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DESPATCH

C.O.
38614

No.

(Subject.)

1905

Oct 1

Report on Prot. Courts

by Judges Hamilton & Barth

[illegible] copy of [illegible] relation to proposed Judicature Order [illegible] in general [illegible] terms & does not discuss in detail [illegible] raised [illegible] which could be referred to Mr Barth

(Minutes.)

2/11

I discussed this question very fully with Mr Barth yesterday.

The Report by him & Judge Hamilton probably gives as clear an account as is possible of the confused & complicated system of courts at present existing in E Africa. The confusion & complication are largely due to the wholesale application of the Indian Crim. Procedure Code to the Protectorate. This has led to a ridiculous inversion. They have endeavoured – with inevitable unsuccess – to adapt these Courts to these procedures instead of placing the Courts & their respective jurisdictions upon [illegible] legislation [illegible] and then devising [illegible] procedure for them.

The Court sh'd be the body, the procedure the clothing. They have changed all this & made the Court ancillary to these cast-iron codes of procedure.

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The Dft Judicature Ordce on 29745/04 has been so revised & cut about by F.O. critics already and will need so much further modification in the light of our memo upon it that I doubt whether it will ever turn out a clear & satisfactory piece of legislation.

I strongly recommend that an entirely fresh start be made with a Dft Courts Order constituting all the subordinate Courts of the Protte and defining their respective jurisdictions independently of the Ind Crim Proc Code, but containing temporary provisions applying the [illegible] to the Courts in an appropriate manner until the Code is replaced by the Comm with adaptation thereof – as the E. Afric Procedure Code [illegible] all along is so necessary.

I made the above suggestion to Mr Barth and he not only agreed but expressed his willingness to draft a new Courts Order, if so requested, whilst he is at home on leave. (He has one or two other drafts in hand including an Abyssinia Immigration Ordce) – [illegible] opinion that [illegible] matter presume necessity [illegible] to [illegible] in order and to get rid of the [illegible] Procedure Code [illegible] therefore [illegible] to be hoped that the [illegible] will [illegible] an assistant to the Crown Advocate [see Mr Read's note on p 7 of the memo]

On approval we propose to send Mr Barth a copy of the Dft Judicature Ordce (parts of which will no doubt work into the new [illegible]) & also of our memo upon it. He should also have some models to which [illegible] (for your approval) of enactments, or drafts of enactments, providing for the various subordinate courts in some of the Crown Colonies or other protectorates – e.g. the N Nigeria series providing for Provincial Courts, Cantonment Courts, Native Courts

H.S.R. 10/11

Mr Antrobus

I agree on all points

H.B. 13/11

Proceed as proposed. Mr Lyttelton has already on 29745 approved of the principle

All this is covered by the E.A.O. and [illegible] 29745 [illegible] of the Ord. [illegible]

Mr Read

Should [illegible] Barth [illegible] remember [illegible]

Wait [illegible]

C. O.
38614
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Commissioner's Office,

Mombasa,

October 7th. 1905.

EAST AFRICA PROTECTORATE.

No. 544

Sir,

I have the honour to transmit to you herewith a copy of a report by Judges Hamilton and Barth on the existing Courts of this Protectorate, as requested in your despatch No. 27. of June 21st, in relation to the proposed Judicature Ordinance.

2. You will observe that the report is general in its terms and does not discuss in detail all the [illegible] contained in the Memorandum accompanying your despatch under reply. It has been thought that it would be of advantage to the legal authorities at the Colonial Office to have an opportunity of discussing them

The Right Hon. The Secretary of State

for the Colonies,

&c. &c. &c. Downing Street,

LONDON.

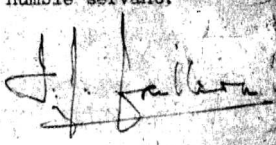
them first of all with Mr. Barth who is now on leave in England.

I have the honour to be,

Sir,

Your most obedient,

humble servant.



Acting Commissioner.

Report on certain points raised in Mr. Secretary Lyttelton's despatch No.272 of the 21st June 1905 covering Colonial Office memorandum on the East Africa (draft) Judicature Ordinance.

