

G.O.  
45834

12 Feb 38

184

now of "Liberat

g"

other legal proceedings taken by

local J.

district court

January

Collie & friends were not serving in our  
army & so I took it up to be our

own to fight them. I present

them to the military to investigate

and bring about all facts

I have my bars & medals

and my rank of Captain

and some suggestion

of the 2nd

Poffening the third time

and Poffening the fourth time

that a man

35

have a prospect of success.  
Until the Government consider  
what he gives in writing,  
to furnish a general report on  
the matter, and therefore which  
are legal documents must be asked  
to repeat on the matter after  
being furnished with copies of  
the whole proceedings. This  
will give the Government a great opportunity to  
have suffered more hardship; &  
it is desirable that we should know  
whether this is due to

- (a) to a defect in the law;
- (b) to a defect in the administration  
of the law;
- (c) To his own tactics and for  
a lack of his solicitor in  
presenting his case.

11/11/12

What we wanted (though I am not sure that this  
was made clear to the Govt) was an official  
report upon the legal history of the case and not  
a report upon the charges of corruption which brought  
a big sum against the Judge.

The report promised in full is not enough.  
It must include upon the ultimate question  
the procedure, he ought to have had with the law.

Superior's 007-10.

17th November 1885

17th November 1885

EAST AFRICA PROTECTORATE.

Confidential (124)

My Lord,

I have the honour to acknowledge the receipt  
of Your Lordship's despatches, marginally noted, giv-  
en cover to correspondence with Mr. C. Grant in re-  
lation to certain proceedings taken by him in East Af-

2. Mr. Grant has laid it bare Your Lordship,  
history of the proceedings between himself  
one part and Mr. A. T. Smart and Mr. G. D. Dugay  
other, and contends that there was no proof  
of a conspiracy to apprise Mr. G. D. Dugay  
and that some of the Judges of this Protectorate  
have assisted in shielding Mr. Dugay  
and Mr. Smart from the charge of their  
behaviour.

3. He further contends that one John  
and deliberately, tried to murder

H.M. PRINCIPAL SECRETARY OF STATE  
FOR THE COLONIES  
DODDING

... the cause has been  
... with  
... in the beginning,  
... to him of an conspiracy to  
prove to the rest of the world

S. ... His Lordship does not  
intend to go back into the case again  
I consider it to be my duty without however  
which my Executive ... I understand you have  
characteristics in it ... in terms.

As regards Mr. ... I am afraid it is not  
nabir to recover under the law of the Province  
in the suit brought by Mr. ... in which the whole  
of the compensation bill ... the new copies of the  
documents of evidence  
and the documents of  
the trial will be sent  
to you by express  
as soon as possible.

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4

SAC

Today

5 January

DRAFT

Mr. & P. Long  
Mr. Justice  
Sir Sedley

MINUTES

Mr. Daniel  
Mr. Chidiock  
Mr. Head

Mr. Just.  
Mr. Hutchinson

Mr. S. Dering

Mr. Danvers the Receiver

Mr. Hopwood

Mr. Seely.  
The Earl of Orford

Mr. Wm.

See also documents  
and also attached

S:

I have the honor to  
inform you that  
the cause of his  
not being  
able to come  
to the Court  
on Friday last  
was that he  
had been  
engaged  
in a suit  
which he  
had  
made  
against the legal  
hist. of this case  
described in the initial  
letter of the 1st of  
August, with copies of  
all the proceedings.  
It may further be observed  
that the result of the  
Court's hearing  
will be known in  
about a week.

IN DOCTOR'S OFFICE

IN H. H. COFFEE

10.52

11

10.50

Shill

IN H. B. M. COURT OF APPEAL FOR EASTERN AFRICA

AT MOZRAA.

Civil Appeal No. 1 of 1907

Charles Grant      versus      A. T. Scott.

J U D G M E N T:-

This is an appeal against a judgment of Judge Bonham Carter dismissing a petition filed in the District Registry of the High Court at Nairobi by one Charles Grant a doctor holding a medical practice make his judgment debtor A. T. Scott in accordance with the English law.

The petition was filed in the Court below on 1<sup>st</sup> January 1906 under the Civil Procedure Act (in this case the Civil Procedure Act) dealing with any matter it might be proper to deal with that matter and a suit of bankruptcy cannot be brought in, and therefore Chapter 20 of the Civil Procedure Act which deals with matters of bankruptcy and a common and statute law of England 1891 relating to Bankruptcy which under article 12 (a) of the East Africa Order in Council 1897 would operate on the law of the Protectorate.

