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TECHNICAL CONFERENCES OF THE  
EAST AFRICAN DEPENDENCIES.

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REPORT BY CONFERENCE  
OF LAW OFFICERS,  
1926.

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Conference of Law Officers of the East 16387  
African Dependencies, 1926.

REPORT.

I. We have the honour to report that the proceedings of the Conference opened at Nairobi on Monday the 4th October and were continued each day until Saturday the 9th October.

II. The Conference was attended by the following :—

HON. W. C. HUGGARD, K.C., Attorney General, Kenya (Chairman),

HON. E. ST. J. JACKSON, O.B.E., Attorney General, Tanganyika Territory.

HON. S. S. ABRAHAMS, Attorney General, Uganda.

At the request of the Government of Northern Rhodesia the Hon. F. Gordon Smith (Solicitor General, Kenya), also attended and watched the proceedings on behalf of that dependency.

Major H. Bown, O.B.E. (Acting Senior Crown Counsel, Kenya), acted as Secretary to the Conference.

III. We desire to express our regret that, owing to unforeseen circumstances, the representatives of the Protectorates of Zanzibar and Nyasaland were unable to attend the Conference, and we also regret the inability of the Attorney General of Northern Rhodesia to be present in person. In the absence of the representatives of these dependencies our consideration of the subjects brought before us has necessarily been limited, and our recommendations must therefore be understood as applying only to those territories which were directly represented at the Conference.

IV. Our Agenda comprised the following matters :—

(1) UNIFORMITY OF COMMERCIAL LEGISLATION :

- (a) BANKRUPTCY,
- (b) PATENTS AND DESIGNS,
- (c) TRADE MARKS,
- (d) STAMP DUTIES AND REGISTRATION FEES.

(2) DRAFT MODEL PENAL CODE.

(3) DRAFT MODEL CRIMINAL PROCEDURE CODE.

(4) WATER LEGISLATION.

(5) MINING LEGISLATION.

(6) INTERCHANGE OF BILLS.

(7) PUBLICATION OF BILLS ACCOMPANIED BY STATEMENTS OF OBJECTS AND REASONS.

(8) COMPARATIVE JURISDICTION OF THE DIFFERENT GRADES OF ADMINISTRATIVE OFFICERS.

(9) INTRODUCTION OF A SYSTEM FOR THE APPOINTMENT OF UNOFFICIAL RESIDENT MAGISTRATES THROUGHOUT THE SETTLED PARTS OF KENYA.

(10) ENACTMENT OF LOCAL ORDINANCES TO REPLACE APPLIED INDIAN ACTS.

(11) RECIPROCAL CONDUCT OF APPEALS BEFORE THE COURT OF APPEAL FOR EASTERN AFRICA.

(12) THE DESIRABILITY OF INTRODUCING LEGISLATION GOVERNING THE ACTIVITIES OF INSURANCE COMPANIES.

(13) THE SUBJECT OF LEADING ARTICLES IN ISSUES OF THE " EAST AFRICAN STANDARD " DATED THE 24TH SEPTEMBER AND THE 4TH OCTOBER, 1926.

The matters included under Item (1) of the Agenda were referred to the Conference at the suggestion of the East Africa Commission. (See the Report of that Commission, pages 65 and 66.) The recommendation of the Commission in regard to these matters was endorsed by the Governors' Conference. (See Summary of Proceedings of that Conference, page 27.)

The Draft Model Penal Code (Item (2)) was transmitted to each of our Governments by the Secretary of State under cover of a despatch dated the 2nd December, 1925, but was not expressly referred to the Conference. It seemed desirable, however, to take advantage of the occasion of our meeting to consider together so important a piece of legislation designed for enactment in each of our territories. A joint examination of the Penal Code was, indeed, required by the fact that in a despatch of the 3rd June, 1926, forwarding the Draft Model Criminal Procedure Code (Item (3)) to our Governments, the Secretary of State observed that he understood that the latter Code would be considered by us. Both Codes were accordingly brought before the Conference with the consent of our respective Governments.

The subject of Water Legislation (Item (4)) was referred to us by the Governors' Conference. (See Summary of Proceedings at the Conference, pages 27 and 28.)

The subject of Mining Legislation (Item (5)) was mentioned by the Governors' Conference in the course of their discussion upon legislative questions and was referred to as a matter to which it was of importance that attention should be paid. (*Ibid.* page 28.) This subject was accordingly included in our Agenda.

The Interchange of Bills and the Publication of Bills accompanied by Statements of Objects and Reasons, as, also, the Comparative Jurisdiction of the Different Grades of Administrative Officers (Items (6), (7) and (8)), were matters referred to us by the Governors' Conference. (*Ibid.* pages 22 and 27.)

The question of the introduction of a system for the appointment of unofficial resident magistrates throughout the settled parts of Kenya (Item (9)) was referred to us by the Governor of Kenya.

A draft Agenda comprising the above subjects was circulated to each of our Governments by the Secretary to the Governors' Conference with an invitation to add to the draft such other subjects as any particular Government might wish to be considered. In response to this invitation, Items (10) and (11) were added at the suggestion of the Government of Uganda. No other suggestions for additions to our Agenda were received from any of the Governments which we represent.

Shortly before the meeting of our Conference a suggestion was made to the Government of Kenya by the Statistician attached to the Governors' Conference Secretariat as to the desirability of legislation regulating the activities of Insurance Companies. This subject (Item (12)) was accordingly brought before us by the Attorney General of Kenya.

On the 29th September and the 4th October, 1926, two leading articles appeared in the "East African Standard" making reference to our Conference. In these articles, in addition to comments upon matters already included in our Agenda, dissatisfaction was expressed with certain aspects of the administration of the criminal law in Kenya, and it was observed that the subject was one upon which the public would welcome an expression of opinion from us. Though the articles necessarily dealt with conditions as they exist, or are supposed to exist, in Kenya, they are not without interest for the other Governments represented by us, and since direct reference was made to our Conference, we thought it desirable that our Governments should be in possession of our views upon the public criticism which the articles contain. These matters were accordingly brought before us by the Attorney General of Kenya and were considered by us as Item (13) of our Agenda.

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We trust that these observations upon the manner in which our Agenda was framed will make it apparent that we have dealt with every subject which has been suggested for our consideration either by the Secretary of State or by any of our respective Governments, or which we could usefully examine at the present time.

#### V.—UNIFORMITY OF COMMERCIAL LEGISLATION.

##### (A) BANKRUPTCY.

##### Present position :—

KENYA ...	... The Indian Provincial Insolvency Act, 1917, applies. A new Bankruptcy Ordinance, based on English law, has, however, recently been enacted, but has not yet been brought into operation.
TANGANYIKA ...	... English Bankruptcy law applies "so far as circumstances admit."
UGANDA ...	... English Bankruptcy law applies "so far as circumstances admit."