We should like to preface our remarks by alluding to a suggestion made in the memorandum that it might be convenient that legislation on similar lines should be introduced in East Africa, Uganda and Somaliland. It is no doubt extremely desirable that there should be as little diversity as possible in legislation relating to the same subjects in the various Protectorates, but at the same time it should be borne in mind that the conditions of the various Protectorates are in many ways so dissimilar that what might prove eminently suitable in one Protectorate would not be suitable in another.

As Uganda is the nearest Protectorate in geographical position to East Africa it might not unnaturally be thought desirable to introduce similar legislation in the two Protectorates, but in fact the conditions of these two Protectorates are in many

essentials so diverse that any attempt to introduce similar legislation for the two on account of their natural proximity and intercourse might lead to considerable error.

For instance, Uganda has but a very small number of white and Indian traders in the midst of a dense central African population. Of this population large numbers are Christians who are governed and held in check by Kings and Chiefs to whom they look for guidance. There are no traditions and no past history of civilization from the outside world and the country may be regarded generally as a 'tabula rasa' on which the British Government may impose whatever form of legislation may be thought suitable.

In East Africa, on the other hand, we have throughout the Coast line the remains of the old Arab civilization and the present administration of Mohommedan Law. Indian merchants and traders form a numerous, wealthy, and long established community. The country is in constant touch with the outside world owing to its ports and large shipping interests, in addition to which it contains the whole length of the Uganda Railway.

W conditions in
rica.

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The native population is sparse and the members of the various tribes have but little coherence amongst themselves, and as a rule have no definite chief or headman whom they look up to and obey; and the native Christian element is but an insignificant portion of the total population. Lastly and perhaps of the most importance there are, apart from the European trading houses, the beginnings of an European settlement which will increase in numbers and importance and be mostly collected within fairly well defined areas.

From these instances it will be seen how unsuitable it might be to apply to the one country a law because it had been found to work well in the other.

icated system of law
rts.

The existing systems of law and Courts in East Africa are undoubtedly complicated. That they have become so is partly owing to the fact that when the country was taken over there was already in existence the Mohommedan Law in those parts which formed the Sultan's Dominions; and partly owing to the fact that the extension of the Government up country and its rapid development owing to the building of the Uganda Railway made it necessary to devise, as occasion arose, methods of dealing with the rapidly changing conditions.

Office memorandum we think that it might be better to omit detailed discussion of them in writing for the present moment and that their solution would probably be arrived at in a more satisfactory manner by direct consultation with the legal authorities at the Colonial Office.

Judge Barth will, in the course of a few weeks be home on leave and as he is thoroughly acquainted with the whole matter in which we are both in the main agreed we would suggest that the Colonial Office should take advantage of his presence in England to discuss all those points which seem either to us or the Colonial Office to need amendment.

lication of Indian unsuitable.

It has been felt for a long time past and latterly with increasing force that the application of Indian Laws in the Protectorate en bloc is not suitable. At the time of their first application they affected few persons other than British Indian subjects to whom they were naturally congenial; but now that the administration of the country embraces the whole of the native population and a considerable and growing number of Europeans, few arguments can be adduced for the continuance of a system which though originally providing a make-shift machine has since daily become less adaptable to

Arabs, Swahilis, Indians, pagan and Christian natives, and Europeans have all had to be provided for separately as each new set of circumstances demanding treatment arose. The consequence has not unnaturally been that there now exists a variety of laws applicable to different persons of a most perplexing and not seldom conflicting character, and for the administration of these laws the Magistrates and Judges throughout the Protectorate have to sit with varying powers and jurisdictions.

...conditions.

A considerable portion of the existing legislation is only of a temporary character and it has been felt for some time past that the time would come when the whole question of revising and consolidating the whole system of law would have to be taken in hand.

During the last few years the conditions of the country have changed materially, and, though the Draft Judicature Ordinance which is now under consideration was only put into shape some two and a half years ago, we are of opinion in the light of experience gained during that time that the original draft may in various respects be now subjected to modification and amendment.

...est Judge Barth should ...t with Colonial Office.

With regard to the various points raised in the draft itself by the Colonial

the growing needs of the country.

