

EAST AFR. PROT.

C. O.
1874

REC^d
REG^d 18 JAN 13

1874 ¹²/₁₃

Governor 869
Field

270

Date.
1912

STOCK AND PRODUCE THEFT ORDINANCE

12 December

Three copies for assent. Has nothing to add to Legal Report enclosed. Sends copy of Bill as originally submitted to the Legve Council together with a copy of the Report of the Special Committee.

Previous Paper.

How
9291
12

Mrs. Bottomley.

The last communication which we received on the subject of Stock thefts was the despatch of May 20th 1912 from the O.A.G. from which it appeared that the agitation on the subject was "figzling out" and that it would be unwise and unnecessary for the Government to take any action at present.

A new ordinance is now submitted for dealing with cases of Stock thefts, but we are not informed whether any special circumstances have since arisen to justify the necessity for the introduction of special legislation for dealing

1929
12

Subsequent Paper

1611

with such cases, or in what extent the existing law (the Indian Penal Code) has been found inadequate.

According to the returns furnished by the O.A.G. in his despatch of May 20 1912 it would appear that cases of stock theft are comparatively insignificant, to deal with which the legislation now proposed is in addition to being novel, somewhat drastic.

In the Legal Report the object of the Ordinance is stated to be, in the first place, "to provide the minimum fine which shall be imposed on persons convicted of the theft of stock or produce" and a ^{minimum} fine equivalent to ten times the value of the stock is imposed accordingly. The principle of imposing a maximum fine in cases of breach of a law is a well recognized one, but the principle of a minimum fine seems novel. In the proposed Ordinance "theft" includes an attempt to commit theft, so it is quite possible that some unfortunate wader who casts an acquisitive eye on a large herd of goats may find himself charged with an attempt to steal the herd and, if found guilty, the Court 'willy nilly' will be bound to fine him ten times the

not now
Absolute

with such cases; or in what respects the existing law (the Indian Penal Code) has been found inadequate.

According to the relation furnished by the Chief Justice in his despatch of May 20, 1912, it would appear that cases of stock theft are comparatively insignificant, to deal with which the legislation now proposed is in addition to being novel, somewhat drastic.

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not now
available

values of the land. Incidentally the
question of value will lead to much
hard hard swearing.

271

The Attorney General in his legal Report
states that he knows of no similar law
in force in a Crown Colony, but that
"within the discretion allowed to Provincial
Commissioners is necessarily wide," "it
is considered that there is no reason
to doubt but these officers will exercise
their discretion wisely with due regard
to justice for the Natives and the purposes of
the Ordinance

Under the proposed Ordinance however
the Court seem to have had little discretion
left to them. Under the Penal Code the
amount of the fine is left to the discretion
of the Court, but must not be unreasonably
("shall not be excessive" s. 2 of the Penal
Code); whereas under the proposed Ordinance
a minimum is fixed.

I think that in the first instance

210

This is of course in the matter of collecting fines.
27

The Governor might be asked, in view of
the OAG's despatch of May 2nd 1912,
to give some further reasons for the
necessity of the proposed ordinance.
The penal clauses of which appear
to be both novel and drastic?

W.E.
21.1.15

Mr. Young ~~W.E.~~ Dr. G. F. Fisher

You should see this before it goes further.

I am not sure how far the Ordⁿ as it stands
complies with the Committee's recommendation that
parts of dead animals should not be dealt with under it.
Also I presume that the whole fine will go to the
Crown & not be payable to the owner as compensation.

The object of the Ordⁿ being to fix the liability
on the tribe, it is natural to expect that the
penalty should be one great enough for the tribe to feel
it. But even so there is little ground for a large
minimum fine, especially for attempt. If the
executive officer can be trusted to prevent undue
harassment to the tribe, the judicial officer can surely
be trusted to impose a substantial fine without
having his hands tied.

The "ten times" is said to be not unusual as a
fine under native law, but this hardly seems to
justify it as a minimum.

I don't
better with
H. J.
I agree
I am very
doubtful
H.
I think the
should certainly
be no reason
for "attempt"
H.

The principle of collective punishment is
accepted in cases where a criminal is
harboured by his tribe or where the tribe is
proved to have suppressed evidence against him.
But here it is sufficient that he should be
actually & not merely nominally a member of
the tribe.

I agree with Mr. Stevenson that we must
first of all ask (except of course) for further
information.

Oct. 22.15

272

I agree. The idea of a minimum
fine is not (novel altogether),
but I think it is more or less
discredited as a principle for
determining punishments.
Moreover I don't know of any case
where the principle has been
applied so sweepingly as here.