In dealing with the subject of Bankruptcy we had before us the following documents :—

Extract from Report of East Africa Commission.	Appendix A.
Letter from the Bankruptcy Department of the Board of Trade to the Under Secretary of State, dated 16th June, 1926.	Appendix B.
Memorandum by His Majesty's Trade Commissioner for East Africa.	Appendix C.
Memorandum on Bankruptcy Law submitted to the Conference by the Association of East African Chambers of Commerce.	Appendix D.

Apart from certain matters of detail raised in the Chambers of Commerce Memorandum (Appendix D), to which we shall refer later, two main points appear to arise for our consideration, namely :—

- (1) The adoption of a uniform Bankruptcy law.
- (2) The possibility of framing a scheme for adoption by each dependency under which the assets of a bankrupt, no matter where they may be situate in the dependencies, may be made available wherever the insolvency occurs.

As regards (1), we are strongly in favour of the adoption of uniform Bankruptcy legislation in the dependencies which we represent. We have considered the Kenya Bankruptcy Ordinance, 1925, and recommend that it be accepted as a suitable model. Certain differences will be required in the various dependencies in regard to points of detail, but they will not affect the main principles of the legislation.

As regards (2), we recommend the introduction of reciprocal legislative provisions in each territory on the lines suggested by the Bankruptcy Department of the Board of Trade in Appendix B. Generally speaking, the object to be aimed at should be to secure that the assets of a bankrupt, no matter where they may be situate in reciprocating territories, should be made available for distribution among all the creditors of the bankrupt. In the time at our disposal, we have found it impossible to settle the details of the scheme or the exact form which the proposed legislation should take, but if our recommendation be accepted we do not anticipate difficulty in preparing, with the possible assistance of the Board of Trade, suitable draft legislation for adoption in the respective dependencies.

Apart from the two main points above dealt with, the Chambers of Commerce Memorandum (Appendix D) raises a number of other points. This memorandum has been addressed to the Attorney General, Kenya, and appears to have been drawn up in ignorance of the recent enactment of a new Bankruptcy Ordinance in that territory. We consider it unnecessary to deal in detail with these various points, as it is our view that they have been adequately disposed of, so far as Kenya is concerned, by the new Kenya Ordinance, and, if our recommendation as to the adoption of that Ordinance as a model is accepted, they will be similarly provided for in Tanganyika and Uganda.

(B) PATENTS AND DESIGNS.

Present position :—

- KENYA ... The law on this subject is contained in the Patents and Designs Ordinance, 1913 (now Chapter 88 of the Revised Edition), as amended by the Patents and Designs (Amendment) Ordinance, No. 26 of 1925. The latter enactment, which was based on a model received from the Secretary of State, embodied the proposals of the British Empire Patent Conference of 1922 regarding the registration in the Colonies and Protectorates of Patents granted in the United Kingdom.
- TANGANYIKA ... At present no legislation on this subject exists, but instructions have been received from the Secretary of State to the effect that legislation should be enacted on the lines of the Palestine Patents and Designs Ordinance, 1924, which is regarded as suitable for Tanganyika as a Mandated Territory.
- UGANDA ... The law is contained in the Patents, Designs and Trade Marks Ordinance, 1912 (now Chapter 108 of the Revised Edition), and its provisions as to Patents and Designs follow closely the Kenya Patents and Designs Ordinance, 1913. No steps, however, have yet been taken to give effect to the proposals of the British Empire Patent Conference above referred to.

In view of the special requirements of Tanganyika Territory as a Mandated Territory it would appear that legislation relating to Patents and Designs is a matter upon which complete uniformity is not possible. As regards Kenya and Uganda, however, we are agreed that uniformity of legislation is desirable. We have examined the Inventions Enactment, 1914, of the Federated Malay States, which was suggested in the Report of the East Africa Commission (page 66) as a suitable model for East Africa as a whole. This enactment, however, provides for original registration of inventions as well as re-registration of inventions already registered in the United Kingdom, and its adoption as a model for Kenya and Uganda would involve the provision of the necessarily elaborate machinery required for the examination of applications for original registration, for which, so far as we are aware, no practical need at present exists. The existing legislation in Kenya and Uganda, on the other hand, provides only for re-registration of Patents and Designs already registered in the United Kingdom, and it is our opinion that legislation on these lines is more suitable for these territories than a law based on the Federated Malay States enactment.

We are advised that the Kenya Patents and Designs Ordinance as amended by Ordinance No. 26 of 1925 has worked satisfactorily in Kenya, and we think, therefore, that uniformity of legislation on this subject could be satisfactorily attained if the Uganda Government would repeal the Patents Designs and Trade Marks Ordinance, 1912, and replace it (so far as it relates to Patents and Designs) by an Ordinance based on the legislation at present in force in Kenya.

## (c) TRADE MARKS.

## Present position :—

KENYA ...	...	The law on this subject is contained in the Registration of Trade Marks Ordinance, 1912 (now Chapter 89 of the Revised Edition), which was based on the Southern Nigeria Ordinance, 1910.
TANGANYIKA ...	...	The law is contained in the Trade Marks Ordinance, 1921, which follows closely the Imperial Trade Marks Act of 1905, and incorporates substantially the amendments made by the Trade Marks Act of 1919.
UGANDA ...	...	Trade Marks are dealt with in the Patents, Designs and Trade Marks Ordinance, 1912 (now Chapter 108 of the Revised Edition).

In dealing with the subject of Trade Marks we had before us the following documents :—

Extract from Report of East Africa Commission.

Appendix E

Extract from East Africa Report, dated 8th June, 1925.

Appendix F

The main points raised in Appendices E and F are :—

- (1) The adoption of uniform legislation on the subject of Trade Marks;
- (2) The inclusion in such legislation of provision for a simple method of registration of Trade Marks originally registered in the United Kingdom.

We are in complete agreement as to the desirability of adopting uniform legislation on the subject of Trade Marks in the dependencies which we represent. We are also agreed in recommending that such legislation should contain provision both for original registration and also for re-registration of Trade Marks, originally registered in the United Kingdom or in any East African territory agreeing to reciprocate.

We consider that in framing the necessary legislation the Tanganyika Ordinance, 1921, should be adopted as a model, such amendments being inserted therein as may be necessary to give effect to our recommendations above mentioned. Special provision will also be required in Kenya relating to the registration of Cotton Marks on the lines of section 9 (2) of the existing Kenya Ordinance.



We are agreed that, in the uniform legislation which we have recommended for adoption in the territories which we represent, registration should be for a period of fourteen years, and should be renewable for further similar periods from the expiration of the original registration or of the last renewal of registration, as the case may be.

(D) STAMP DUTIES AND REGISTRATION FEES.

