

EAST AFR. PROT.

C O
41295

No. 41295

(Subject.)

Arrest of Mr. Graham

I do report on a raid from Leb. G. Kenya Province together with copy of judgments in Provincial & Appeal Courts.

(Minutes.)

Mr. Reed.

These papers show clearly that there was no over-courtesy of justice and no want of consideration to Mr. Graham. With regard to the question of Graham's removal amongst the Kavirats or Galla & Landriff to a native host's man, the distance would appear from the map to be considerably less than 60 miles as stated by the Landriff and the European Police Officer as a distance of 100 miles was probably the correct distance. The Landriffing appears to have been a very necessary precaution, and I do not see that there is any necessity to supply horses for the accommodation of these black sheep in white skins of whom there are far too many in East Africa.

Lord Huddleston is now in East Africa and we might ask the C.O. to communicate the papers.

to be — but perhaps it is not necessary
as he will already have found that
the letter was written on a covered up

658

If the offence had been committed
in England Graham would probably
have been sentenced to penal
servitude.

(It is probably desirable to on the other
hand to give more force of local
opinion for Europeans. This will no
doubt be done but on the new ground
The sight of this recorded being
conveyed along the road in the man
no doubt could not fail
to have a salutary effect on
whites & blacks alike as showing
the existence of even justice for
blacks & whites alike.

Reply that Mr. L. has no reason
to think that Graham's punishment
was intended for a slight punish-
ment for a most serious crime,
granted, however, in the view
that the prompt punishment of such
outrages is essential to the
security of the white natives.

21/11

So passed? — at the Duke of
Borough? See the paper as Lord Hindlip
has

has been smiling him a series of
demands on the I. A. P. & it is
to note the Lord's statement in
with a grain of salt.

576

H. J. R.

23/11

Proceed as proposed. (But
Lord Hindlip made it
clear that the statements were
those of the East African
Society and not his, although
he seems to have believed
them)

Old Box 23

Duke of Marlborough

26/11

Choice

C. O.
41295

577

Secretary's Office,
20th Nov 1905
London.

Dear Sir,


In continuation of my despatch No. 664 of October 11th
transmitting a letter which appeared in the African Standard
regarding the arrest of the man Graham, I now have the
honour to furnish a report on the subject which I have
received from the Sub-Commissioner of the Kenya Province
together with a copy of the judgments in the Provincial
and Appeal Courts.

I have the honour to be,

Sir,

Your most obedient,

Humble servant,


Acting Commissioner,

Colonial Secretary of State

for the Colonies,

Downing Street,

LONDON.

C. O.
41295

Commissioner's Office,
20 Nov 1905
Mombasa,

577

October 24th 1905.

PROTECTORATE.

Sir,

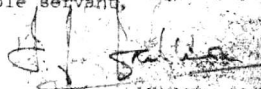
In continuation of my despatch No. 554 of October 11th transmitting a letter which appeared in the African Standard regarding the arrest of the man Graham, I now have the honour to furnish a report on the subject which I have received from the Sub-Commissioner of the Kenya Province together with a copy of the judgments in the Provincial and Appeal Courts.

I have the honour to be,

Sir,

Your most obedient,

humble servant,



Acting Commissioner,

Principal Secretary of State

for the Colonies,

Downing Street,

LONDON.

C. O.
41295

Commissioner's Office,
20, N. B. S.
Mombasa,

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October 24th 1905.

AFRICA PROTECTORATE.

No. 580

Sir,

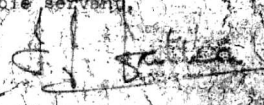
In continuation of my despatch No. 554 of October 11th, transmitting a letter which appeared in the African Standard regarding the arrest of the man Graham, I now have the honour to furnish a report on the subject which I have received from the Sub-Commissioner of the Kenya Province together with a copy of the judgments in the Provincial and Appeal Courts.

I have the honour to be,

Sir,

Your most obedient,

humble servant,


Acting Commissioner

Principal Secretary of State

for the Colonies,

Downing Street,

LONDON.