I think the ordinance is
all right as far as dead animals
go. I have no criticism of
the legal form of the Bill
except that the definition of
"farm" appears to be unnecessary
and I can't find the word used
elsewhere in the ordinance.

Oct. 27/15
H. J. R.
28/1

T.O.

I agree that in the past instance
we sh^d ask for the reasons, in view of 1929!

P.M. 31/1

Yes. In any case I do not think that
the 'collective' fine sh^d be imposed except
in cases where ~~the~~ ^{two or more}
members of the family or tribe have at
least one previous conviction for stock
theft.

Uk. 31.1.13

£ 31.1.13

I agree with Sir G. Fiddes.

I think I pointed out on some
previous paper that it might be
a commercial advantage to some
settlers to have their stock stolen
if they cd. recover fines on a high scale.
But in view of the deportation of G.
Cole I have always felt that we
must help the Prot. to check stock-thefts.
What has happened to the proposals as to
branding? (I mean of cattle - I believe it
is difficult in sheep - except in
the ear)

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21. 1. 13

23. 1. 13

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branding? (I mean of cattle - I believe it
it is difficult in sheep - except in
the ear)

21. 1. 13

and in our reply we stated that we should be glad to receive this information.

But the promise was not fulfilled.

Apparently no measures were taken.

The next deep. is Dr. Bowring's June 1912 (1912)

stating with ref. to our deep N-722/^{Sept 1911}(reply to

Sir P. Girouard on 30241) that the question

is not sufficiently important to justify

any immediate measures being taken.

Now we receive Dr. Belford's deep 1874¹¹/₁₀

with copies of the new Stock Theft Ordinance

and no explanation.

Sir G. Zeldes.

H. F. D. Sp

~~Reference~~

This question of branding appears to have

gone to sleep, & unless we ask Sir S. Stockman again

for the Natal Agricultural Journal which he

sent us for comment on 30241/11 I don't see

how we are to stir it up. I get the

Journal - & any later info. he may know of

+ send out extracts for comment.

U.S.B.

In the Agric. Report for 1911-12 the A?
Sw? of the Agric. Dept. says:-

- The advisability of branding is recognized by most stock farmers and numerous applications have been received for brands.

This being so, I think that we might let the matter drop?

H. F. D. Sp
10/11 6/11

This special reference to branding of the deep
W.C.B.

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Sir G. Fiddes.

H. F. D. Esq.

~~to be read~~

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Yours,

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10/11 6/11

has been
reference
brand
of the d
W.C.B.

Since my action in the Cole case
and the representations I have since
received from Deputations & others
as to the prevalence of stock thefts
I do not wish to seem to veto
legislation which is really thought
necessary.
The Prop. to F. A. P. should therefore
be somewhat modified so as not to
leave this impression

H. 10. 2. 13

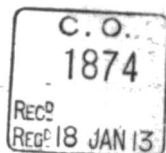
X

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE.

No. 869.

December 14th, 1912.



Sir,

I have the honour to transmit herewith for favour of your assent two copies of The Stock and Produce Theft Ordinance 1912 as passed by the Legislative Council on the 27th ultimo.

2. The enclosed memorandum by the Attorney General deals very fully with the objects of the Ordinance and I have nothing further to add.

3. A copy of the Bill as originally submitted to the Council together with a copy of the report of the Special Committee is also forwarded.

I have the honour to be,

Sir,

Your humble, obedient servant,

H. Conway Bejard.

GOVERNOR.

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

Finance

Memorandum by
Attorney General

Bill

Report of the
Special Committee

No.



East Africa Protectorate.

IN THE THIRD YEAR OF THE REIGN OF

HIS MAJESTY KING GEORGE V.

HENRY CONWAY BELFIELD, C.M.G.,

Governor.

C.O.

1874

REC^d
REC^d 18 JAN 13

276

An Ordinance to make further and better Provision
for the Prevention of the Theft of Stock and
Produce.

[1912.]

BE it enacted by the Governor of the East Africa Protectorate with the
advice and consent of the Legislative Council:—

1. This Ordinance may be cited as "The Stock and Produce Theft Short title.
Ordinance, 1912."

2. In this Ordinance, unless inconsistent with the context:—

The term "District Commissioner" includes an Assistant District Interpretation.
Commissioner;

The term "farm" includes also a plantation, orchard, and a market or
nursery garden;

The term "Native" means a Native of Africa, not being of European or
Asiatic race or origin, and includes a Somali;

The term "produce" means agricultural produce and includes ostrich
feathers;

The term "stock" means the male, female, or young or cross of an animal
of any of the following kinds:—horse, ass, kine, sheep, goat, swine or domesticated
ostrich; and

The term "theft" includes every offence punishable under any of the
sections following of the Indian Penal Code, and includes also an attempt to
commit, and an abetment of, any such offences:—

Sections 379, 380, 381, 382, 384, 386, 387, 392, 394, 395, 396, 403, 406,
408, 411, 412, or 414.