It is clear from the East African Order in Council 1897 that the law of the Protectorate is not to the other

by Treaties for

to the Protectorate,

and Criminal jurisdiction in the same manner as in the

Air Force shall, so far as may be necessary

1151

... be exercised on the principles of, and in accordance with, the enactments for the time being in force in the territories hereinafter mentioned of the Governor-General in Council, in Bengal, and of the Governor of Madras, in Mysore, and of the Governor of Bombay, in respect of the said territories and according to the course of law and practice observed by, and before, the Courts of Justice in the territories of the Government of Bombay beyond the ordinary original jurisdiction of the Courts of Justice in the territories of the Government of Bombay according to their established jurisdiction and authority and so far as such enactments, procedure and practice are incompatible therewith, shall be exercised under and in accordance with the common and Statute Law of England in force in the territories of the Government of Bombay.

The same Order applies certain Indian Acts and Statutes of the Government of India, of which is the Civil Procedure Code, and in order to ascertain whether the Indian Courts are bound by the said Order, it is necessary to consider Chapter 20 of the Civil Procedure Code, which provides for the Statute Law of Bombay.

It will be seen from the said Chapter that the Statute Law of Bombay is divided into two parts, one relating to the territories of Zanzibar, and the other relating to the territories of the Government of Bombay, and that the Statute Law of the territories of Zanzibar is to be applied in the territories of the Government of Bombay in accordance with the provisions of the Order in Council.

Jurisdiction referred to in article 3 of this Order shall, so far as circumstances permit, be exercised in conformity with the Criminal Procedure and Penal Codes of India and the other Acts by which are in force in East Africa, and in so far as this Order creates or extends any jurisdiction provided by law.

Article 11 of the Royal Charter of the Colony of East Africa dated 1897 but also in the 1st section of which it provides that "There shall be no law in the Colony except by Ordinance and law passed or made in Parliament of Great Britain or under the authority of the Governor and all such of any legislature in East Africa, hereinafter called Africa shall remain in force in Africa, and no legislation is made that the Governor may pass or having been made by Ordinance or Statute Law, is to be thrown back upon article 11 of the Order in Council, again with the law actually in force at the present time."

Now article 11 sub section (a) of the Order in Council 1897 expressly states that the law whether derived from Royal Charter or Statute Law, and Statute Law, Treaties or the Protocols.

(8)

which had been for some time past due to certain  
individuals but not having been paid off before his return and also  
that Government might best serve its subjects by helping  
to expedite such returns and that at present such persons  
are not able to do so. Now we have considered the matter and  
decided that it is expedient to make an Order in Council to the effect  
that whenever any individual or company or firm  
or persons shall be in debt to Her Majesty's Civil Court or to  
any other Court or to any person or persons in India  
the amount of which may exceed Rs. 100/- and  
shall be unable to pay such debts when called upon  
to do so, he shall be deemed to be bankrupt and  
such debts to be debts of bankruptcy and shall  
not be liable to sue for payment of such debts  
in any Court or to be compelled to give up his  
goods and chattels or to be distrained  
therefor or to be distrained for the payment  
of such debts and shall be liable to be distrained  
for the payment of such debts in any Court  
or to be distrained for the payment of such debts  
in any Court or to be distrained for the payment  
of such debts in any Court or to be distrained  
for the payment of such debts in any Court

(9)

This article states that "So far as Indian  
Inhabitants and the procedure and practice of the  
Court in the Presidency of Bombay are incompatible  
Her Majesty's Civil Jurisdiction shall be exercised  
in accordance with the common and statute law of  
England in force at the commencement of this Order."

At that time this article was framed the  
Rules of the English law of bankruptcy relating to  
the realization and distribution of a bankrupt's  
assets had already been applied to the domains of  
His Highness the Sultan by the Treaty of 1885, and  
neither at that time of the framing of the Order in  
Council of 1897 nor at any time subsequently has any  
affirming and definite law as to bankruptcy been applied  
to the rest of the protectorate. That being the case  
we do not think we are justified in regarding that the  
framers of the Order intended by the application of  
~~the~~ Civil Procedure, which contains a Chapter  
dealing with certain matters of insolvency, thereby  
to alter the law of bankruptcy which undoubtedly at  
that time existed as regards the coast areas of the  
Protectorate; but we believe that it is more correct  
to assume that article 11 sub section (a) was intentioned  
to be in force in the areas not mentioned and to be limited  
so as to cover the territories of the State of Mysore  
and the State of Travancore and the Cochin State  
and the territories of the Nizam of Hyderabad and  
the territories of the Deccan States.