We therefore entirely agree with the suggestion contained in Mr. Secretary Lyttelton's despatch that it is desirable that the system of legislation by applying Indian Laws should be discontinued, and the existing Indian Laws be recast to suit the requirements of the Protectorate or be replaced by new local ordinances. The sooner this work can be undertaken the easier it would be to carry it out. But it is a large undertaking which will require great care and attention to details and should be considered and carried out as a whole and not piece-meal.

Although the local staff are anxious to assist in every way; it is practically impossible to expect them to give the constant and undivided attention that the work would require. At present they are barely able to cope with the current work of the Protectorate, and though they may have the knowledge of local conditions which is requisite for the successful undertaking of the work, it would, we fear, be some years before the work so undertaken could be completed and it would, in the process lose the unity of construction which it is so desirable that it should possess.

Under

Under these circumstances we would venture to suggest either that a Draftsman be specially appointed who might begin the work in consultation with the local legal authorities and carry it to completion with the assistance of the Colonial Office. Or should this course not be considered desirable an appointment might be made (as has already been asked for) of an assistant to the Crown Advocate, which would, to some extent, leave the Crown Advocate free to devote a portion of his time to this subject only.

The two Procedure Codes, and especially the Code of Criminal Procedure, are those on which the work might be most fittingly commenced, but in order to make these suitably applicable to the conditions of the country respective relationship of the various Courts one with the other will need to be clearly defined.

The existing system of Courts is undoubtedly somewhat complicated and the fact that Mr. Secretary Lyttelton has asked for a report on the subordinate Courts as they now exist and the changes that it is proposed to make in them exemplifies the difficulty that is experienced by those who are not personally acquainted with the local conditions in appreciating the

actual state of affairs.

In 1904 a memorandum on the Courts of the Protectorate was compiled by Judge Cator which appears on pages 91 - 94 of the official Handbook for East Africa of 1905. As this memorandum largely covers the ground of the matters now under discussion we beg leave to call the attention of the Colonial Office authorities to it.

Though this memorandum relates to the Courts now existing in the Protectorate as created by Orders-in-Council, local ordinances and orders of the local Government, it is nevertheless somewhat misleading to the outside reader, as it does not disclose the full extent of the changes that have been brought about in the system of Courts as originally constituted under the 'Native Courts Regulations, (No. 15 of 1897) by the creation of Courts of special jurisdiction known as 'Town Magistrates' Courts' at Mombasa, Nairobi, and Kisumu, and to a still larger extent by the Native Courts Amendment Ordinance (No. 31 of 1902) under which Special Courts were created with full jurisdiction over natives.

This latter ordinance has practically revolutionized the administration of justice with regard to Natives throughout almost the whole of the Protectorate. Article 2 of

randum in Official
book referred to

Special Courts
ance as applied to the
ctorate.

the Ordinance provides that 'the Commissioner 'may by proclamation declare any District or 'part of a District to be a Special District 'within the meaning of this Ordinance and 'such District shall be called a Special 'District.' Under the provisions of this article all the Districts in the Provinces of Ukamba, Kenya, Naivasha, Kisumu and Jubaland and the Districts of Vanga and Taveta in the Province of Seyidie have been proclaimed Special Districts with the result that the only portions of the Protectorate in which the old Native Courts Regulations still obtain are the Coast Districts: Mombasa, Malindi, Kipini and Lamu in which four Districts the old Arab civilization and influence is predominant.

l jurisdiction of
rdinate Courts created
Native Courts Regula-
1897.

The Courts constituted by the Native Courts Regulations continue on the lines as originally laid down with a system of appeals in civil cases lying from an Assistant Collector's Court to a Collector's Court, and from the Collector's Court to the Provincial Court, and from the Provincial Court to the High Court, which now takes the place of the old Chief Native Court. Concurrently with these Courts there are also the Courts of the Native Mudirs and Liwalis, a Liwali having a similar jurisdiction to that of a District Officer (i.e.

Collector) and appeals lying in like manner.

s' Courts.

The Kathis' Courts which were originally instituted for the purposes of trying cases affecting the personal status of Mohommedans such as Marriage, Divorce and Inheritance' are established at a variety of places on the Coast line, and by an amendment of the original Ordinance dated 1st July 1901 appeals lie from their Courts to the Court of Sheikh-ul-Islam, who does not hear cases in the first instance.

