321

DOMESTIC.

EAST AFR. PROT.

No. 32105

C.O.
32105
2 . 08

Office or Individual.	(Subject.)
Grant C.	Legal proceedings in Prot.
1908	
28 Aug.	further regarding his complaint.
Last previous Paper.	
4/32063	

(Minutes.)

~~Mr Risley~~ See also 32063

Mr Antrobus

The point of this letter apart from the trifling correction in para 1. is that Mr Grant will not be content with the enquiry into his case by the Govr. promised in our letter of 26 Augt (30246) unless it is conducted by a person whom Mr Grant may approve & not unless he is allowed to call witnesses &c

Subsequent Paper.

E 45684

In fact what he wants is a quasi-judicial enquiry into the conduct of the judges of the E.A.P. & of Zanzibar & of the minutes of the Court. I imagine that it is not intended to grant this at present at all events. If the Gov's report gave any support to his allegations the matter would be different.

At the same time I see no real objection to the report being obtained by the Gov. from Judge Smith as Mr Grant wishes (if the former thinks it is consonant with his judicial position to make such a report).

With regard to the general question Mr Grant fairly represents the attitude which I thought it right to take up at my interview with him. I have no reason at times had occasion to doubt the competence of the E.A.P. Court but that is very different from admitting charges of corruption & oppression

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against them: and I gave Mr Grant clearly to understand that until some evidence was produced apart from his own statements on the subject I was not prepared to listen to such talk

W.L. 8/1

[illegible] [illegible] ... [illegible], to add and [illegible] do not think we need [illegible]
[illegible] the [illegible] of Mr Grant's [illegible] of [illegible]
[illegible] [illegible] [illegible] [illegible] what

[illegible] 8/1

Send copy of this and of 32063 to Governor & ask him to acknowledge them without comment. Add that, if the Governor thinks fit, Judge Smith may be asked to give his views on Mr Grant's complaints

C.P.L.

q at once

DRAFT.

MINUTE.

Mr.

Mr.

Mr. Just.

Mr. Antrobus.

Mr. Cox.

Sir C. Lucas.

Sir F. Hopwood.

Mr. Churchill.

The Earl of Elgin.

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32105

August 28th, 1908. 2 SEP 08

The Under Secretary of State
for the Colonies,
Colonial Office,
LONDON.

Sir,

In my letter of August 18th 1908, "re Administration of Justice in B. E. A." on page 20, in referring to Mr. Tonks, I state that, "he deliberately avoided making any reference to the fact that fraud had been alleged". The word "deliberately" ought not to be there, and I would like to have it deleted.

I also beg to acknowledge the receipt of your letter of August 26th, informing me that the Governor will be asked to furnish a report on the matter.

And further I beg to put on record, that I have had interviews with Mr. Cox and Mr. Ellis of the Colonial Office on this matter,, and I believe that I can fairly say that their reception of my complaints, was one of almost open hostility.

Mr. Ellis in particular stated emphatically that in getting the Colonial Office to ask for a report, I was getting more than I was entitled to, and that the competence and standing of British Judges was too high to have charges of bribery and corruption made against them.

With reference to the competence of the East African Judges, if it is in order, I beg to refer you to the Judgment of the Lords of the Judicial Committee of the

Privy Council on the Appeal Wehner v The King, and to the Editorial in the London Times on the case which I hold is a reasonable comment on the trial. A copy of the Judgment and editorial is enclosed.

That trial was held before Principal Judge Hamilton, and I maintain that a perusal of that Judgment and the files I placed before you, ought to be sufficient to prove Principal Judge Hamilton's incompetence, and I will not confine the charge of incompetence to the Principal Judge.

I have not made a charge of bribery, though I have charged one Judge with deliberately, and knowingly trying to deprive me of the only method open to me of obtaining justice, and that charge I will prove of given an opportunity before an impartial Judge.

But I wish specially to call your attention to the fact that Mr.Cox and Mr.Ellis stated emphatically that the Colonial Office would not instruct the Governor to have the report made by a disinterested Judge, or give me an opportunity, to call or examine any witness, and produce further evidence to complete my case.