In the opinion of the Law Officers  
it is better to limit the application of this Article  
to those areas where there is no law of bankruptcy  
and to leave the application of the law of  
bankruptcy to the territories of the State of  
Mysore and the State of Travancore and the Cochin State  
and the territories of the Nizam of Hyderabad and  
the territories of the Deccan States.

where the applied Indian enactments do not cover the case, enquire into the matter before proceeding. The general rule is to be had to the common law statute law of England in force at the time of commencement of the contract. This being so we do not feel at liberty to say that a Chapter in a Code dealing with foreign contracts, although treating of certain matters, would likely be held to cast the substantive law of the country. In this respect we would refer to the decision of the Supreme Court of India in the case of *Premnatty Fleetilla Co. vs Dugay* 1907 Indian Law Reports Indian Appeals Vol. 1 No. 10. The Lordships of the Privy Council held that the Indian law covers being in force in India and not in England in the contract Act dealing with the subject of contracts. The court could not be construed as referring to the Indian Statute of Limitations in 1877 as "it is squarely covered".

"*Agreeably to the law of the place where the contract is made*"

"*or according to the law of the place where the contract is to be performed*"

Costs  
In the first instance  
or otherwise by the party  
in whose favor judgment  
is given  
and which has been trans-  
ferred or otherwise caused  
to another suit to serve with the judgment  
and

had been expressly referred to it, and which became equally applicable to the Protectorate under the concluding article II (a) of the Order in Council. In our opinion we differ from the learned pleader who stated that "where an application deals with any matter it must be dealt with that matter and a larger question cannot be brought in".

The true position is, we consider, that the English Bankruptcy Law has not been applied to the whole of the Protectorate since the Order in Council 1897 that will reorganization and distribution of a bankrupt to the dominions of His Majesty the Emperor by the Treaty of 1886, and that Chapter 20 of the Civil Procedure Code has been superimposed upon the main bulk of the country.

The Appellant's pleader has however noticed the fact that certain cases have been taken in the past in the Old Province under the Procedure applicable to England and also the fact that the schedule of debts liable to the whole Protectorate is only as to adult of the application under the English Bankruptcy Law. This is of great importance in either of these two cases, but they are deserving of mention, the first being that procedure under the English Bankruptcy Law

to the Courts of East Africa in the past,  
as showing that legislation authorising  
the Courts to make rules of fees framed under

Section 10 of the Ordinance of 1897 certain  
fees to be charged in English bankruptcy  
cases.

With others will refer to the procedure

in the Courts of the Colony, and we have since  
been informed in the ships of war, that the  
Courts are governed by the Ordinance Council 1897.

Having arrived therefore at the conclusion that  
the Ordinance 1897 of bankruptcy in the Province  
is English law, is there anything which can  
prevent the same from applying to the  
Civil Procedure Code? We do not know.

There are in fact two points of view. In  
so far as the procedure provided in  
the Ordinance applies and is not

overruled by the Law of Kenya, it is  
obligatory to be observable or the  
English law, and the other  
country.

In so far as the procedure provided in  
of the Ordinance does not harmonise with  
Kenya law, then it must be overruled.

It is submitted that the Ordinance would  
be inapplicable in so far as it is not in accordance with  
the English law.

Though we have arrived at this conclusion, we  
feel that the position is not entirely satisfactory.

17/11/1912

In this wise the Learned Judge of the Lower Court has suggested that effects bankruptcy may be applied to the East Africa Protectorate. It behoves me now to consider this question. (The question however) is whether the procedure adopted by the learned Judge is in accordance with the law or not.

The learned Judge

in his judgment has suggested that article 13 of the Civil Procedure Code of the former British part of the English law of bankruptcy, which covers British subjects within the Coast area, and the East Africa Order in Council 1897, (kept alive by article 13 of the 1902 Order) in applying the Civil Procedure Code of the Coast area (as well as the inland area) expressly states that the Coast area is made subject to the Treaty. I consider it to be clear that the English law is in the Coast area the governing law of the country. The Code is merely supplementary for therefore as the insolvency provisions of the said conflict with English law I am of opinion that the English law must prevail. As far as the Coast area is concerned I find myself unable to agree with the general opinion of the Learned Judge of the Lower Court in regard to the bankruptcy law of the Protectorate.