Courts.

The 'Special Courts' to the jurisdiction of which natives are subject throughout the whole of the rest of the Protectorate were intended originally to be held by Collectors of Districts but subsequently to the Ordinance being brought into force all Assistant Collectors in charge of Stations were (under Article 5) appointed to preside over additional Special Courts and by amendment No. 11 of 1903 the Commissioner was given power to appoint Sub Commissioners also to preside over Special Courts.

Courts held by ollectors.

It will thus be seen that owing to the necessities of the situation the scope of the Ordinance has been widely extended beyond that contemplated on its first introduction with the result in practice that many Native Courts held in Special Districts are presided over by Assistant Collectors.

Of these many are young and entirely

inexperienced officers and it is a matter of great doubt whether it is wise to place in their hands, subject only to the supervisory powers of the High Court, such complete jurisdiction as the Ordinance confers. Under such circumstances it is only to be expected that serious blunders and irregularities will be committed, and it undoubtedly reflects credit on the care taken by these young officers in the discharge of their judicial functions that serious mistakes do not more often occur.

The principle contained in the Ordinance is undoubtedly a sound one that the officer on the spot should have wide powers over the Natives living in his District. Besides increasing the authority of the Collector himself, frequently the only white man in the District, it prevents the failures of justice that would certainly occur if all the more serious cases had to be committed for trial at Sessions, where as experience has already shown it is almost impossible to ensure the attendance of Native witnesses without submitting them to restraint. Seeing also the size of the country that is now administered and the large number of Courts it would be a practical impossibility for one or other of the Judges to devote the time that would be necessary to travel

round the country to hold Sessions.

rmation of sentences pecial Courts.

Under the East Africa Native Courts Amendment Ordinance 1902 all sentences exceeding six months imprisonment or twenty-five lashes or a fine of Rs.500/- require to be confirmed by the High Court.

During last year no less than 102 cases were so sent up for confirmation and 11 cases were also taken in revision by the High Court, the records having been sent for on that Court's initiative. This year the number promises to be somewhat larger.

Though this power of confirmation and revision acts as a salutary check on excessive punishments being inflicted it to some extent has also had the opposite effect of inducing Magistrates in some instances to inflict inadequate sentences in order to avoid the necessity of sending their cases for confirmation, and there has been noticeable in the graver cases in which the law requires the penalty of death a distinct shrinking from accepting responsibility on the part of the officer holding the trial. We have consequently come to the conclusion that it should now be considered whether it is not desirable to limit the jurisdiction of the ordinary Magistrates in the more serious class of cases such as

tion to limit powers Magistrates in cases.

murder and culpable homicide and make arrangements that they should be tried by an officer with a legal training. This matter was partially in view when an additional appointment of a legally qualified Magistrate was asked for last year, it being intended that he should act as a relief to the three existing legal Magistrates in the case of leave or sickness and also as an Assistant to the Judges in relieving them in respect of other work involved by the administration of estates, bankruptcies, and trusteeships, and so enabling one of them to be more frequently on tour.

Magistrate could
tures.

At present it is impossible that the two Judges of the High Court when both are in the Protectorate at the same time, and still less one when acting single handed, could in addition to their other work try all serious Native cases if committed for trial in the out districts.

It may be in fact soon become necessary to appoint an additional Judge, and when one of the Judges is on leave it has already become necessary that an acting appointment should be made during his absence.

Besides the powers of confirmation and revision vested in the High Court the Ordinance provides for an appeal to that Court in all matters decided by a Special

Court. Hitherto this right has not been largely exercised but there are distinct evidences that it is becoming more so and that it will before long be more frequently resorted to.

Magistrates hold Special Courts.