I am leaving immediately for Mombasa, and will apply to the Governor to have the report from a disinterested Judge, if His Excellency refuses it will mean that my appeal to His Majesty's Principal Secretary of State for the Colonies has been in vain.

My Justification for that statement is the treatment I have already received. As you will see in the files, I

went before Judge Barth and claimed the protection of the Court from Mr. Allen, Lord Delameres Solicitor, and made three charges, for the one charge there was irrefutable evidence in the court records, the other two I would have to produce evidence to prove.

The enquiry was held without giving me an opportunity to be present or produce evidence.

The Judge after the hearing wrote me that in regard to one charge, there was not sufficient evidence, and that was probably true, as I had no opportunity to produce sufficient, and that he was considering the other charges, and he is still considering them.

And then regardless of the fact that under the 8th and 9th exception of section 499 of the Indian Penal Code, my charges were privileged, I had to face a criminal charge for defamation, the code even was not sufficient to save me from what was nothing less than persecution.

For more than two years at a great financial loss, I have quietly and persistently endeavoured by every legal means to get Justice, though the odds from the commencement were hopelessly against me.

There is no Law Society there, I am advised that the Judges are responsible for the good behaviour of the Officers of the Court. But when a Judge condones the professional misconduct of a solicitor, and deliberately and knowingly deprives me of my only remedy for obtaining justice, the position is hopeless.

I am surely justified in claiming, that if His Excellency refuses the application I will make to him, my appeal to you has been in vain.

And I am justified in stating, that if it is in vain, if this enquiry is a repetition of the one before Judge Barth, and produces like results. If the Courts there are going to again inflict injustice instead of administering justice, it will be a desperately serious position.

I am,

Sir,

Your obedient Servant,

Chas Grant
Nairobi
B.E.A.

32105

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Max Herman Wehner v. The King, from the Court of Appeal for Eastern Africa; delivered the 8th February 1906.

Present:

Earl of Halsbury.

Lord Macnaghten.

Lord Davey.

Lord Robertson.

Lord Atkinson.

Sir Arthur Wilson.

(Delivered by the Earl of Halsbury.)

Their Lordships are of opinion that it is impossible that this Judgment should be allowed to stand. The Attorney-General has most properly admitted that the whole proceedings were from the first irregular, and therefore the only Order their Lordships think should be made is that this Conviction and Sentence should be quashed; and they will humbly advise His Majesty accordingly. There will be no Order as to costs.

London Times Editorial of Feb 10/06

There is a widespread and comfortable belief that English justice, wherever it is administered, is, on the whole, satisfactory. Even where it is applied, in remote parts of the Empire, in a somewhat rough-and-ready manner, fair play is believed to be its spirit. With this opinion, which is generally well founded, the proceedings which have been investigated before the Judicial Committee in "Wehner v. The King", reported in THE TIMES yesterday, distinctly conflict. In criminal matters there is no appeal as of right to the Sovereign. It is only when there is clear departure from justice, and wrong has been manifestly done, that the Judicial Committee by special leave allows an appeal. Here there had been a serious miscarriage of justice. The proceedings were from first to last irregular. The appellant had been found guilty of murder, and sentence of death had been pronounced after what look likes a mockery of a trial, accompanied by a string of irregularities. The Judicial Committee promptly quashed the decision and the prisoner will go free. But it is a little startling to find that such things may be done under British rule, that they are condoned or approved by the Appeal Court for East Africa, and that it has been necessary to come all the way to England to set aside the proceedings. From the Congo come tales of black men faring badly in so-called Courts of Justice. From the other side of the continent comes this story of a white man not receiving fair play in a trial in which he was charged with murdering a native. The whole matter is not reassuring to Europeans living in or visiting these parts.