Present position :—

KENYA ... The law on this subject is contained in the Stamp Ordinance, 1923 (now Chapter 57 of the Revised Edition).  
 TANGANYIKA .... The Indian Stamp Act applies.  
 UGANDA ... The law is contained in the Stamp Ordinance, 1915 (now Chapter 96 of the Revised Edition).

In dealing with this subject we had before us the following documents :—

Appendix I. Extract from Report of East Africa Commission.  
 Appendix J. Correspondence between the Secretary of State and the Governor of Tanganyika.

We are agreed as to the desirability of uniform legislation relating to stamps in the dependencies which we represent. The present position as indicated above shows that specific legislation on this subject has been enacted in both Kenya and Uganda. We have examined and compared those enactments, and, while there are and must be differences in points of detail, we find that the main principles of the enactments are identical both in form and substance. We therefore consider that the Kenya and Uganda legislation is already sufficiently uniform and we recommend legislation on similar lines as suitable for adoption in Tanganyika Territory.

The foregoing observations are not intended to apply to the rates of duties imposed in each dependency under Stamp legislation. Such rates must be governed largely by local revenue considerations which vary from time to time and therefore we are unable to recommend that the principle of uniformity should be extended to rates of duties. The position appears to us to be the same with regard to Registration Fees.

GENERAL REMARKS.

It will be noticed that in dealing with commercial legislation we have in every case come to a unanimous conclusion as to the desirability of uniformity in the dependencies which we represent. In this connection we desire respectfully to express our agreement with the following observations which appear in the Report of the East Africa Commission :—

“ There is small advantage in achieving uniformity unless once achieved it is adhered to. This implies that no one of the dependencies must proceed to pass amending legislation, whenever any local inconveniences have come to light, without prior consultation with the neighbouring dependencies where similar legislation is in force.”

SECTIONS VI AND VII REFER TO A DRAFT PENAL CODE AND TO A DRAFT MODEL CRIMINAL PROCEDURE CODE WHICH ARE NOT YET AVAILABLE FOR PUBLICATION; THESE SECTIONS DEAL WITH DETAILED POINTS IN THESE DRAFT CODES AND ARE UNINTELLIGIBLE WITHOUT THEM.

## VIII.—WATER LEGISLATION.

## Present position :—

- KENYA ... The only legislation relating to water at present existing appears to be contained in section 145 of the Crown Lands Ordinance (Chapter 140 of the Revised Edition) and in the Crown Lands (Water Permit) Rules, 1919.
- TANGANYIKA ... The law on the subject is contained in the Natural Water Supply Regulation Ordinance, 1923.
- UGANDA ... No legislation on the subject exists.

We are informed that an elaborate draft Bill to make provision for the employment and conservation of waters and to regulate water-supply, irrigation and drainage was prepared in Kenya in 1922. For financial reasons, however, the Bill was not proceeded with and no further action was taken in the matter until the present year when the Kenya Government secured the services of Mr. A. D. Lewis, Director of Irrigation to the Government of the Union of South Africa, for the purpose of reporting on the possibilities of irrigation and on water laws generally. Mr. Lewis' Report has now been received, and contains certain general recommendations with regard to water legislation, but he does not refer in any way to the Kenya Draft Bill of 1922. We understand that the Secretary of State has now invited Mr. Lewis to give an expression of opinion on this Bill, but that Mr. Lewis' reply has not yet been received. Pending the receipt of Mr. Lewis' opinion it would, we consider, be premature on our part to attempt to express our views on the draft Bill and indeed it would have been impossible for us, in the time available for the Conference, satisfactorily to examine its provisions.

The Tanganyika Ordinance is a short measure by which the control of natural water supplies is placed in the hands of Boards appointed by the Governor for specified areas. This Ordinance has been found satisfactory for existing conditions in Tanganyika and there are no data at present before the Government which suggest the desirability of legislation upon different lines or in more elaborate form.

In these circumstances we must confine ourselves to suggesting that the question of water legislation should be considered in the first instance by the Kenya Government, in the light of Mr. Lewis' Report, and any further observations he may offer on the draft Bill, and that any legislation which may eventually be decided upon be forwarded for the consideration of the other East African Dependencies. At the same time, we would point out that the terms of any water legislation which may be enacted in any individual territory must largely be governed by local conditions, and as those conditions vary so greatly in regard to water in the territories represented at our Conference, we feel that it may be difficult to attain any great degree of uniformity of legislation on this subject.

## IX.—MINING LEGISLATION.

## Present position :—

KENYA ... ..	The law on this subject is contained in the Mining Ordinance, 1925.
TANGANYIKA ...	The law is contained in the Mining Ordinance, 1920, but this enactment has been found to be inadequate and a new Ordinance is in contemplation.
UGANDA ... ..	The law is contained in Mining Regulations but these Regulations have proved inadequate and new legislation based on a model received from the Secretary of State is now under consideration.

We are convinced that uniformity of legislation relating to mining is not only desirable but essential in the contiguous territories which we represent, and, in view of the fact that the recent Kenya enactment on this subject had, in draft form, been carefully examined and eventually approved by the Imperial Mineral Resources Bureau and by the Secretary of State we should unhesitatingly have recommended this enactment as a model for Tanganyika and Uganda. We learn, however, that a draft model Ordinance relating to mining has been received in Uganda from the Secretary of State and that this model is considered by the mining experts of that territory to be superior to the Kenya Ordinance. A copy of this model Ordinance was not available for examination at the Conference, and we are, therefore, unable to express any opinion in regard to it. In these circumstances, we can only repeat our conviction that uniformity of legislation on this subject is essential and suggest that the comparative merits, and general suitability of the recent Kenya enactment and the model Ordinance above referred to should be examined and reported upon by the mining experts of the respective dependencies.

It seems desirable to add, with reference to the transmission of the model Ordinance to the Government of Uganda by the Secretary of State, that it would greatly assist the attainment of uniformity of legislation in the East African Dependencies if, when a model Ordinance upon a subject of general interest is proposed by the Secretary of State for enactment in one territory, copies of the model and a statement of the reasons for which its enactment is proposed might be forwarded at the same time to the other Governments concerned with the same question.

## X.—INTERCHANGE OF BILLS.

We are in complete agreement as to the desirability of circulating to the Law Officers of other Dependencies Bills which relate to matters of mutual interest and importance; and we also agree that each Bill should be accompanied by a full statement as to its origin, objects and reasons, a comparative table whenever possible, and any additional information which is likely to be of use. We recommend that Bills should normally be circulated as soon as they have been approved by the Governor in Executive Council, and that amendments which may be made subsequently in Legislative Council should be circulated separately.

We believe that the practice of interchanging Bills will go a long way towards achieving uniformity of legislation in the territories represented at the Conference, and we shall be glad to extend the practice to the other East African Dependencies, if they so desire.