3. Whenever any Court shall convict any Native of the theft of stock or
produce the Court shall, in addition to or in lieu of imposing any other punishment
authorised by law, sentence the Native convicted to pay a fine which shall
in no case be less than ten times the value of the stock or produce in respect of
which the offence has been committed. Provided, however, when two or more
Natives tried jointly are convicted of such offence as aforesaid, the Court shall
sentence each Native convicted to pay a fine of such amount as the Court may
deem proper, provided that the total fine payable by all the convicted Natives
shall not be less than ten times the value of the stock or produce in respect of
which the offence has been committed. And provided further no animal shall be
valued for the purposes of this section at a higher value than 300 rupees.

4. Whenever any Native shall be convicted of the theft of stock or produce
and shall be sentenced to pay a fine the Court passing sentence shall, unless the
amount of the fine shall be forthwith paid, issue a warrant for the levy of the
amount of the fine by distress and sale of any moveable property of the offender
or of the offender's family, sub-tribe or tribe or of any member of the offender's
family, sub-tribe or tribe.

Minimum fine
to be imposed on
Natives convicted
of theft of stock
or produce.

Warrant for levy
of fine imposed
on Native
convicted of
theft of stock or
produce.

Where warrant
may be executed

5. Subject to the provisions hereinafter contained a warrant issued under the last preceding section may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by a Magistrate within the local limits of whose jurisdiction such property is found.

Effect of such
warrant.

6. (1) Whenever a warrant shall have been issued under Section 4, and no or insufficient moveable property of the offender shall be found to satisfy the fine, the warrant shall, subject to the provisions of sub-section (2) of this section, be executed against the moveable property, (1) of any member or members of the offender's family, (2) of any member or members of the sub-tribe to which the offender belongs, (3) of any member or members of the tribe to which the offender belongs, in the order set out above, until the amount of the fine is levied.

(2) A warrant shall not be executed against any property other than the property of the offender unless and until it shall have been endorsed by the Provincial Commissioner of the Province in which the family, sub-tribe or tribe of the offender is resident. A Provincial Commissioner shall, before endorsing any such warrant, satisfy himself that the circumstances of or in connection with the offence of which the offender has been convicted are such as to justify the levying of the fine or the balance of the fine, as the case may be, by the distress and sale of the property of the offender's family, sub-tribe or tribe, and a Provincial Commissioner may, if he should think fit, call upon the head of the family or the Headman or Headmen of the sub-tribe or tribe to show cause why the warrant should not be executed, or may hold such other enquiry as he may think proper.

Passed in the Legislative Council the 27th day of November, in the year of Our Lord one thousand nine hundred and twelve.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and found by me to be a true and correct printed copy of the said Bill.

E. P. Evans

Clerk of the Legislative Council.

Presented for authentication and assent as a correctly and faithfully printed copy of the Bill as passed by the Legislative Council.

W. B. Brown

Chief Secretary.

J. D. Lamb

Attorney General.

Assented to in His Majesty's name this day
of December, 1912.

Governor.

Where warrant
may be executed

5. Subject to the provisions hereinafter contained a warrant issued under the last preceding section may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by a Magistrate within the local limits of whose jurisdiction such property is found.

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Governor.

LEGAL REPORT.

C. O.
1874

REC^d
REC^d 18 JAN 13

THE STOCK AND PRODUCE THEFT ORDINANCE, 1912.

1. Under the Indian Penal Code a Court convicting any person of theft or of any offence punishable under any of the sections of the Code mentioned in the interpretation of the term "theft" in this Ordinance may impose a fine. The amount of the fine is left to the discretion of the Court but must not be unreasonable. If the fine is not paid, the Court imposing the fine may, at its discretion, issue a warrant for the levy of the fine by the sale of the moveable property of the offender.
2. The purpose of this Ordinance is, in the first place, to prescribe the minimum fine which shall be imposed on Natives convicted of the theft of stock or produce, and to impose upon Courts a duty to take steps for the levy of the fine, if it not paid.
3. It has in the past been urged that the Courts should be empowered to punish stock thieves with a longer term of imprisonment than is prescribed by the Indian Penal Code, but it is now generally recognised that the imposition of a fine, a punishment more in accord with the laws and customs of the Native Communities, will go much further to deter Natives from committing theft of stock or produce, than any other form of punishment, provided the fine is levied.