The Town Magistrates of Nairobi and Kisumu have further been specially appointed to hold additional Special Courts under the Native Courts Amendment Ordinance in all the Districts of Ukamba and Kisumu respectively. In practice, the Collectors of Nairobi and Kisumu as a rule try those cases in which the accused are Natives only. But in order to enable the Town Magistrates to deal with cases in which some of the accused are Natives and some non-natives, and also to sit for the Collector during his absence, it became necessary to give them these additional powers. The only way, however, in which the powers could be given them was by appointing them Assistant Collectors to preside over additional Special Courts in the various districts of their respective Provinces. The ~~same~~ difficulty that was experienced in making these appointments arises from the fact that Judicial powers are attached to an administrative appointment. It therefore became necessary to give the Magistrates administrative appointments in order to enable them to exercise their

judicial functions. Articles 4 and 6 of the Draft Judicature Ordinance were inserted particularly with the view of enabling the Commissioner to appoint any Magistrate or Subordinate Judge with such powers as the case might require without having to have recourse to such an awkward method of appointment.

inal Jurisdiction of rdinate Courts created r Native Courts lations 1897.

Under the Native Courts Rules and Regulations 1897 Assistant Collectors have the powers of a third class magistrate, Collectors and Liwalis of a second class magistrate, and Sub Commissioners of a District Magistrate as provided in the Indian Code of Criminal Procedure. Article 52 of the Regulations provides for appeals by reference to Chapter XXXI of the same Code, and consequently appeals lie from all inferior Magistrates to a Sub Commissioner, and from a Sub Commissioner to the Chief Native Court which is now replaced by the High Court.

or Subordinate Appeal in minor civil and l appeals from Special

In Civil cases in which both the parties are Natives under the Native Courts Regulations there is a chain of appeals as already alluded to, but under the Special Courts Ordinance as an appeal in all matters whether civil or criminal lies directly to the High Court it follows that appeals of the most trivial nature which under the

Native Courts Regulations would have been heard by a Collector or Sub Commissioner have to be heard by the High Court and it is a matter that we think should be considered whether some intermediate Appeal Court should not be constituted to deal with the minor class of appeals arising from judgments of the Special Native Courts.

ve and non-native
es.

Where the accused person or defendant is other than a native the course of procedure applicable is in many respects different.

The difference is in fact so marked that it has become usual to draw a broad line of distinction with regard to the two classes of cases and to speak of them generally as 'Native' and 'non-Native' cases. This arose in the natural course of events as the same Magistrate has to try a Non-Native case with different jurisdiction and subject to different laws of procedure and to apply different law from that applicable in native cases.

ature should be made
ar in both classes
ases.

We think that it would be desirable as far as possible to lessen the breach which exists between the two classes of cases and though it may be necessary to administer different law or custom having the force of law in the two classes it would at any rate be possible to assimilate as a general rule

in both all forms of procedure, an object to which we attach considerable importance.

The present system of Subordinate Courts and their Jurisdiction in non-Native cases is shortly as follows:-

nary Jurisdiction of
strates in non-native

The ordinary jurisdiction of Magistrates in Criminal cases will be found on page 77 of the book of Ordinances and Regulations. The limits of jurisdiction as therein set out were afterwards extended by a further notification dated May 24th 1904 which appears in the Official Gazette of June 1st 1904.

~~The result in tabulated form is as follows:-~~

Sub Commissioners.	1st. class Magistrates under the Criminal Procedure Code.	Powers. 2 years & fine upto Rs.1000/-
Collectors.	2nd. class Magistrates.	Powers 6 months & fine upto Rs.200/-
Assistant do.	3rd. class Magistrates.	Powers: 1 month & fine upto Rs.50/-

The Sub Commissioner of Seyidie is excluded from this list as his powers are exercised by the Town Magistrate Mombasa.

When the accused is a European the powers as defined above are limited as follows:-

Sub Commissioners powers, six ~~months and~~ months & fine upto one thousand rupees. Collectors and Assistant Collectors in charge of stations powers of a third class Magistrate viz. one month and fine of fifty rupees.

in Jubaland.

In the Province of Jubaland, however, Collectors and Assistant Collectors have only the powers of compelling the appearance of a European before a Magistrate having jurisdiction to enquire into or try the case.

and Kisumu.

In practice the Sub Commissioners of Ukamba and Kisumu do not in the ordinary course exercise their jurisdiction any more than does the Sub Commissioner of Seyidie; the reason being that at Mombasa, Nairobi and Kisumu three Courts of special jurisdiction have been created (as mentioned on page 8) which are known as Town Magistrate's Courts.

agistrates.