## XI.—PUBLICATION OF BILLS ACCOMPANIED BY STATEMENT OF OBJECTS AND REASONS.

All Bills are published in Kenya and Tanganyika with a statement of objects and reasons so that no further action is called for on the part of those Dependencies. We learn, however, that in Uganda, owing to difficulties of staff, it has not been the universal practice to attach objects and reasons to Bills.

We desire to record our unanimous opinion that it is desirable that all Bills should be published with a statement of objects and reasons.

## XII.—COMPARATIVE JURISDICTION OF THE DIFFERENT GRADES OF ADMINISTRATIVE OFFICERS.

In considering this subject we had before us only the brief reference to it which is made upon page 22 of the Summary of Proceedings at the Governors' Conference, and the following memoranda which were circulated to that Conference :—

### *Memorandum by Sir C. Bowring :*

The judicial powers of the different grades of officers appear to vary considerably in the different Dependencies. I imagine this is necessary because of variations in the judicial systems, but I think some common standard should be aimed at.

### *Memorandum by Sir William Gowers :*

Administrative officers exercise the powers of a magistrate of the 3rd-class under the Indian Penal Code until they have passed the local examination in law, when they exercise 2nd-class powers. Certain of these officers who have 2nd-class powers and show a special aptitude for legal work receive 1st-class powers when it is in the public interest that there should be an additional 1st-class magistrate in a district.

Administrative officers in charge of districts exercise the powers of a district magistrate under the Indian Penal Code.

The High Court is the court immediately superior to the District Courts, and Provincial Commissioners, although nominally presiding over a Sessions Court, do not normally exercise magisterial or judicial functions.

We were unable to obtain fuller information by reference to the Minutes of the Governors' Conference and we cannot therefore be certain that we have rightly apprehended the object at which that conference desired to aim. We attach, as Appendix O, a statement showing in tabular form the powers of magistrates' courts in criminal matters in the territories which we represent, as well as in the other territories which were to have been represented at our Conference, so far as we have been able to ascertain them.

Appendix O.

With regard to the territories which we represent, we consider it practicable and desirable that, subject to the special requirements of Kenya in regard to the trial of Europeans, the ordinary powers of the first, second and third classes in criminal matters should be the same in each territory. The jurisdiction and powers of these courts are prescribed by the provisions which we mentioned in our opening observations upon the draft Criminal Procedure Code. We see no reason why that Code, when it attains its final and complete form, should not, subject to the reservation mentioned above, prescribe the same criminal jurisdiction and powers for each class of subordinate court in each of our territories.

In Tanganyika and in Uganda, however, in consequence of the inaccessibility of so much of these territories to the High Court, it will be necessary to retain the existing power to extend the criminal jurisdiction of first-class courts, in districts which the High Court does not visit, in such a manner as to enable them to deal with any class of criminal case which may arise in those districts.

We think, therefore, that there can and should be uniformity in the ordinary criminal jurisdiction of each class of subordinate court in each of our territories, but that the peculiar needs of Tanganyika and Uganda make extended powers necessary in some circumstances.

A distinction must be drawn between the criminal jurisdiction of the different classes of subordinate courts and that of the different grades of administrative officers. It is, of course, desirable that the judicial powers which an administrative officer is authorised to exercise should correspond to his capacity or experience, and his grade in the service may generally be taken as a rough index of those qualities. But we consider that the decisive factor in determining what jurisdiction should be exercised by a criminal court in a particular area must be the need of the area, and it should be the aim of the Government to find an officer of sufficient experience to sit in it. It would be highly inconvenient if the criminal jurisdiction which might be exercised in a given district varied with the individuality of the officer appointed to be in administrative charge of that district.

In Tanganyika, for example, in consequence of shortage and other circumstances affecting the administrative staff, it is not infrequently necessary to appoint an officer of lower standing than the first grade to be in at least temporary charge of a district. It would be highly inconvenient if in these circumstances the jurisdiction of a First Class Subordinate Court could not be exercised in that district.

While, therefore, we think that uniformity in the ordinary criminal jurisdiction of the different classes of subordinate courts should be prescribed, uniformity in the criminal jurisdiction of the different grades of administrative officers is, in the circumstances of these territories, not normally attainable.

In regard to the civil jurisdiction of subordinate courts there is the same necessity to accept the need of the area, rather than the individuality of the administrative officer, as the deciding factor. And, in this respect, the needs of the area vary so much, not only in our different territories, but also in different localities in the same territory, that we see no prospect of attaining substantial uniformity, even in the jurisdiction of courts, in this matter.

### XIII.—INTRODUCTION OF A SYSTEM FOR THE APPOINTMENT OF UNOFFICIAL RESIDENT MAGISTRATES THROUGHOUT THE SETTLED PARTS OF KENYA.

The Attorney General of Kenya, in bringing this matter before the Conference, explained that the Governor of Kenya had originally intended to ask the Conference to formulate a suitable scheme for the appointment of unofficial magistrates in the settled parts of that territory, but as a Commission presided over by Mr. Justice Feetham had recently been appointed to advise, *inter alia*, as to the establishment of some form of local government in the settled areas, His Excellency had come to the conclusion that this was a subject which could more fittingly be dealt with by that Commission than by this Conference. The Attorney General of Kenya stated, however, that he had been instructed by His Excellency to bring the matter before the Conference, in order to obtain the benefit of any views which the representatives of the other Dependencies might wish to offer.

We are informed by the Attorney General of Tanganyika that the Governor of that Dependency has under consideration the question of appointing Justices of the Peace to exercise powers similar to those already vested in Justices of the Peace under the Kenya Justices of the Peace Ordinance (Chapter 21 of the Revised Edition). It was not intended to confer on such Justices any power to try cases or to sit in Court in a judicial capacity.

We are informed by the Attorney General of Uganda that no provision exists in that territory for the appointment of unofficial magistrates, nor is any such provision in contemplation.

The Attorney Generals of Tanganyika and Uganda do not desire to express any views on the proposal to appoint unofficial magistrates in Kenya, and we, therefore, confine ourselves to expressing our agreement with the

view that the matter is one which should be referred to the Local Government Commission rather than to a conference of officers, the majority of whom have no acquaintance with the local conditions or needs of the settled areas of Kenya.

#### XIV.—ENACTMENT OF LOCAL ORDINANCES TO REPLACE APPLIED INDIAN ACTS.

In dealing with this matter we had before us the despatch of the Secretary of State to the Governor of Kenya, dated 28th September, 1920, in which the following passage appears :—

“ It would be of great advantage if the opportunity were taken to re-enact in an appropriate form those Indian enactments which are in force in Kenya. A beginning has already been made in this matter by the enactment of the Criminal Procedure Ordinance, but the Civil Procedure Ordinance has been in hand for many years, and I trust that its enactment may now be completed and that action may also be taken with regard to other applied Indian Acts.”