4. Under Native law and custom the penalty for theft of stock is a fine of stock; the amount of the fine varies with different tribes, but it has been stated that a fine of ten times the number, or of ten times the value, of the stock stolen is not an unusual fine, and a fine of that amount has been adopted for the purposes of this Ordinance as the minimum fine to be imposed.

5. The Ordinance further makes provision for the levy of a fine by the sale of the property of the family or Community to which the offender belongs, in cases in which the offender has insufficient property to satisfy the fine, and the circumstances of the offence in respect of which the fine has been imposed are such as to justify the levy of the fine on the property of the family or Community.

6. It is stated that under Native law and custom the head of the family or Community of an offender is under an obligation to the person entitled to receive compensation in respect of the offence committed to see that the compensation is paid out of the property of the offender or of his family or Community, and that Natives will recognise the equity of extending this obligation to cases in which fines have been imposed under this Ordinance, provided the circumstances of the offence are such as would impose such obligation if the fine had been ordered by a Native Tribunal administering Native law.

7. As it would be obviously inequitable that the family or Community should be held responsible for the misdeeds of a Native who has been living away from his family for some time, provision has been made in the Ordinance to postpone execution of a warrant as against family or tribal property until a Provincial Commissioner has satisfied himself that the offence was committed under circumstances which would justify the execution of the warrant as against such property. The discretion allowed by the Ordinance to Provincial Commissioners is necessarily wide, but it is considered that there is no reason to doubt but these officers will exercise their discretion wisely with due regard to justice for the Natives and the purposes of the Ordinance.

8. The Ordinance is designed to deal with a class of offence which is prevalent in this Protectorate and which, if not checked, will ruin a most important industry. Amongst Natives of this Protectorate cattle thieving is considered as an honourable occupation, provided the thefts are committed in respect of cattle not the property of any member of the Community to which the thief belongs, and it is only by creating ^a public opinion in the Reserves against stock thieving that stock thieving can be checked. The sentencing of Natives convicted of that offence to long terms of imprisonments has not and will not have the desired effect. If, however, heads of families and Communities can be taught that it is not only their duty but it is to their advantage to use their parental authority to restrain the young men from committing this offence, a public opinion against stock thieving will be created.

As it would be obviously inadvisable to place the family or community should be held responsible for the misdeeds of a native who has been living away from his family for some time, provision has been made in the Ordinance to postpone execution of a warrant on a certain family or tribal property until a Provincial Commissioner has satisfied himself that the offence was committed under circumstances which would justify the execution of the warrant on a certain individual. The discretion is allowed by the Ordinance to Provincial Commissioners in cases where it is considered that there is no reason to doubt that the offenders will execute their obligations with due regard to justice for the natives and the purposes of the Ordinance.

8. The Ordinance is designed to deal with a class of offences which is prevalent in this Protectorate and which, if not checked, will tend to increase and which is a most important factor in the development of this Protectorate and the welfare of the natives. It is considered as an honourable occupation provided the facts are omitted in respect of cattle not the property of any member of the community to which the offence is committed and it is only by creating public opinion in the Protectorate against stock raising that stock raising can be checked. The remaining of natives convicted of the offence for long terms of imprisonment has not had the desired effect. It, however, leads to a loss of authority to restrain the young men from committing the offence, a public opinion against stock raising will be created.

9. As thefts of ostrich feathers plucked from -- domesticated birds and thefts of agricultural produce from lands in the neighbourhood of Native Reserves are very common and are said to be on the increase, the provisions of this Ordinance are extended to theft of produce defined to include agricultural produce and ostrich feathers.

10. As I know of no similar law in force in a Crown Colony, I am unable to advise His Excellency to assent to the Ordinance without previous reference to the Secretary of State.

NAIROBI,
December, 1912.

W. H. Wood
ATTORNEY GENERAL.

THE STOCK AND PRODUCE THEFT ORDINANCE, 1912.