Each of these Courts is presided over by a Magistrate who has had a legal training, and has the powers of a first class Magistrate under the Code with all the additional powers with which such a Magistrate may be invested by the Local Government under Schedule 4 with the exception of the powers of hearing appeals. The limits of their jurisdiction

extends in the case of the Town Magistrate of Mombasa, to the Province of Seyidie, in that of the Town Magistrate of Nairobi, to the Provinces of Ukamba, and Naivasha, and in that of the Town Magistrate of Kisumu, to the Province of Kisumu.

Under the Criminal Procedure Code appeals from Magistrates of the Second and Third Class would ordinarily lie to the District Magistrate, but, there being no provision in the Protectorate for a separate District Magistrate, the Protectorate Judge was made District Magistrate by the Order of the 1st. February 1900.

Consequently all appeals from whatever Court they may originate are now heard by one of the Judges of the High Court in his capacity of Sessions Judge, or District Magistrate this procedure having been kept alive under Article 28 of the Order-in-Council 1902.

As the High Court also exercises with reference to Subordinate Magistrates the powers of a High Court under the Code which did not exist prior to the passing of the Order-in-Council 1902, the result is that in many, if not in most instances, the s[illegible] Judge has to exercise the various powers of District Magistrate, Sessions Judge and High Court, all of which are in the Code entirely

separate and should if the necessity of the case allowed be kept distinct one from the other.

In short the existing judicial machinery is inadequate for carrying out the provisions of the Code.

When a Judge of the High Court tries a case in his capacity of Sessions Judge the Court of Appeal for Eastern Africa to which appeals from his decisions lie is in the ~~greatest~~ relationship to him of a High Court.

Now the Code of Criminal Procedure is so constructed that for the proper carrying out of its provisions, there should be a High Court in constant Session, to which applications could at any moment be made with reference to all matters before a Sessions Judge. In practice this has been found to be an impossibility.

The Court of Appeal for Eastern Africa at present has two Sessions a year and difficulty has been constantly experienced in getting three Judges together for the purpose of constituting the Court; and great hardship may be caused to an appellant having to wait months before his appeal can be heard. At the present moment there is a case in stance, in which, the two accused, both Europeans, were tried and convicted at

Sessions at Nairobi in April; in the ordinary course the earliest date at which their appeal could have been heard would have been at the next sitting of the Appeal Court in the first week of September, but owing to the impossibility of forming an appeal court sooner, it cannot in fact come on for hearing till the first week of October, that is to say, six months after the conviction.

Though no provision is made in the Draft Judicature Ordinance for altering this state of affairs we are of opinion that it would be desirable to devise some means by which it could be remedied.

court should be a High and in fact, not in name

Under the Code as it stands trial in India by a High Court is final, that is to say there is no appeal except to the King in Council, and if commitments are made direct to the High Court as such it would be necessary to pass an Ordinance to provide for appeal to the Appeal Court. The existing Appeals Ordinance 28 of 1902 provides only for the right of appeal in any case where such right would previously have existed, that is to say, from a judgment of a Judge in East Africa sitting as a Court of Session. When the Criminal Procedure Code is replaced by our own law of procedure the relationship of the High Court to the Court of Appeal and the right of appeal in Criminal matters will need to be clearly defined.

It is we think advisable that the right of appeal should be retained in all the more serious cases but under a simpler form of procedure though similar to that provided for in the Code for appeals from a Sessions Judge to a High Court.

In Uganda Sub Commissioners have the powers of Sessions Judges and the High Court discharges the functions of a High Court under the Code. This system would, however, be for many reasons unsuitable to the conditions existing in East Africa, and if commitments are made to the High Court provision should we think be made for retaining the right of appeal to a Superior Court.

There are many drawbacks to the working of the present system of appeals but until the judiciary is strengthened on the mainland it is difficult to suggest a remedy, for the trouble, expense, and delay to which an appellant has now to submit.

of Europeans.

The most important change in the jurisdiction of Subordinate Criminal Courts that is proposed in the Draft Judicature Ordinance is contained in Articles 23 to 28. These Articles deal with the trial of Europeans and, on the assumption that Chapter XXXIII of the Criminal Procedure Code is not applied to the Protectorate, provide that Europeans may claim to be tried by Jury except in

10

summary cases. Since this alteration was originally proposed it has been felt that difficulties would occur in the carrying of it out owing to the delay that would inevitably ensue in many cases, if the accused claimed trial by Jury. If, however, the suggestion now made for strengthening the Judicial Staff meets with approval this apprehended difficulty would be largely diminished.

