humble, obedient servant,

A. Lawry Bayard.

GOVERNOR.

Govt 28473/1915.

E.A.P.

8 July 1915

Sir,

With reference to your letter, No. 115708 of the 7<sup>th</sup> June I am to transmit to you the accompanying copy of a despatch from the Governor of the East on the subject of the provisions of Article 6 (a) of the Eastern African Protectorate (Appeal to Privy Council)

DRAFT.The Clerk to the Council,  
Privy Council Office,

MINUTE.

[26529]

Mr. Harper 8/7/15.

Mr. Bottomley 8/7/15.

Mr.

Mr.

Sir G. Fiddes.

Sir H. Justice.

Sir J. Anderson.

Mr. Steel-Maitland.

Mr. Dunsen Law.

SW 407-13 MR