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<p>Section 1. Title.</p>	
<p>Section 2. Interpretation.</p>	<p>A Swahili, who is a detribalised Native, is not included in the definition of the term "Native." As to Ordinance will apply to Jubaland, it is necessary that a Somali should be deemed to be a Native for the purposes of the Ordinance.</p> <p>The term "theft" is defined so as to include robbery, extortion and similar offences.</p>
<p>Section 3. Sum fine imposed on natives convicted of theft of stock and produce.</p>	<p>As the subject of a theft might be a pedigree bull or ram, the second proviso has been added to limit the value of any animal for the purposes of the Section.</p>
<p>Section 4. Warrant for levy of fine issued on conviction of theft of stock and produce.</p>	<p>Under this Section the Court has no alternative but to issue a warrant for the levy of a fine unpaid, and the warrant must be executed against any moveable property of the offender which under the Criminal Procedure Code may be seized and sold.</p>
<p>Section 5. Warrant to be executed.</p>	<p>The warrant can be executed against the property of the offender wherever situate, if endorsed by a Magistrate of the District in which such property is situate.</p>
<p>Section 6. Warrant.</p>	<p>Under Sub-section (2) of this Section the Provincial Commissioner is required to satisfy himself of the equity of levying the fine on the property of the family or Community and he is given full authority to make such investigation as he may think fit to that end.</p>

INCLOSURE 1/3

In Despatch No. 867 of Dec. 16th 1912

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C. O.
1874
REC^d
REG^d 18 JAN 13

A Bill

Intituled

An Ordinance to make further and better Provision for the
Prevention of the Theft of Stock and Produce,

A Bill

intituled



An Ordinance to make further and better Provision for the Prevention of the Theft of Stock and Produce.

283

1. This Ordinance may be cited as "The Stock and Produce Theft Short Title. Ordinance, 1912."
2. (1) Sections 1 to 7 (both inclusive) shall apply to the whole of the Protectorate and shall come into operation on the publication of the Ordinance in the Gazette. Commencement.
- (2) The Governor may, by notice in the Gazette, direct that the provisions of Section 8 shall apply to any Province, District or area specified in such notice, and may by such notice fix the date on which such section shall come into operation and take effect in such Province, District or area.
3. In this Ordinance, unless inconsistent with the context :— Interpretation.
- The term "District Commissioner" includes an Assistant District Commissioner ;
- The term "farm" includes also a plantation, orchard, and a market or nursery garden ;
- The term "Native" means a Native of Africa, not being of European or Asiatic race or origin, and includes a Somali ;
- The term "produce" means agricultural produce and also all skins, hides, horns of stock, wool, mohair and ostrich feathers ;
- The term "stock" means the male, female, or young, or cross of an animal of any of the following kinds :—horse, ass, kine, sheep, goat, swine or domesticated ostrich ; and the carcase or portion of the carcase of any slaughtered stock ;
- The term "sufficient fence" when applied to wire fences shall mean a fence of not fewer than four wires and not less than three feet six inches high ; in other cases any fence, wall or hedge through which no stock could pass without breaking, or any natural boundary through or across which no sheep would ordinarily pass ; and
- The term "theft" includes every offence punishable under any of the sections following of the Indian Penal Code, and includes also an attempt to commit, and an abetment of, any such offences :—
- Sections 379, 380, 381, 382, 384, 386, 387, 392, 394, 395, 396, 403, 406, 408, 411, 412, or 414.
4. Whenever any Court shall convict any Native of the theft of stock or produce the Court shall, in addition to or in lieu of imposing any other punishment authorised by law, sentence the Native convicted to pay a fine which shall in no case be less than ten times the value of the stock or produce in respect of which the offence has been committed. Provided, however, when two or more Natives tried jointly are convicted of such offence as aforesaid, the Court shall sentence each Native convicted to pay a fine of such amount as the Court may deem proper, provided that the total fine payable by all the convicted Natives shall not be less than ten times the value of the stock or produce in respect of which the offence has been committed. Minimum fine to be imposed on Natives convicted of theft of stock or produce.
5. Whenever any Native shall be convicted of the theft of stock or produce and shall be sentenced to pay a fine the Court passing sentence shall, unless the amount of the fine shall be forthwith paid, issue a warrant for the levy of the amount of the fine by distress and sale of any moveable property of the offender or of the offender's family, sub-tribe or tribe or of any member of the offender's family, sub-tribe or tribe. Warrant for levy of fine imposed on Native convicted of theft of stock or produce.

Where warrant
may be executed.

6. A warrant issued under the last preceding section may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by a Magistrate within the local limits of whose jurisdiction such property is found.

Effect of such
warrant.

7. Whenever a warrant shall have been issued under Section 5, and no or insufficient moveable property of the offender shall be found to satisfy the fine, the warrant shall be executed against the moveable property, (1) of any member or members of the offender's family, (2) of any member or members of the sub-tribe to which the offender belongs, (3) of any member or members of the tribe to which the offender belongs, in the order set out above, until the amount of the fine is levied.

Trespass on farm
offence.

