

EAST AFR PROT

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5 MAR 14

Deputy Gov.
Bowling 127

BRITISH AND COLONIAL PROBATES ORDINANCE, 1913.

1914

5th February

Trs. for assent with Legal Report, which raises question of application of Colonial Probates Act 1892 to the Protectorate.

Last previous Paper.
Gov. 3938/Genl.

General Department

See also Gov. 3938.

(154) H.J.R.

6/III/14.

Mr. Pennyson - Mr. Risley
Mr. Macnaghten.

This is sent for approval. The Governor's assent has not yet been given. It is a result of the recent addition of the Colonial Probates Act, 1892, to the schedule to the Foreign Jurisdiction Act (See paragraph 3 of Attorney General's memorandum with Gov. 3938/14. Genl.)

? First refer to the Principal Probate Registry asking whether the provision would comply with

*Original Probate Reg? can no longer be traced
Mr. 434*

Last subsequent Paper.
15549

the conditions Required for extending the Act to the Protectorate - referring to the recent addition to the schedule of the Foreign Jurisdiction Act.

(Itd) J.A.S.
9.3.14.

I am rather uncertain as to form of this Ordinance.

It is obviously founded on Southern Nigeria 10/93 Cap.IX. which it follows pretty closely. My objection is as follows:-

Section 3 of the Imperial refers to British Courts in Foreign Countries. It has been held to apply to Protectorates (Law Officers' opinion in 20147/06). It follows from the minutes on P.O. 17520/06 which seem to overrule this section is to be treated as a procedure necessary in the case of British Courts in Foreign Countries. It is in that of British Protectorates as in that of British Colonies. It is suggested that the procedure for the control of British possessions there also but presumably the case in foreign countries remains the same. It is decided to be on 20147/06, i.e. reciprocity and an Order-in-Council (Of the Southern Rhodesia Order-in-Council of 1911). Under these circumstances Section 2(1) of the draft appears to be wrong and might, I think, well be omitted altogether. If this is done there are alternative forms which might be adopted.

(a) They might refer to the Imperial Act in preference to a British Court in any foreign country" in sections 2 and 3. It is also possible to use like section 5 of the Imperial Act.

(b) The might and after "Protectorate" in line 2 of section 2(1) of the draft "Court in a foreign country" "Protectorate" in line 3 and 2. It is suggested that after "Protectorate" "in a foreign country" in line 2 of section 2(1) of the Ordinance applies.

This, however, would be the case of a British Court in a foreign country. The requisite law was made by the House of Lords, and it will be necessary to think any amendment necessary.

It is suggested to adapt (a). Possibly the Indian model is already in the draft. It may not think any change necessary. In any event, as for "Magistrates" ought to be "Magistrates" in this part of the draft.

It is suggested also to adapt (b) in section 7 where "prescribed" seems to have been omitted between "duty" and "by rules" in line 2 of paragraph 2 and in section 8 where the words of the second definition should read "probate" and "Letters of administration".

Point these out
YJR.

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RECEIVED
17 FEB 1914
PROTECTORATE
SOUTH AFRICA

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

February 5th 1914.

EAST AFRICA PROTECTORATE.

8222

MAR 14

Sir,

With reference to the Memorandum by the Attorney General of November 18th 1913 which formed enclosure to my despatch No. 11 of the 5th ultimo, I have the honour to transmit herewith, for your of assent, two copies of "The British and Colonial Probates Ordinance 1913" as passed by the Legislative Council on the 19th December 1913.

2. The accompanying Memorandum by Mr. Combe further explains the necessity for introducing this legislation and I have nothing to add to his remarks.

I have the honour to be,

Sir,

Your humble, obedient servant,

J. C. Combe
Deputy GOVERNOR.

THE RIGHT HONOURABLE

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

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.

INCLOSURE

155

C. O.
8222
REC.
5 MAR 14

MEMORANDUM

THE BRITISH AND COLONIAL PROBATES ORDINANCE, 191

The purpose of this Ordinance is to make provision for the recognition in this Protectorate of probates and letters of administration granted by the Courts of the United Kingdom or by the Courts of any British Possession in which the legislature has enacted reciprocal legislation.

2. His Majesty has been empowered by the Colonial Jurisdiction Act 1893 to apply by Order in Council the Colonial Probates Act 1892 to any British Possession in like manner as that Act may be applied in a British Possession.

3. On the application of the Colonial Secretary to this Protectorate probates and Letters of Administration granted by the Courts of this Protectorate shall be recognized by the Courts in the United Kingdom and shall be sealed by such Courts and the same shall have the same effect as if granted in the United Kingdom.

4. Before, however, the Act can be applied to the Protectorate the Secretary must be satisfied that adequate provision has been made in this Protectorate for the recognition of probates and letters of administration granted in the United Kingdom.

5. The Ordinance should be submitted to the Secretary of State before it is assented to by His Excellency, and the Secretary of State should be asked to inform His Excellency whether he is of opinion that the Ordinance is enacted to advise that the Ordinance is applied to this

to
1813.
provision for
Secretary
this
the Southern
of the
Secretary.



DRAFT.

Mr. Lewis
Remondel 10/11/44

22 April 1845

MINUTE.

- Mr. Smith 14/4/44
- Mr. Tennison 14/4/44
- Mr. Harris 17/4/44
- Sir G. Fiddes.
- Sir H. Just.
- Sir J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

Sr

I am directed by Mr. Harcourt to be good to

you a copy of an Ordinance
 which it is proposed to pass in
 the East African Protectorate
 provide for the recognition of
 the Protectorate of

and details of Administration
of the United Kingdom
in the possession of
a British subject
in foreign country.

2. It is to state that the
form of this Order as
prepared by the local authorities
does not appear to Mr. Havers
to be satisfactory. The
modifications which he would
propose are shown in red ink
in the margin and I

to enquire whether ~~in view~~
of the enactment of the Foreign
Jurisdiction Act 1913 the
provisions of that Act
modified as well
comply with
required of the
Colonial Probates Act 1892, to
the Probate Act under the
provisions, as framed by the Foreign
Jurisdiction Act 1913

1892