We are unanimous in accepting the principle that applied Acts should be replaced by local enactments. Some advance towards this end has been made in Kenya since the above despatch was written, as, for instance, by the enactment of the Companies' Ordinance, 1921, the Stamp Ordinance, 1923, the Civil Procedure Ordinance, 1924, the Bankruptcy Ordinance, 1925, and by the recent preparation of a Succession Bill. We are agreed that the work of substituting local enactments for applied Acts should be proceeded with as rapidly as possible in all the territories which we represent, and we feel sure that the successful completion of this work will be greatly facilitated by our agreement, already referred to, regarding the interchange of Bills.

#### XV.—RECIPROCAL CONDUCT OF APPEALS BEFORE THE COURT OF APPEAL FOR EASTERN AFRICA.

The following memorandum on this subject was placed before the Conference by the Attorney General of Uganda :—

“ I should like to ventilate the matter of reciprocal conduct of criminal appeals before the Court of Appeal for East Africa.

“ It is sometimes impracticable and sometimes apparently unnecessary for a Law Officer to appear when the Court sits outside his territory. But it is, in my view, always desirable to be represented to meet some unforeseen point which the Court may raise; the retention of a local advocate may be a needless expense, but the undertaking of the case by a local Law Officer might be arranged. One may anticipate objections from the local advocates, but I think the question could be discussed, in view of the distant places where the Court now sits and the growing number of appeals.”

In our opinion, it should be accepted as a general principle that appeals to the Court of Appeal for Eastern Africa to which the Crown is a party, and in regard to which personal representation is considered desirable, should be conducted by a representative of the Legal Department of the Dependency from which the appeal has been brought. We recognise, however, that it is sometimes, impracticable, or highly inconvenient, for a representative of a Legal Department to attend when the Court happens to sit in some other territory, and therefore, subject to the acceptance of the above principle, we are agreed that the Legal Departments of the territories which we represent should endeavour to assist one another in regard to the conduct of appeals.

In connection with this matter, the following extract from a telegram received from the Government of Nyasaland was communicated to us :—

“ Agree to participation in suggested arrangements for conduct of appeals before East African Court of Appeal.”

XVI.—THE DESIRABILITY OF INTRODUCING LEGISLATION GOVERNING THE ACTIVITIES OF INSURANCE COMPANIES.

As already mentioned in paragraph IV of this Report, this item was brought to the notice of the Conference by the Attorney General of Kenya, who placed before us a letter on the subject addressed to the Acting Colonial Secretary of Kenya by the Statistician attached to the Governors' Conference Secretariat. We were also informed that the Statistician had suggested the framing of legislation based on the Insurance Act, 1923, of the Union of South Africa.

Appendix P.

It appears to us that the question as to the desirability of introducing legislation designed to regulate the activities of insurance companies necessarily depends on conditions which exist or which may be anticipated in each territory, and we feel that at present we have no data on which we could frame a definite recommendation.

We suggest, therefore, that, as this question has been raised in Kenya, it should be considered in the first instance by the Government of that territory, and if it is decided to legislate that copies of the draft legislation should be forwarded to the Governments of the other Dependencies for their consideration.

XVII.—THE SUBJECT OF LEADING ARTICLES IN THE "EAST AFRICAN STANDARD" OF THE 24TH SEPTEMBER AND THE 4TH OCTOBER, 1926.

We have already given in paragraph IV of this Report the reasons why we thought it might be useful to comment upon the articles which we have mentioned in so far as they contain a criticism of the system of criminal procedure. That criticism can be conveniently placed under two separate heads, and in the following observations we have reproduced under each head those portions of the articles which deal with that particular aspect of the question :—

(1) CRIMINAL PROCEDURE IN NATIVE CASES.

From the "East African Standard" of the 24th September, 1926 :—

"We have had many examples in the past of the difficulty in applying Court procedure in cases where Africans are the accused persons. The Courts, particularly the lower Courts, are tied down to the complicated system which involves a law of evidence applicable mainly to cases in which the accused is a member of a race with a higher standard of intelligence than the native. But in dealing with the native something much simpler and more elastic is required. It is possible, we are convinced, to simplify Court procedure in native cases without sacrificing justice and the recent agitation on this point and on the dangers of indiscipline which follow Court decisions was not intended in any way to reflect upon the integrity of those who administer justice, but rather as a layman's criticism of the inflexible nature of the law which, in its operation, is not always parallel with ordinary common sense. It is difficult, as was found recently, to collect a record of such examples, especially after the cases have been through the Courts and a decision given months ago, but the feeling remains that there is something lacking in the manner in which the native is brought to the bar of a code of justice based on procedure with which he is not familiar. In the best interests of East Africa we would earnestly suggest to the Kenya Government that an examination of this aspect of the whole subject be included in the agenda when the new draft criminal procedure and penal legislation is under consideration. Examination by experts can do no harm at all, and if they are able to give an assurance that, in their considered opinion, the fears of the community are groundless, the public mind will be to some extent satisfied that the problem has



received attention. It is a difficulty hard for the layman to explain; it is more than anything else an undefined feeling that there is room for a simplification which will be in the best interests of the Africans, their relationships with the white community, and their respect for European justice. If the Court procedure is made easily understandable to the native accused who finds himself before a white judge, his respect for western justice must be enhanced. At present, in many cases, the complications of procedure in regard to evidence must leave his mind a blank until the full force of the sentence comes out of the lengthy proceedings to stun him—or elate him. It is a most important question, worthy of close study."

From the "East African Standard" of the 4th October, 1926:—

"We make no apology for reiterating, on the morning of this important meeting, expression of the hope that this Conference will find it to be within its powers to examine very fully the handicaps laid upon the administration of justice in native cases by the present complicated Criminal Procedure Ordinances. There can be no question of providing one type of justice for the European and another for the native, but recent experiences in this country, and the danger to order and good government which those experiences suggest, indicate the very great value of simplification of the procedure in native cases so that the accused person, and the laymen who watch those prosecutions with anxious interest, may be able to understand fully and sympathetically the steps which are taken to administer justice. We have not yet reached the stage in Kenya where we have found it possible to erect native courts where less serious cases are tried by members of the accused's own race, thoroughly conversant with his mentality, and that is an added reason why, under a system whereby the native is tried by a white magistrate, the whole procedure should be of the most simple and elastic character, especially in regard to the law of evidence. If it is not possible within the scope of one conference, to examine the difficult position completely, we may at least express the hope, on behalf of the people of Kenya and in the interests of good relationships between the races, that the legal experts will be able to express an opinion helpful to their various Governments and to the communities they serve. We have also in mind the fact that Sir Edward Grigg has promised to refer to this meeting for advice in any difficulties that lie in the way of the appointment of selected settlers as honorary magistrates; if the Conference is able to support his personal belief in the practicability of the proposal, that, in itself, is an added reason why the law in native cases, and the procedure at trials, should be of the most simple and elastic character."

