

EAST AFR. PROT.  
No. 15409

E. O.  
15409  
Recd 30 APR 07

(Subject)

1907

Nairobi Incident  
Legal Proceedings

For copy file & judgment in case *Crown v. Logan & others*  
Reports airtels made for accommodation of prisoners. The result  
& its result have had no effect on the natives.

(Minutes)

Minutes also on 13999, 15408 & 15445

Mr. Read,

Yes  
H.S.K.

The trial of those concerned in the Nairobi  
flogging incident appears to have been very well conducted  
by the Crown Advocate and Mr. Dolbey the magistrate - see the  
latter's judgment pp 51 to 57.

The main features of the case are already known to us:  
the principal points to which it seems necessary to direct  
attention now are -

(a) The conduct of Mr. Logan the Police Magistrate  
who was present at the flogging. See his evidence pp 1 to 4.  
I think it is clear that he did not do as much as a man of  
high courage might have done to stop the flogging. But I  
don't think he should be censured.

It is quite evident that Ficht spread the story  
that the ladies had been indecently assaulted though he well  
knew it to be false.

Capt. Smith does not appear to have distinguished himself but he will probably lose  
the promotion to the Deputy Commissioner of Police  
in Uganda, which he would otherwise have got.  
H.S.K.

M.O.  
15482

(9698) The Commissioner's telegram giving an account of the incident, and our reply.

(13814) Commissioner's telegram as to question whether assembly was armed.

I do not think we had better print 13909 see minutes on that paper.

(14395) message from the Colonists Association should be printed.

(15408) should not be printed.

(15409) and its enclosure giving the full report of the trial must be printed, with the reply which Lord Elgin will address to the Commissioner *415842 & 15843 telegrams on the subject matter of the assault, & the inquiry done thereon*

The lines which that reply should take should I think be something as follows -

Say that Lord Elgin fully realises the importance attached by the settlers to the protection of their women from insult and assault: that the law provides severe penalties for those guilty of such crimes, (quoting the appropriate sections of the Code) and that where an offender of this kind is taken redhanded, the infliction of summary punishment might probably be excused. But there is no evidence to show that crimes of this kind have been committed by natives of the Protectorate, and accordingly the message to the Daily Mail appears to be a wilful attempt to mislead public opinion. In the present case at any rate the insult was of the most trivial character and the punishment of the natives extremely severe as is shown by the Commissioner's telegram of the 3rd May. The manner and place of its

infliction

15843

infliction, too, was such as to make it clear that it was intended to be a deliberate defiance of settled order and government and a setting up of lynch law in its place. The conduct of Ficht<sup>a</sup> in deliberately spreading the report that the assault on Mrs. Moran was indecent, well knowing it to be false, cannot be too strongly condemned.

The offenders were extremely fortunate in not being convicted on the more serious charges of riot &c. originally preferred against them: and the sentences actually passed were by no means adequate to the gravity of their offence.

In answer to the Colonists Association 14395 say that there seems no ground for saying that the prosecution was a political one, unless there is any party in Nairobi which professes as a policy the indiscriminate flogging of natives for trivial offences. The statement that the assembly was armed was not proved, but neither was it disproved; and even if they were not armed the gravity of the offence was not materially diminished.

The suggestion that a Board of enquiry shall be appointed cannot be considered as no material facts are in dispute.

Say that the fears of a native rising appear to have no foundation, but it is clear that such flagrant acts of injustice are the surest way to provoke it, and that in the interests not only of the natives (constituting as they do immense majority of the population) but also of the innocent white population Lord Elgin is determined to

restrain

restrain and punish those persons who commit such acts of injustice, either without considering the probable result, or, as Lord Elgin fears may be the case, with the deliberate intention of provoking a rebellion in order to seize the lands and cattle of the natives.

And that the ordinary law will accordingly be rigorously enforced against such offenders; and moreover the Governor will be instructed to put in force as occasion arises the provisions of the Order in Council relating to the deportation of persons who show themselves dangerous to peace and public order in East Africa.

W. D. F.

3/5

Mr. Cantor has

I agree. I have already circulated a private letter from Sir W. Manning giving him info of the alleged assault. I have recently received a private letter from the Chief Medical Officer, Col. Well, who gives a similar account.

He says: "There appears to have been nothing in the so-called assault or insult. Two hysterical women in arickshaw both sitting forward going down hill were asked by the boys to get further back, & not hearing a single word of the native language pluffed the boys with their umbrellas & told him to go on, whereon he stopped & pointed to them but back."

It is believed that the incident actually was, but these gentlemen from S. Africa are in writing to the Comm. I think that we should show as clearly as possible the flimsiness of the pretext on which these boys were pluffed.

H. J. R. 4/5

Mr. Cantor has been informed

Jan 17 1894  
 13999

all like to  
 something said  
 at this but it  
 is difficult to  
 without some  
 thing it a

copy  
 1/10

Mr. Bellis

A proof herewith for comment  
Should there be a Full Delivery?

E. D. D.  
25507

Mr. Bellis

Review herewith for  
exam and authority to publish.