8. (1) Any Native who shall be found within a farm or part of a farm enclosed on all sides with a sufficient fence, or within a stock boma, and who, when so found, was not proceeding along some road or thoroughfare traversing such farm or part of a farm, and who also was on such farm or part of a farm or in such cattle boma without the authority or consent of the owner or occupier or of some one who was entitled, or was by the person so found *bona fide* believed to be entitled to give such authority or consent, may be found guilty by the Court by which he is tried, of criminal trespass, unless he shall satisfy the Court that he was not there with intent to commit theft in respect of any stock or produce.

Intent

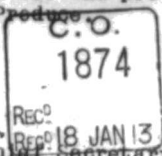
Onus of proof on
accused.

Penalty.

Any Native found guilty of criminal trespass under this section shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) For the purposes of this section the term "Native" shall include a Swahili.

P. Report of Special Committee of the Legislative Council on a Bill intituled an Ordinance to make further and better provision for the prevention of the Theft of Stock & Produce



The Committee consisted of the Chief Secretary.

(Chairman), the Attorney General, Hon.C.W.Hobley, C.M.G., Hon.P.G.Dickinson and Hon.B.G.Allen.

2. After the provisions of the Bill had been carefully considered it was unanimously agreed that amendments were desirable in more than one direction.

3. The Committee consider that, as the object of the proposed enactment is primarily to prevent the theft of stock, ostrich feathers and produce, the special punishments provided therein should be confined to such offences and should not be made applicable in the case of theft of other property.

4. It is therefore recommended that the definition of the expressions "Produce and stock" be limited so as to include in the former agricultural produce and ostrich feathers only and to exclude, in the latter, carcasses or portions of carcasses.

5. With regard to Section 4 which provides that a fine of 10 times the value of the stolen property must be inflicted in the event of a conviction being secured, the Committee consider that a limit should be fixed to the value of any one animal stolen for the purposes of the Ordinance. They recommend that such limit of value be fixed at Rs.300.

6. The reason which prompt the Committee to make

this

this recommendation are as follows:-

The fine of 10 times the value of stolen property is based on the native custom of demanding the replacement of stolen stock by a fixed number of similar stock but for the purposes of this Ordinance it is necessary to express the penalty in monetary value. It has been represented to the Committee that, although some natives may realise the difference between various grades of stock, it is necessary to fix some outside value within reasonable limits in order that the penalty of 10 times such value may not fall too heavily on the family, sub-tribe or tribe of the offender in cases where the offender is unable to pay the fine himself. The Committee agree that natives would not understand how any single animal ~~could be worth 15 or 20 times more than~~ ^{could be worth 15 or 20} ~~another~~ animal of the same species and would regard a fine based on such value as extortion. The effect of the enforcement of such a fine might lead to the most serious dislocation of local administration and would in the opinion of the Committee have a grave effect on the labour supply since the Chiefs and Elders would not care to take the risk of their young men being convicted of theft under the Ordinance while away from their direct control and would consequently discourage them leaving their Reserves for work.

7. The Committee have carefully considered the proposal of the imposition of a minimum monetary fine in cases where the value of the stolen stock does not amount to Rs.10, but do not recommend its adoption. They consider that such a provision would be antagonistic to

Report of Special Committee of the Legislative Council on a Bill intituled an Ordinance to make further and better provision for the prevention of the Theft of Stock & Produce

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 18 JAN 13

The Committee consisted of the Chief Secretary (Chairman), the Attorney General, Hon.G.W.Hobley, G.M.G. Hon.P.G.Dickinson and Hon.B.G.Allen.

2. After the provisions of the Bill had been carefully considered it was unanimously agreed that amendments were desirable in more than one direction.

3. The Committee consider that, as the object of the proposed enactment is primarily to prevent the theft of stock, ostrich feathers and produce, the special punishments provided therein should be confined to such offences and should not be made applicable in the case of theft of other property.

4. It is therefore recommended that the definition of the expressions "produce and stock" be limited so as to include in the former agricultural produce and ostrich feathers only and to exclude, in the latter, carcases or portions of carcases.

5. With regard to Section 4 which provides that a fine of 10 times the value of the stolen property must be inflicted in the event of a conviction being secured, the Committee consider that a limit should be fixed to the value of any one animal stolen for the purposes of the Ordinance. They recommend that such limit of value be fixed at Rs.300.

6. The reason which prompts the Committee to make this

to the principle of replacement of stolen stock to which allusion has already been made. 287

8. The Committee consider that it is necessary to include in the Ordinance some provision which will safeguard the interests of the families and tribes of natives who are obviously not subject to family or tribal control such as a native who may have severed all connection with his tribe for several years, a Kavirondo working on Magadi Railway or a Kikuyu who may be working on the Coast. They therefore recommend that the provisions for carrying the incidence of the fine beyond the offender himself shall be subject to the acquiescence of the Provincial Commissioner in whose jurisdiction the offenders tribes is situated, such Provincial Commissioner being ⁱⁿ the opinion of the Committee the individual best able to judge of the relations between the offender and his family.