It is not easy to gather from these articles exactly in what respects the present law of criminal procedure is thought to be unsuitable to native cases. Indeed, the writer of the articles states that the difficulty to which he refers is "a difficulty hard for the layman to explain; it is more than anything else an undefined feeling that there is room for a simplification. . . ."

We understand that this feeling has arisen as the result of certain recent cases in subordinate courts in Kenya, in which accused natives were acquitted after trials which, rightly or wrongly, gave to some of those who followed them the impression that the accused were guilty. We are not aware of any comment suggesting that the law of criminal procedure is liable to bring about the conviction of the innocent, either in native or in non-native cases.

If, in the instances to which we have referred, guilty persons escaped punishment, such a result would indeed be unfortunate, but we see no ground for the suggestion that, either in those instances or in other cases in which the accused are natives of Africa, the acquittal of the guilty may result from the unsuitability of the law of procedure or evidence to such cases. Nor,

we are convinced, does such a result occur more frequently in native cases than in non-native cases, in proportion to the numbers of each that come before the courts.

The simplification of procedure is an object at which every legislator constantly aims, but no one would seek to attain it at the risk of lessening its efficiency as an instrument for the ascertainment of truth. That is the danger which lurks beyond all attempts at simplification. Similarly, in regard to the quality of elasticity which the writer suggests is desirable in our law. Some elasticity is certainly necessary, and there is, as we shall presently mention, special provision for it in our law relating to native cases, both civil and criminal. But an elastic law can be stretched in one direction by one individual and in another direction by another, and that uncertainty follows which it is the great object of every law to avoid.

The special provision to which we have referred is contained in the Orders of the Crown in Council, establishing the Governments of our several territories, and runs as follows:—

“ In all cases, civil and criminal, to which natives are parties, every Court shall (a) be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or Ordinance or any Regulation or Rule made under any Order in Council or Ordinance; and shall (b) decide all such cases according to substantial justice without undue regard to technicalities of procedure, and without undue delay.”

It is obvious that this provision must be used with discretion and in such a manner as not to result in the dangers we have mentioned, but if it is rightly used there is, in our opinion, no such rigidity in our laws as to handicap any of our courts in the administration of justice in native cases.

The writer of the articles refers particularly to the lower courts as being tied down by our system. But it will be seen that the position of all courts is exactly the same, and if it were true that the decisions of the lower courts are less satisfactory than those of the higher, this result would be due to the fault of the courts or to the manner in which cases are presented to them, and not to the rules of procedure or evidence which all courts alike must apply.

It is very commonly suggested, as it is suggested in the articles to which we refer, that a law of procedure and evidence evolved by a highly civilised community for its own needs cannot be suitable for the conditions of an undeveloped people. The present law of procedure and evidence in criminal cases in our territories is, as is well known, an adaptation of the English law upon those subjects specially designed to be administered largely by lay magistrates and among non-European peoples. But, apart from that fact, we think that the long history of the evolution of that law can be regarded as having produced a system scientifically designed for the ascertainment of truth, not only in the state of civilisation in which the law has been evolved, but in any conditions whatever.

The writer of the articles very properly remarks that “ there can be no question of providing one type of justice for the European and another for the native,” and we cannot suppose him to suggest that the law of evidence should require less proof of guilt when the accused is a native than when he is a European. The degree of proof which is demanded in all cases is determined by the belief that the conviction of the innocent is a far graver danger to society than the escape of the guilty, and if the same degree of proof is to be required in native cases as in non-native cases, we see nothing in the present law of evidence that can impede the attainment of that end.

As the writer of the articles implies, the subject is a very large one, and, as we remarked at the outset, we have had some difficulty in deciding to what points we should address ourselves, but if, as is stated in the first of the

articles, it would be of value to record an assurance that, in our considered opinion, the fears of the community are groundless, we can give that assurance without hesitation, in so far as the form of the law is concerned.

(2) THE SELECTION OF ASSESSORS IN CRIMINAL CASES IN WHICH THE ACCUSED IS A NATIVE.

From the "East African Standard" of the 24th September, 1926 :—

"We also hope that the Conference will be able to record their views upon the system of selection of native assessors."

From the "East African Standard" of the 4th October, 1926 :—

"Finally, we hope the Conference will be able to give some attention to the system, almost as important in its mental processes and moral effect on a native community, under which assessors are selected in cases in which Africans are accused. That system, which employs the less capable type of native in prosecutions where native law and custom is not in question, and allows, as recently, for the citation of the same assessors for important cases within a few months, requires to be overhauled."

We have little material upon which to comment in regard to this subject. It is our opinion, as well as that of those whose experience has been made available to us, that the employment of native assessors in native cases can be of very great assistance to the court if those assessors are rightly selected and proper use is made of their knowledge during the trial.

The system of selection in each of our territories appears to leave the choice of assessors, from among those who are liable to serve, entirely to the court. Accordingly, if those results are produced to which the articles refer the fault does not lie with the system. We feel that it is not within our province to suggest principles upon which the choice should be made.

XVIII.—CONCLUDING OBSERVATIONS.

We have already stated in the earlier stages of this Report that the proceedings of the Conference extended over a period of six days, and that during that period we have dealt with every subject which had been referred to us. Although in the time at our disposal it has not been possible to deal with the various matters placed before us as exhaustively as we should have wished, nor has it been possible to submit with this Report draft legislation designed to give effect to our recommendations, we nevertheless desire to place on record our cordial appreciation of the value of our consultations, not only to each of us individually, but also, we hope, to the several Governments we serve. We feel particularly that our discussions will do much towards the achievement of uniformity of legislation, both upon those subjects dealt with at our Conference and also upon matters of common interest and concern to our respective Governments, which may arise in the future, and we strongly recommend that as such matters arise opportunity should be afforded to the legal representatives of the Dependencies concerned to meet together for the purpose of discussion.

We also desire to record our appreciation of the valuable services rendered to the Conference by Major Bown in his capacity as Secretary.

W. C. HUGGARD,  
*Attorney General, Kenya (Chairman).*

E. ST. J. JACKSON,  
*Attorney General, Tanganyika Territory.*

S. S. ABRAHAMS,  
*Attorney General, Uganda.*

Nairobi, 16th October, 1926.

**APPENDIX A.**

EXTRACT FROM EAST AFRICA COMMISSION REPORT.