A 1113  
2/6/01

Mr. Read

Mr. Antedus

This review appears to  
be in order. I went through it  
carefully at the last review and  
the two corrections then made  
have been omitted. I do not  
understand the marked passage  
on p. 18 "No proceedings under  
P. 143 Y.P." in a summary  
case: there seems to be some  
mistake but I cannot revise  
the report of the proceedings.  
The presentation of them at  
the Court must suffer

the 5th para of the Comm<sup>rs</sup> report  
on p. 4, & I would omit the 409  
newspaper extract on p. 30-32.  
It will make the main of the  
letter part of the first sentence in  
para 6 of the report on p. 4.

24/6

I could not omit the news-  
paper extract, as it shows what  
kind of people there who support  
Capt. Grogan are.

But there are several ar-  
ticles in Mr. Jackson's pamphlet  
which are not very judicious,  
and pages 1-4 of the Review  
sh<sup>d</sup> be read carefully with a  
view to deciding whether  
any further editing is required.

Mt. June 25

This might be published at once. It will  
raise any number of questions & perhaps  
a debate on the subject.

Surely the Governor will not stand on his dignity  
upon such a small point. But a telegram  
might be sent him - if thought necessary.

Mt 26.6 £ 27/6

Notes received  
in 1890  
6. 27.04

C. O.  
15409  
Commissioner's Office,  
Nairobi  
REL 30 APR 07

April 26<sup>th</sup> 1907.

TO: PRO...  
... (25)  
(Incl. 2.)

PRINTED FOR PARLIAMENT  
No. 3, 562-2-1, 1907

My Lord,

With reference to my telegrams Nos. 42, 43 and 45,

I have the honor to transmit herewith a copy of the  
... in the case of the Crown versus Grogan  
... terminated on the 1st instant.

... received and the  
... Later in the day  
however a boys meeting was held and telegrams were in  
consequence despatched to Your Lordship and to the  
Premiers of the various South African Colonies.

... also waited upon me to ask that the  
... be incarcerated in a place where their  
... by native convicts.

Secretary of State  
for the Colonies,  
Downing Street,

LONDON, S.W.

C  
11853  
11921  
11924

In view of the fact that the boy has been medically  
 diagnosed as insane, and is besides very  
 ill, and for their accommodation I acceded to the request  
 of the deputation and ordered the transfer of the prisoners  
 to a building on Nairobi Hill, where they are confined under  
 the surveillance of the Police.

I was somewhat reluctant to do this, as the moral effects  
 of the decision have been greater if the sentence had been  
 carried out in the regular prison, but, having regard to the  
 lectures passed on the Mombasa Jail in the Wehner case, I  
 thought it better not to give any opportunity for adverse  
 criticism. I trust however that ere long we shall have a  
 building in which male factors of every kind can be confined  
 in accordance with the provisions of the Penal Code.  
 The sentences, such in view of the gravity of the  
 offences committed, cannot be reasonably regarded as other  
 than correct, have nevertheless provoked a considerable  
 amount of vituperation in the local press, an instance  
 of which I have the honour to enclose a copy of "The Times"  
 of last Friday of the 14th instant. Such expressions of  
 opinion are only to be expected from the persons who are



known to be the authors of them.

The trial and its result have, as far as I am aware, produced no effect whatever on the native mind, which is far too intelligent and ignorant to take any interest in such proceedings, unless their scope and meaning were very carefully explained.

It is at any rate certain that the knowledge that they can only be punished in accordance with law is unlikely to have a dissuading effect on the Kikuyu. If they were led to understand that they could be flogged by Europeans whenever the latter thought fit it certainly might disturb their tranquillity.

I have the honour to be,

With the highest respect,

Your Lord,

Your Lordship's most obedient

humble servant,

*J. J. Fallora*

Acting Commissioner.

15

51109

Common  
15409

L.A.P. 113

DRAFT

L.A.P. No  
Gov. Ch. Pader

May 27

MINUTE.

- Mr. Ellis 14/5
- Mr. Read 15
- Mr. Just.
- Mr. Astorbus
- Mr. Cox.
- Mr. Lucas.
- Sir F. Hayward.
- Mr. Churchill.
- The Earl of Elgin.

for common  
Draft to be printed  
for circulation with  
the H. when Mr.  
Carter appears

Per  
I have the honor to acknowledge the receipt of Mr. Jackson's despatch of the 9<sup>th</sup> of April forwarding a report of the trial & conviction of Capt. Grogan & Messrs. Barker, Gray, Fichet & Low for unlawful assembly. I have also received Mr. Jackson's telegram of the 23<sup>rd</sup> of April forwarding

14595

8  
+ Mr. [unclear] Mr. [unclear]

embodying a message  
from the Colonists. However  
contending that the  
flogging incident has been  
twisted into an unscrupulous  
political prosecution,  
conflating a reported  
statement reported to have  
been made by one or  
the other to the effect  
that many of the Europeans  
present at the incident  
were armed, & wishing  
that a Board of Inquiry  
may be appointed to in-  
quire into these & other  
pressing grievances.