Jurisdiction of inate Courts in native cases.

In Civil Matters all Sub Commissioners, Collectors and Assistant Collectors are appointed to be Assistant Judges under the Bombay Civil Courts Act 1869 which with certain modifications is applied to the Protectorate under the Order-in-Council 1897. The ordinary jurisdiction assigned to them by the Judge of the Protectorate Court, (now Principal Judge of the High Court) who sits as District Judge for the whole Protectorate, the Protectorate being regarded as a District in the Presidency of Bombay (as provided by the Order-in-Council 1897), is as follows:-

Sub Commissioners	- Cases in which the subject matter does not exceed value of	Rs.1000.
Collectors.	do.	do. 500.
Assistant Collectors	- do.	do. 250.
Town Magistrates	Mombasa	Rs. 500.
	Nairobi	1,500
	Kisumu	2,000

The jurisdiction of these two latter has been increased in view of their distance from the head quarters of the High Court and the hardship that litigants might suffer in having to travel to Mombasa in order to get cases involving comparatively small amounts settled.

Appeals in non-cases.

The ordinary jurisdiction assigned to Assistant Judges may be varied by the Principal Judge who can assign to any Assistant Judge cases in which the subject matter does not exceed Rs.10,000 subject however, to this proviso that in all cases taken by an Assistant Judge the subject matter of which exceeds Rs.5,000 the appeal lies to the High Court that is to say the Court of Appeal for Eastern Africa, otherwise, following the ordinary procedure in all cases, the appeal lies to the District Judge that is to say to the High Court for East Africa.

Insolvency Jurisdiction.

In addition to their ordinary civil jurisdiction mentioned above the Courts of the Town Magistrates of Nairobi and Kisumu respectively have under Section 860 of the Civil Procedure Code been invested with powers under Chapter XX to deal with insolvency matters transferred to them by the District Judge.

R. W. HAMILTON.

J. W. Barth.

Comm — E.A.P.

38114

(38)

30 November 1905

DRAFT.

W. Barth Esq.

MINUTE.

Mr Bottomley 24/11
Mr Risley 28
Mr Read 28
Mr Antrobus 28 f.e.
[illegible] 28
Mr [illegible]
Mr Graham
Mr Ommanney
The Duke of Marlborough
Mr Lyttelton.

Judicature O. in C. (in 29745/05) copy herewith
memorandum (attached to do.) copies herewith
Schedule of Enactments enclosed (Mr Risley will prepare) See last page

See minute overleaf.
O.J.R. 28/11

Sir,

I am directed by Mr Secy. Lyttelton to inform you that he has had under his consideration the report prepared by Mr R. W. Hamilton and yourself on the existing Courts of the East Africa Protectorate.

2. It appears to him that the unsatisfactory system of Courts in the Protectorate is due to the fact that the [illegible] attempt

attempt has been made to adapt the courts to the procedure prescribed by the ~~adoption~~ application to East Africa of the Indian Code of Criminal Procedure, and he considers it desirable ~~that the matter should~~ ~~be~~ that the organization of the Courts should be put on a fresh basis by the introduction of a Courts Ordinance constituting all the subordinate Courts of the Protectorate and defining their respective jurisdictions and especially

Mr Read
Mr Cox

This has been delayed a few days [for] the selection of a few subordinate court orders as models. But, to save time [for the] time, I have had our desp. and memo 29745 copied and put them up [with] a copy of the E. Africa Dft Judicature [Ord.] herewith. The schedule of models see next page.

J.S.R. 23/1

of the Indian Code but containing temporary provisions applying that Code to the Courts in an appropriate manner until the Code is replaced by a special Procedure Code for the Protectorate.

3. Mr Lyttelton will be glad if you will undertake the preparation of a draft Ordinance on these lines during your present leave of absence, and I am to enclose, for your guidance in the matter, a copy of the draft Judicature Ordinance which has already been drawn up and parts of which will no doubt be suitable for inclusion in