**BANKRUPTCY LAW.**

In Uganda, the English bankruptcy law has been followed since 1906—“so far as circumstances permit.” The Government of Tanganyika followed Uganda in 1920, and applied the English bankruptcy law to the territory. The Kenya law is based on the Indian Provincial Insolvency Acts, while the Zanzibar Insolvency Decree of 1917 is based on the Indian Presidency-Towns Insolvency Act, 1909. The English Bankruptcy Act of 1914, with its voluminous and elaborate rules, has been found difficult to work in Tanganyika and a new draft Ordinance has been recently prepared which, like the Zanzibar Decree of 1917, is based on the Indian Presidency-Towns Insolvency Act, 1909. A new draft Bankruptcy Ordinance has also been prepared in Kenya, and, in view of the obvious desirability of securing uniformity, the Colonial Office suggested to the Governor of Kenya in July, 1924, that he should communicate with the Governors of the other East African Dependencies, with a view to arranging a conference. We recommend that such a conference, at least between the law officers of Kenya, Uganda, Tanganyika and Zanzibar, should be held as soon as possible.

When the conference is held, it should consider not only the adoption of a uniform bankruptcy law for all the Dependencies, but also whether an arrangement is possible under which the assets of a bankrupt, no matter where they may be situated in the Dependencies, may be made available wherever the insolvency takes place. If there is only one bankruptcy, the court officers in the various Dependencies should act as agents for the official receiver of the Dependency in which the petition is filed. If bankruptcy has occurred in two or more Dependencies, the official receiver might be either the trustee in the first of the bankruptcies, or, alternatively, the trustee appointed in the bankruptcy where the bulk of the assets are situated or where the bulk of the creditors reside.

**APPENDIX B.****BANKRUPTCY LAW.**

BANKRUPTCY DEPARTMENT,  
BOARD OF TRADE, GREAT GEORGE STREET,  
LONDON, S.W.1.

16th June, 1924.

SIR,

In reply to your letter of the 24th ultimo, forwarding copy of certain correspondence on the subject of the Bankruptcy Law of the British Dependencies in East Africa, I am directed by the Board of Trade to state, for the information of the Secretary of State, that as there appears to be a diversity of opinion as to the basis on which bankruptcy law in the various Dependencies should be founded, the Board concur in Mr. Thomas' proposal to suggest that the question should be discussed at a joint conference of representatives of the various Dependencies.

The correspondence forwarded with your letter indicates that the present system is unsatisfactory, and the Board would suggest, for the consideration of the Secretary of State, that the aim of the conference should be not only to establish an uniform bankruptcy law among the various dependencies, but also to reach an agreement under which the assets of a bankrupt, no matter where they may be situated in the dependencies, should vest in one person, by whom the claims of all creditors should be taken into consideration, thus ensuring a *pro rata* distribution of the proceeds of the assets among all the creditors of the bankrupt. If there is only one bankruptcy, this person might be the trustee appointed in that bankruptcy. If, however, bankruptcy has occurred in two or more Dependencies, the person might be either the trustee in the first of the bankruptcies, or, alternatively, the trustee appointed in the bankruptcy where the bulk of the assets are situated or where the bulk of the creditors reside. Difficulties may arise in attaining this end owing to the large area over which the Dependencies extend, but it is submitted that these difficulties might be overcome by the appointment in each Dependency of some person or persons who would act as agent in his Dependency for the trustee in another Dependency. This person should probably be an officer of the court administering bankruptcy law in his dependency, and his functions would be to realise the assets situated in his Dependency and to remit the proceeds to the trustee. He would also deal with the claims of creditors in his Dependency, and forward the proofs of such creditors when dealt with to the trustee.

The details of such a scheme would no doubt require careful consideration, but if the general idea commends itself to those concerned, the details could probably be settled by the suggested joint conference.

I have, etc.,

(Signed) H. F. CARLILE.

THE UNDER SECRETARY OF STATE,  
COLONIAL OFFICE, S.W.1.

## APPENDIX C.

### BANKRUPTCY LAW.

MEMORANDUM BY H.M. TRADE COMMISSIONER FOR EASTERN AFRICA.

The agitation for amended Bankruptcy Law in East Africa existed before I arrived here in 1919. Repeated resolutions upon the subject have been passed by the Chambers of Commerce, Law Societies, and other interested bodies.

Subject to correction, I believe the position at present is as follows :—

KENYA ... ..	An agreed law on English lines has been passed and recommended to the neighbouring territories for acceptance.
UGANDA ... ..	English law is adopted.
TANGANYIKA AND ZANZIBAR ...	The existing legislation follows largely the Indian Towns-Presidency Insolvency Act of 1909 upon the ground (alleged) that the English Act and regulations would be cumbersome to work in East Africa.

I believe again, subject to correction, that in a case of insolvency affecting all four territories, the position is, therefore, that if the main petition were filed in Kenya, the Court in Kenya would frame a request to the Uganda Court to safeguard assets to the creditors, or similar action, but that in the cases of Tanganyika and Zanzibar petitions would have to be filed.

The disadvantages of the present lack of uniformity are obvious, and, in reply to the allegation that the local practice of English law would be cumbersome, it can be pointed out that Uganda has English law, and that the new Kenya law follows very closely the English code.

The present position is a hindrance to the investment of new capital.

Further, the expected inception of a complete Customs Union—at least of the mainland territories—means that the head offices of East African businesses will inevitably be consolidated at some central stocking point, with branches in the principal distributing centres. The facility of this practice to trade and development needs no labelling.

The desire of merchants is that there should be in these four territories one clean-cut, simple and effective Bankruptcy Law, capable of expeditious application; and that in framing this law the following points should be borne in mind:—

- (a) That insolvency in these territories is not counted a disgrace, and that the successful avoidance of the penalties of insolvency is becoming a profession.
- (b) That the penalties for fraudulent insolvency should be as heavy as it is possible to make them, and that the onus of proof of honesty should lie on the insolvent.
- (c) That all cases of insolvency should be placed in the hands of the official receivers for winding up unless these officers recommend to the court that unofficial liquidators should be appointed to act as the agent and under the supervision and responsibility of the official receivers concerned.

If this method is not adhered to it will be found in practice that only poor estates will come into the hands of the official receivers for winding up, and that their offices will be a burden on local revenue, which they should not be if all estates—good, bad and indifferent—passed through their hands. Secondly, the placing of all estates in the hands of the official receivers will give the commercial community a definite and responsible source to whom inquiries can be made.

## APPENDIX D.

### MEMORANDUM ON BANKRUPTCY LAW.

SUBMITTED BY ASSOCIATION OF EAST AFRICAN CHAMBERS OF COMMERCE.

1. That an official receiver be appointed by Government as an officer of the court, whose business it shall be, immediately a petition in bankruptcy be filed, and without waiting for the application to be heard by the Court, to take charge of the premises and the books of the applicant, and make his report thereon.

(It is pointed out that the present practice is for the applicant to hand in a more or less stereotyped form of petition, with a more or less complete and accurate list of his liabilities and assets, after which there is a delay of possibly six weeks or two months, and it has in the past been even three months before the petition is heard or anything further done in the matter. This obviously lends itself to undue preference and other evils.)