It is clear from the  
report that the offenders  
had a very fair & full  
trial & there was little  
dispute as to the facts.

which is the contention of  
the defendants with the  
exception of Low who  
claimed that he was a  
mere spectator. Being  
that the flogging of  
the natives was deemed  
to be a necessary  
and usually an unobjectionable  
and justifiable  
because they had been  
guilty of insulting  
white women, was  
a violation which was  
of the defendant  
Practices inflicted on  
himself as follows. That  
he has always been the  
first flourish with one  
to fly a nigger on  
night who insults a  
white woman. I felt it  
my bounden duty to  
take the step which  
J. P.

and that in a public place  
as occurring to the natives"

4. The defence of the accused  
being thus in the nature  
of a plea of justification  
and of appeal to an  
unwritten law overriding  
the law of the land, it  
seems necessary to ensure  
that plea and its applicability  
to the present case.

5. Fully realising the imper-  
tance attached by the  
the white settlers to the  
protection of their women  
from assault & assault  
But I would point  
out that the Indian  
Penal Code affords  
ample for penalties  
not some penalties

DRAFT

for such offences. 415.  
Under the 376<sup>th</sup> Section  
the crime of rape is  
punishable with transpor-  
tation for life, and  
the 354<sup>th</sup> Section  
indecent assault is  
punishable with seven  
years labour, and  
under the 509<sup>th</sup>  
Section an assault to  
the modesty of a  
woman, not amounting  
to assault, renders  
the offender liable  
to one year's simple  
imprisonment.  
In States charged with  
such offences would  
be tried by white  
magistrates & judges  
and it is altogether  
unreasonable to suppose

that they would be considered  
to be unduly lenient to  
such offenders, particularly  
if the injured party  
were a white woman.  
But, as a matter of  
fact, it does not  
appear that any crimes  
of this nature have  
been brought before  
the Courts of the Protec-  
torate, and therefore  
wrong it is exceedingly  
impossible to plead delay  
a refusal of justice  
as a justification for  
these lawless proceedings.

7 Moreover in the present  
case it is clear from  
your letter of the 3<sup>rd</sup>  
inst that the assault  
alleged was of the  
most brutal character

15873

and had no doubt involved  
no indelicacy: and it is  
clear also that the 416  
punishment inflicted  
on the natives for this  
slight offence by the  
defendants, ~~that~~  
Gregory, Gray &  
Bosker was of a very  
severe character: one of  
them being confined to  
hospital for a considerable  
period.

8. The place & circum-  
stances of the flogging  
in front of the Court House  
& in spite of the protest  
of the magistrates, make  
it clear that this act  
was intended to be a  
deliberate defiance of  
settled order & govern-  
ment, & a setting up  
of Lynch law in its  
place

JH



9. Accordingly I consider  
that the offenders were  
extremely fortunate  
in not being convicted  
on the more numerous charges  
of riot & assault on  
a public officer, & that  
the sentences actually  
passed on them were by  
no means adequate to the  
gravity of their offence.  
The conduct of the defen-  
-dant Fitchet who, it is  
dear from the evidence,  
deliberately spread a  
report that Mr. Pagan  
had been individually  
assaulted, will however  
it be felt, cannot be  
too strictly reprobated,  
and I shall be glad  
to report no doubt  
many persons were  
thus led to

DRAFT

take part in the  
assembly who would  
not have done so if  
the true facts had  
been known to them.

10. With regard to the  
telegram to manage  
from the Admiralty  
however I would not  
say that there seems  
to be no ground for  
saying that the proce-  
-dure of the offenders  
in this case was a  
political one, unless  
there is any party in  
power which proposes  
as a policy the in-  
-crease of the number  
of political offences  
without trial

Am. 6. 85

"It appears that the statement made by Mr. Churchill in the House of Commons that many of the persons present at the flogging were armed was not established by evidence given at the trial. but I do not find that it was disproved, and I do not consider that the question whether they were armed or not materially affects the gravity of the offence committed and accordingly  
12. to be a material fact  
I see no reason for appointing a Board of Enquiry to inquire into the

on the subject of the flogging on Mr. Jackson's trial of the 11th of 1848

of the flogging

circumstances which are or other respects established by the evidence given at the trial. I am not aware what the other persons concerned in the transaction alluded to  
12. The prices of a nature rising which induced those who took part in the flogging to rush to the Common Office demanding wages & remuneration for their protection appear at present to have no foundation, but it is clear that such illegal acts of lawlessness & injustice as those of which Gregory & his fellow offenders have  
J.D.

been found guilty in  
the usual way to punish  
an outbreak, and in  
the interests not only  
of the natives (constituting  
as they do an immense  
majority of the population)  
but also of the innocent  
white inhabitants, I am  
determined to restrain  
& punish those who  
commit such acts

13. The ordinary law  
is made exceedingly benign  
by reference against  
such offences & as  
you should not hesitate  
of occasion to put  
in force the provisions of  
the Ordinance in Council authorizing  
the deportation of any person  
who conducts himself in  
a dangerous to peace  
& good order in this Office