9. Finally the Committee recommend the deletion of Section 8 of the Bill. They consider that such provision whereby the onus of proof of innocence rests with the accused is contrary to the principles of British Law and Justice. They are apprehensive that the retention of this clause might lead to grave abuse and, by restricting the free movement of natives, seriously affect the labour supply. They recommend that this matter be dealt with when a fencing law is enacted.

sd. C. C. BOWRING

Chairman of Committee
27-11-12.

ause 2.	Delete.
ause 3.	Becomes Caluse 2.. In the interpretation of the term "produce" delete "also all skins, hides, horns of stock, wool, mohair and" and substitute "includes".
ause 4.	Becomes Clause 3. Add at end of clause "And provided further no animal shall be valued for the purposes of this Section at a higher value than 300 rupees."
ause 5.	Becomes Clause 4.
ause 6.	Becomes Clause 5. The Clause to commence with the words "Subject to the provisions hereinafter contained".
ause 7.	Becomes Clause 6(1). In the first line substitute "4" for "5". In line 3 after the words "the warrant shall" insert "subject to the provisions of Sub- section (2) of this Section". Add Sub-section (2) in the terms follow- ing:- (2) A warrant shall not be executed against any

to the principle of replacement of stolen stock to
which allusion has already been made.

8. The Committee consider that it is necessary to
include in the Ordinance some provision which will safe-
guard the interests of the families and tribes of nati-
ves who are obviously not subject to family or tribal
control such as a native who may have severed all con-
nection with his tribe for several years, a Kafir who
working on the railway or a Kikuyu who may be working
on the coast. They therefore recommend that the provi-
sions for carrying the incidence of the law beyond the
offender himself shall be subject to the sanction
of the Provincial Commissioner in whose jurisdiction the
offenders reside. In such cases, such Provincial Commission-
ers should be empowered to refer the matter to the
District Judge or the relations between the offender
and his family.

9. Finally, the Committee recommend the deletion of
Section 8 of the Bill. They consider that such provision
whereby the issue of proof of innocence rests with the
accused is contrary to the principles of British law
and justice. They are apprehensive that the retention
of this clause might lead to grave abuse and, by re-
sulting in the free movement of natives, seriously affect
the labour supply. They recommend that this matter be
dealt with when a fencing law is enacted.

ad. C. C. BOWRING
Chairman of Committee
27-11-12

any property other than the property of the offender unless and until it shall have been endorsed by the Provincial Commissioner of the Province in which the family, sub-tribe or tribe of the offender is resident. A Provincial Commissioner shall, ~~xxxx~~ before endorsing any such warrant, satisfy himself that the circumstances of or in connection with the offence of which the offender has been convicted are such as to justify the levying of the fine or the balance of the fine, as the case may be, by the distress and sale of the property of the offender's family, sub-tribe or tribe, and a Provincial Commissioner may, if he should think fit, call upon the head of the family or the Headman or Headmen of the sub-tribe or tribe to show cause why the warrant should not be executed, or may hold such other enquiry as he may think proper.

Delete.

ause 8.

Amendments to the Stock & Produce Act, 1912 recommended by the Special Committee.

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ause 2.

ause 3.

ause 4.

ause 5.

ause 6.

ause 7.

delete.

Becomes Clause 2.

In the interpretation of the term "produce" delete "also all skins, horns of stock, wool, mohair and substitute" includes "includes".

Becomes Clause 3.

Add at end of clause "And provided further that no animal shall be valued for the purposes of this section at a higher value than 300 rupees."

Becomes Clause 4.

Becomes Clause 5.

Becomes Clause 6.

The Clause to commence with the words "Subject to the provisions hereinafter contained."

Becomes Clause 6(1).

In the first line substitute "4" for "5".

In line 3 after the words "the warrant" shall insert "subject to the provisions of Sub-section (2) of this section."

Add Sub-section (2) in the terms following:-

(2) A warrant shall not be executed unless

R 13 FEB
D. 14

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Jac

1874/1912-13. East Africa Protectorate.

Downing Street,

17 February, 1913.

Ans'd 16/11

DRAFT.

EAST AFRICA PROTECTORATE

CONFIDENTIAL

Governor

H. CONWAY BELFIELD, ESQ., C.M.G.,
&c., &c., &c.
(1874)

MINUTE.