C. O.
41295
RE-
RE 20 Nov 15

Sub-Commissioner's Office,

October 17th 1905.

578

Sir,

I have the honour to report as follows on the arrest of the man Graham:-

Graham shot the native with a rifle, not a shot gun. The bullet passed through the shoulder below the joint and into the chest; the Medical Officer was unable to extract the bullet which had punctured the lung.

I fined Graham five hundred rupees, not six hundred; after conviction he was handcuffed (one hand) with a leading chain to a black policeman while on the march. This precaution was, I think, necessary as two white men whose agent Graham claimed to be had that week broken their tail and were said to be on the road. If officers were allowed horses Graham could have been attached by a leading chain to the saddle of Police Instructor Richardson who was in charge of the prisoner. Graham slept in the Police Instructor's tent at night.

Nairobi is the nearest prison for white men; the greater part of the road from Nairobi to Fort Hall is only a foot-path through bush and well.

As to the legality of proceedings, Mr. Graham appealed and the High Court dismissed the appeal.

Mrs. Graham informed the late Commissioner, Sir D. Stewart, that she knew nothing about the occurrence until after Graham's conviction.

Mrs. Graham was confined on the 26th May, 1905, and Graham was arrested by Assistant Collector E. B. Horne on

the Commissioner,

M. M. K. A. S. A.



... as she arrested a police picket of three
 ... Mrs. Graham's house from 6 p.m. to 6 a.m.
 daily for her ... assistance if necessary.

After Mr. Gopal's ... (August 2nd) she went
 ... and was supplied with a police-
 ... wherever she went. She gave up her land
 ... The late Sir D. Stewart
 returned her ... and himself paid her passage

... ..

Sd/-

... ..

Criminal Case No. 1 Provincial Court Fort Hall

Crown v Graham.

Judgment:-

The medical evidence shows that Karagua's wound was serious, that he was in danger of losing his life, he has not yet recovered from the effects as is patent to any one who saw him in Court.

Your statement that you saw where the bullet had entered and left the arm is an error, as there is only one hole on the arm, I have examined the arm myself. The medical evidence shows that the course of the bullet was traced into the man's body where it still is. I am constrained to believe the evidence of the wounded man Karagua that you had asked the porters to go to Naivasha as they refused he told you that he would fetch bigger money to pay. As it was evening and raining he and the other three porters who had not gone away, decided to sleep at your place that night. It is a general custom for porters to sleep in the neighbourhood of the place they belong to, if it is unlikely that they can finish their work before dark. Your servants were evidently in good terms with the porters and encouraged them to sleep in the kitchen as the porters drew water for them. The evidence goes to show that it was not the first time that you found your employees sleeping in the boys' room or kitchen.

The evening before Karagua was injured you sent for your rifle after beating the porters.

The boy Niagi states that he told you the porters were not in the house when they were there as he was afraid you would do them an injury.

You have brought no proof that there was any attempt

at violence or other provocation to cause you to do a violent act.

I think it unlikely that if your intention was only to frighten Martinari that you would have chosen the small rifle the report of which is so slight that none of the witnesses seem to have heard it.

Your own statement shows that your action was deliberate, you chose a rifle, you tried to fire it and failed, you called for cartridges. The boy Nginia gave his evidence in such a manner that it bore every appearance of truth, Nginia probably could see what you were doing as the evidence plain and show that the occurrence took place on the side of a hill.

You state that you are very short sighted the fact should have made you all the more careful in the use of a dangerous weapon.

I therefore find you guilty of the offence with which you are charged and sentence you Walter Graham to six months simple imprisonment and a fine of five hundred rupees (500 rupees) one hundred (100 rupees) of which will be given to Karagua w. Kikungu as compensation for the injury he received.

Sd/- E. L. Hinde,
Sub-Commissioner.

I certify this to be a true copy of the original Judgment by Mr. Hinde's.

Sd/- Ronan W. Hinchery,
COLLECTOR,
2nd Class Magistrate.