With regard to the inland area the position is as follows: Article 11 of the East Africa Order in Council 1897 (Article 28 (1) of the 1902 Order) applies to the inland area the Civil Procedure Code, and since the English law was inapplicable, the Shari'a and Custom law of the area. I take that to mean that the substantive bankruptcy law of the inland area is the Civil Procedure Code and that the English law is merely supplementary. I think it is important, on a question of contractions of the facts, especially in view of the *Fidelity Mortilla Co. vs. Buganda* case,

the English law, as far as I am aware, does not afford any such remedy. The reason is that where a man has got into difficulties by his own fault, he can do nothing about it. The best that can be said is that where he has got into difficulties through no fault of his own, he may possibly get some relief.

Another question which arises is whether a creditor can sue in the civil courts or in the criminal courts. The position is that if a creditor sues in the civil courts, he can sue in either of them. If he sues in the criminal courts, he can sue in either of them. The main difficulty is that there are two sets of conflicting laws. In the criminal process, the question is whether he can sue in the criminal courts. He would have to adopt the procedure of the criminal courts in the area in which he happens to reside or in the criminal courts in his option, and adopt the rules of the criminal courts.

I submit that under the principle of the co-existence of the old and new remedies he can. An English mortgagee can sue in his choice sue on the conventional debt or forgive the debt and take possession and eject his mortgagor. If he likes he can do all four together. A person who is assaulted can sue for assault as a crime or a tort. He can prosecute for imprisonment or he can sue for civil damages. The alternatives of a secured creditor in equity are well known. Such examples might be multiplied very easily. Early in both English and Indian law. In all of such cases the party concerned makes up his mind before he begins and then, if he begins, he continues, will have

serves in my opinion to exclude the Code only in the points in which there is an actual clashing between the English law and the Code.

The Legislature in effect says that the Treaty applies. Where there is no clashing the procedure varies with English law and Code seems to me to be equally well established. Apart from the ~~Article~~ 22 which they clash I see nothing to justify the application of one or the other to the other. I therefore ~~for~~ <sup>in</sup> the Inland area the right of choice exists.

With regard to the Inland area the matter is again different. By section 11 of the East Africa Order in Council 1897 the Code is to be applied so far as applicable, while the Statute in Common law of Maryland comes in only to the extent to which the Code is not applicable. (I read the word "Applicable" as "capable of being applied".)

The Legislature are, I think, much more definite and mandatory in their method of applying the Code, and the English law of the Inland area than they are in their method of applying the Treaty and the Code to the Coast area. In the Inland area the Code is distinctly first and England law second. In the Coast area the Treaty and the Code (except where they clash) seem to me to be applied indiscriminately. In the Inland area the Legislature especially name one procedure (the Code) and postpone the other (English law) to its operation. I think that may be construed as working an definite ~~application~~ of the English law so far as the Code applies. In my opinion, until you do so the Code gives no remedy, you cannot, in my opinion, sue at the English Bankruptcy Court at all.

Shortly the conclusions are: If we have  
Common law in part and a different law  
and if you apply a part of the common law  
and another part of the different law  
possibly in the same case.

... must go by the code if the code does not fit his case he is well off but  
does not fit his case he is well off but

But where there is a conflict the law prevails

In the conclusion, are we to believe

that the law which is not in accordance

with the law of God is to be followed?

It is not so, for the law of God is to be followed

and the law of man is to be followed

in accordance with the law of God.

It is not so, for the law of God is to be followed

and the law of man is to be followed

in accordance with the law of God.

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in accordance with the law of God.

It is not so, for the law of God is to be followed

and the law of man is to be followed

in accordance with the law of God.

Do you certify that this is a true copy of the record?
<i>[Signature]</i>

INVESTIGATION BY LAWYER FOR

DEFENSE ATTORNEY

RE: L. L. COOPER, JR., Plaintiff

v. W. E. COOPER, JR., Plaintiff, et al.

RE: L. L. COOPER, JR., Plaintiff

v. W. E. COOPER, JR., Plaintiff, et al.

RE: L. L. COOPER, JR., Plaintiff

v. W. E. COOPER, JR., Plaintiff, et al.

RE: L. L. COOPER, JR., Plaintiff

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RE: L. L. COOPER, JR., Plaintiff

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... but has considered the application of the law to  
the position of the applicant as a decree holder only, he is  
not thereby precluded from presenting his petition under  
the English Bankruptcy Law.

It only remains for him to satisfy the Court in this  
matter that his petition is timely and that it is not  
prejudiced by the circumstances of the case.  
In a petition filed before the date of the hearing,  
for the Plaintiff to file a copy of the petition and  
any other documents which may be necessary.

the same time it is necessary to have a  
certain number of people to make up

the organization and this number must be  
large enough to give the organization

the strength and influence it needs to  
make it successful.

The organization must be strong enough to  
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