Mr. Downie 4/2

Mr. Bottomley 5. +11

Mr. Read 6

X Sir G. Fiddes. 10/12

Sir H. Just.

X Sir J. Anderson. 10/12

Lord Emmott.

X Mr. Harcourt. 12.2.13
for comma

see memorandum annexed
as to branding.

Sir,

I have the honour to acknowledge

the receipt of your despatch No. 869 of

the 14th of December, forwarding two

copies of the Stock and Produce Theft

Ordinance, 1912, as passed by the Legisla-

tive Council of the East Africa

Protectorate.

2. I am fully aware of the im-
portance of this question and I have no

desire to appear to oppose any legisla-
tion which is locally thought to be

necessary. I am informed that stock

thefts have recently been prevalent, but

I may point out that the last official
report

report I have had on the subject is

Mr. Bowring's confidential despatch of
the 25th of May, 1912, in which it was
suggested that, in view of the small number
of cases of stock thefts in the Protectorate,
it would be undesirable and unnecessary for the
Government to take any action at present
and that no intolerable grievance
existed.

(19291)

3. In the circumstances I feel it
necessary, before authorising you to
assent to the Ordinance, to ask you to furnish
me with a report as to any fresh developments
which may have occurred in this matter
since the date of Mr. Bowring's despatch,
in order that I may be satisfied that such
strong action as is contemplated in the
Ordinance is essential.

I have, etc.,

(SR)

4. I shall be glad if at the
same time you will supply
me with some additional info
on one or two points of detail
connected with the Ordinance, which
I feel some difficulty in accepting.

I am not altogether satisfied that
there is ^{sufficient} ~~good~~ ground for the prescribing
a minimum fine, as the amount of
the punishment awarded might well
be left to the discretion of the Court,
and I should have great hesitation
in approving of the imposition of
any minimum in cases of attempts
to steal. Further, as a minimum,
the a fine of ten times the value of
the stock or produce stolen would
appear to be excessive, unless I may infer
from the Attorney General's report
that a fine of this amount could be
regarded as a moderate punishment in
Native law.

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5. I am doubtful, also, as to the
principle of collective punishment
is appropriate in cases where there is
no suggestion of complicity in the
offence on the part of the family or
tribe, and I should be glad to see
its imposition limited to cases in
which either there is evidence of mutual
complicity or one or more members of
the family or tribe have at least one
previous conviction for stock theft.

6. As I understand the Ordinance,
the whole of the fine will go to the
Crown and will not be payable to
the owner as compensation. I shall
be glad to be assured on this
point.

7. In making these observations,

I do not wish it to be understood
that I shall necessarily find myself
compelled to direct a amendment
on any of the points which I have
mentioned. I only expect I draw your
attention to them rather in order that
I may be as fully informed as
possible of the circumstances and
of the necessity for drastic action
in the matter.

(Signed) L. HARCOURT

1874 ¹²/₁₃ East Africa Prot.

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Now revised

DRAFT.

East Africa Prot. Confidential

Memo. H. C. Belfield & Co. & Co.

Feb. 1913

MINUTE.

Mr. Downie 4/2

Mr. Bottomley 5/6

Sir G. Fiddes 10

Sir H. Just.

X Sir J. Anderson 10

Lord Emmott.

X Mr. Harcourt.

All items accepted as to
hardship.

Sir

I have etc to acknowledge
the receipt of your despatch N. 286
of the 14th of December, forward-
ing two copies of the Stock
and Produce Theft Ordinance
1912 as passed by the Legis-
lative Council of the E.A.P.

2. Before ^{considering the provisions} giving effect to
of this Ordinance, I should
be glad to receive information
as to the reasons ^{which make} for the
necessity of the enactment, ^{necessary}
and I would refer you to

Int. Bowring's

Mr Bowring's Confidential

(19291)

dup of the 25th of May 1912,
in which it ^{was} suggested
that, in view of the small
number of cases of stock theft
in the Provinces, it would
be undrainable and
unnecessary for the Government
to take any action at
present and that no interests
were concerned.

I have etc.

3. In the event of
it being found that
the number of cases
is increasing
it may be necessary
to consider the
possibility of
taking action
at that time
as it is essential

Mr Bowring's Confidential

(1929)

dated of the 26th of May, 1912,

in which it ^{was} suggested

that, in view of the small number of cases of stock thefts

in the Protectorate, it would be undesirable and

unnecessary for the Government to take any action at

present and that he in turn encouraged.

I have etc.

[Faint, mostly illegible handwritten text, possibly a second page or a continuation of the letter.]