41295

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In the High Court of the East Africa Protectorate

At Mombasa

20th 15

Appellate side

Criminal Appeal No. 8 of 1905 of the District Registry
at Nairobi.

(Original Criminal Case No. 4 of 1905 of the Provincial Court at
Fort Hall)

Walter Graham

Appellant.

V.

Respondent

Prosecution

Defence

This is an appeal from a judgment and sentence of the Sub-Commissioner Fort Hall, Kenya Province in which a European named Graham was convicted under section 326 of the Indian Penal Code of voluntarily causing hurt to a Mkikuyu, by shooting and sentenced to six months simple imprisonment and a fine of Rs. 500/-.

The petition of appeal alleges that the accused asked for a postponement to obtain legal assistance which was refused, and that the proceedings are consequently bad. This allegation is unsupported by any evidence, and not borne out by the record; further than this the Crown Advocate who was present throughout at the trial states that it is not the fact. I can therefore attach no weight to it.

A second allegation is also made that the Sub Commissioner was biased against the accused this allegation is also unsupported by any evidence and does not appear to be in accordance with the facts, the record showing that the accused had a fair and impartial trial in every respect.

The suggestion that the case was disposed of by the Collector before the trial by the Sub Commissioner was not pressed by

Mr. Burn as these proceedings were evidently in the nature of a preliminary

preliminary enquiry only.

The main point on which the appeal was argued was that the finding was not in accordance with the facts, and that the injury which Graham caused to the Mwikuyu was purely accidental. The suggestion being that the shot fired by the accused was fired in the air & the man hit crossed the line of fire accidentally & unknown to accused.

I have studied the evidence most carefully on this point with a view to finding if there was any doubt of which the accused should have had the benefit & regret to have to say that I am of opinion that the Sub-Commissioner came to a right conclusion in convicting.

The fact that the man hit was the last to run, that the medical evidence shows that the wound is such as might have been caused by a man running away and looking over his shoulder, that he was hit when running down hill, tends to negative the suggestion that the shot was fired in the air, & to prove that the shot which struck him was aimed directly in his direction, & could not have been merely returning to earth after a high trajectory pointed far over his head.

The accused was no doubt annoyed & lost his temper but that is no justification for his act. He was no doubt surprised that a small bore rifle should have caused the damage it did at the distance of 60 or 70 yards, but that is no excuse for so pointing the weapon so as to hit or run the risk of hitting the object aimed at. A man is supposed to know the ordinary result of his actions & when a man deliberately takes a gun & aims it, he must be expected to know that if he hits he is likely to cause injury. The grass it is true was long but there is nothing to show it was so long as to prevent accused seeing a man running through it, & from the nature of the weapon it is clear that intimidation by the report only could not have been intended as the report was inaudible at a few paces. there is therefore the further reason for concluding that

accused

accused must have intended the intimidation to be by the bullet.

Under the circumstances I do not think the punishment too severe, for so inexcusable an act, I will only add that an act of this nature if unpunished would render the lives of all white people unsafe in outlying districts. I dismiss the appeal.

(Sd) R.W. Hamilton

27.7.05

584

I certify that this is a true copy of the original

Sd/ Wm H. During

Deputy Registrar

1.8.05

I certify this to be a true copy of the copy received from Registrar, Magr. Court.

Sd/-Ronan W. Humphery,

COLLECTOR,

2nd Class Magistrate.

30 November 1905

DRAFT.

1. Ref. Post no 538

Sir, Ind

I have the honor to ack.

the recd. of your despatch no:

580 of the 24th of October

last, on the subject of

the arrest and trial of

the man Graham for

shooting a native.

2. I see no reason to think

that Graham's sentence

was other than a

light punishment for

a most heinous crime,

and I concur in the

view expressed by Mr.

St. John in his judgment

MINUTE.

W. J. H. 28/11 1905/11

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H. Andrews.

H. Cox

H. Lucas

H. Graham.

Sir M. O'Malley.

The Duke of Marlborough.

W. J. H. Melton.