The story was that Wehner and one Gibson were returning after drinking more or less, from Nakuru to their camp in the

jungle with some native attendants, and that a quarrel arose the white men blaming the latter for showing them the wrong way. Two of the natives spoke positively to seeing Wehner shoot with a rifle a native named Moharnia. The statement of one of them was picturesque and explicit. "He (Wehner) then asked "Moharnia where the road was. Moharnia pointed out the "direction. He then asked him again. We then went to some " little hills, and I sat down to see if I could see the line " of the hills. It was very dark and I could not see them, " but I saw the big water. Then accused Moharnia asked " where the road was. Then he shot him with the gun." The accused denied the whole story. He had no rifle in his possession; and in this he was borne out by others. Having lost his way he fired two or three shots from the revolver, in the hope that the reports would bring assistance from camp. He admitted that he had been drinking. The body of Moharnia was never found. But near the spot where the murder was said to have been committed were human bones, which appeared to have been dragged and gnawed by jackals or hyaenas. That these were the remains of Moharnia was far from certain; and it was not altogether unreasonable to suppose that the native having left the party searching for the camp had lost his way and was devoured by wild beasts. The jury, however, found Wehner guilty of murder, adding to their verdict the rider that he "was not responsible for his actions owing to "the influence of drink."

It would have been rash to hang any one on evidence so imperfect and dubious, even if the forms of justice had been observed. They seem to have been ignored, or observed only

in a slovenly fashion. The proper number of juros, it was said, was not impanelled. Some, it was added, were not sworn at the proper time. The accused alleged that he had been stopped in his comments upon the case for the prosecution and been prevented from examining his witnesses. The Judge seems to have given the jury no choice but between a verdict of acquittal or murder; the possibility that the death was a culpable homicide does not seem to have been contemplated. The identification of the bones found was also imperfect. Scarcely less surprising than the first trial was the Court of Appeal, which upheld the conviction, though they thought that it would have been more satisfactory if the Judge had "elicited from the jury whether or not "they believed the story of the prosecution."

The Judicial Committee has unhesitatingly set aside the whole proceedings. The wider interest of this case lies in the fact that redress in these matters is remote, tardy, and expensive. To resort to the Judicial Committee-to obtain in the first instance special leave to appeal in a criminal case, and then to come again at a long interval to argue the matter out-is a tax upon the purse few can meet. For the majority of people it means that there is no redress, however great may be the miscarriage of justice. A large and increasing number of our countrymen and Europeans go to British protectorates. They cannot expect there the elaborate, finished forms of justice in use at home. But they may fairly expect that, if elementary rules of fair play are violated in their persons, there will be an opportunity of correcting them, and that

the costs attending an appeal will not be practically prohibitive in the bulk of cases. The applications for special leave to appeal in criminal matters are comparatively rare. Their number, however, is determined, it is probable more by the costs incident thereto than by the extreme rarity of cases calling for intervention. Another aspect of the matter calls for notice. The trial took place in January, 1905. The first appeal was heard in March of that year. Leave to appeal against the judgment of the Court of East Africa was granted last August. Not until Wednesday last was this capital matter disposed of. Can one wonder much that the accused, over whom a sentence of death has been hanging for more than a year, thinks that he has a grievance? It is not pleasant to criticize the proceedings of a tribunal the defects of which are due in the main to causes beyond the control of its members. But here is fresh evidence that the Judicial Committee, with all its virtues, does not work with the rapidity which suitors may fairly , and do in fact, expect. What has become of the long-promised measures which were to correct all these and other defects?

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32105

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Dray

DRAFT.

E.A.P. No 464
Gov Sadler

MINUTE.

Mr. MOE 9/9/

Mr.

Mr. Just.

Mr. Antrobus.

Mr. Cox.

Sir C. Lucas.

Sir F. Hopwood.

Mr. Churchill.

The Earl of Elgin.

11 September 08

Sir

With ref to my desps Nos 419 of the 27 ult. & 429 of the 2nd inst. I have the honour to transmit to you for your infn the accompanying copies of further communications from Mr C. Grant on the subject of the legal proceedings in which he has been engaged in the E.A.P.

2. As Mr Grant is returning immediately

Aud 24584

the Post. I request

that you will ask the [illegible]

receipt of this letter

on my behalf without

comment.

3. If you think fit

there seems to be no objec-

-tion to your asking

Judge Lindsay Smith

for his views on

Mr Grant's complaints

in accordance with the

wish expressed by

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