2. That a bankrupt in any of the adjoining East African territories should automatically become bankrupt in all these territories.
3. That as a deterrent, the punishment for any breach of the insolvency laws or law, such as not giving the full particulars required, or otherwise not complying with its provisions, should be increased from the present limit of six months' simple imprisonment to three years' hard labour or rigorous imprisonment.
4. Also, as a deterrent, no man who goes insolvent should be permitted to leave the Colony or Protectorate until he shall have satisfied the full requirements of the court.
5. That penalties in every direction for anything approaching dishonesty should be made very stringent.
6. No discharge should be given unless at least fifteen shillings in the pound shall have been paid by the estate, or unless a certificate be obtained from the court that insolvency is due to *bonâ fide* misfortune or other unavoidable and legitimate cause.
7. That legislation be introduced at the earliest possible date making it compulsory for all traders and merchants to keep proper books of accounts in one of the three following languages : English, Gujerati and Urdu (Hindustani), provided that after two years English only be the language.
8. The Association lays particular stress on having uniformity throughout the adjoining territories in bankruptcy and other commercial laws.

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## APPENDIX E.

### TRADE MARKS.

#### EXTRACT FROM EAST AFRICA COMMISSION REPORT.

The Indian Inventions and Designs Act, 1888, was applied to Kenya in 1900, and to Zanzibar in 1901. In 1912 Kenya passed a Trade Marks Ordinance based on the Southern Nigerian Ordinance, No. 18 of 1910, and in 1913 passed a separate Patents and Designs Ordinance. Uganda dealt with both patents and trade marks in the Patents, Designs and Trade Marks Ordinance, 1912. In 1917 Zanzibar replaced the Indian Inventions and Designs Act by the Patents, Designs and Trade Marks Decree, No. 16 of 1917. In 1921 Tanganyika passed a Trade Marks Ordinance following closely the Imperial Trade Marks Act of 1905, and incorporating substantially the amendments made by the Imperial Trade Marks Act of 1919. The question of patent legislation for Tanganyika is now under consideration.

This brief survey shows how divergent the present legislation is, and it is clear that by a concerted effort greater uniformity could be attained. In the first place, trade marks should be dealt with in all the Dependencies in separate legislation from patents. The most up-to-date trade marks ordinance now in force is undoubtedly that in Tanganyika, and we suggest that it should be taken as a basis, and that, when the Law Officers meet for the conference on Bankruptcy Legislation, they should endeavour to agree on a uniform Trade Marks Ordinance. If any important differences of opinion should emerge at the Conference, they should be referred to the Secretary of State, who has received in the past valuable assistance from the Board of Trade on questions of Colonial trade marks legislation.

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**APPENDIX F.****TRADE MARKS.**

*Extract from East Africa Report, dated 8th June, 1925.*

In any legislation applicable to East Africa it would undoubtedly be advisable to have a provision for the simple registration of trade marks already registered in the United Kingdom. Such provision, which already exists in Uganda and Zanzibar, might be framed generally on the lines of the scheme for registering United Kingdom patents, with a special saving of common law rights as to "get-up" etc., on the lines of section 45 of the United Kingdom Acts. This, in many cases, would be really sufficient, but it would seem advisable to provide also the power to receive other applications and to register the marks proposed, provided they do not conflict with any other mark on the Register or with any other rights already acquired.

As regards Tanganyika, there is no special provision at present for the registering of marks registered in the United Kingdom, and persons who have registered in the United Kingdom can only obtain the date of that registration if application is made in Tanganyika within four months of the United Kingdom registration. Preferably, this provision should be omitted altogether, if, as suggested above, provision is made for the simple registration of United Kingdom registered marks.

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APPENDICES G AND H, WHICH REFER TO THE REGISTRATION OF  
TRADE MARKS, CONTAIN CONFIDENTIAL CORRESPONDENCE WHICH  
IS NOT AVAILABLE FOR PUBLICATION.

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**APPENDIX I.**
**STAMP DUTIES AND REGISTRATION FEES.**

EXTRACT FROM EAST AFRICA COMMISSION REPORT.

There are other aspects of commercial legislation in which greater uniformity may be attainable. Thus, the Indian Stamp Act, of 1889, was applied to Kenya in 1899, to Uganda in 1903, and to Tanganyika in 1920, but in 1915 Uganda passed a Stamp Ordinance and repealed the 1903 Ordinance which applied the Indian Act; and in 1923 Kenya passed an Ordinance of its own.

No doubt a stamp ordinance, specially adapted to East African requirements, would be more suitable in each territory than the Indian Stamp Act, but, as revenue considerations enter into the rates of stamp duties, it may not be easy to fix uniform rates. Still, the matter is also one which could, with advantage, be considered by the law officers when they meet in conference.

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**APPENDIX J.**
**CORRESPONDENCE BETWEEN SECRETARY OF STATE AND  
GOVERNOR OF TANGANYIKA ON THE SUBJECT OF STAMP  
DUTIES AND REGISTRATION FEES.**

TANGANYIKA TERRITORY.

No. 108.

DOWNING STREET,  
19th February, 1926.

SIR,

I have the honour to inform you that representations have been made to me by the Joint East African Board that the present Stamp Duties and Registration Fees for the title to and transfer of property in Tanganyika Territory are excessive and will weigh heavily against the development of properties over the next two or three years, during which period the payment of the properties sold to planters by the Custodian of Enemy Property mature. The Board desire the duty to be restored to one per cent. and the other charges investigated with a view to reduction.

The stamp duty on conveyances in Tanganyika is, following the rate in Kenya and Uganda, substantially two per cent. It is not advisable that the present uniformity should be departed from; and the question whether any reduction in the duty would be of advantage is, therefore, one of discussion between the three Governments. I shall be glad if you will communicate with the Governors of the neighbouring Dependencies, with a view to a joint recommendation on the subject before final consideration is given to the next Estimates.

Registration fees are on a somewhat different footing, as they are imposed rather as a payment for services than as a means of supplementing general revenue. The rates vary widely in East African territories, and do not appear to be calculated on any settled principle. I note, however, that they are highest in the Tanganyika Territory. There would undoubtedly be convenience in a greater degree of uniformity, and the subject might properly be referred to the proposed Joint Conference to discuss Trade Marks and Stamp Legislation in East African Dependencies.

I am sending copies of this despatch to the Governors of Kenya, Uganda, Zanzibar and Nyasaland.

I have the honour to be,

Sir,

Your most obedient, humble servant,

(Signed) L. S. AMERY.

GOVERNOR, SIR D. CAMERON, K.B.E., C.M.G., &c., &c., &c.

No. 404.

GOVERNMENT HOUSE,  
DAR-ES-SALAAM.

31st May, 1926.

SIR,

I have the honour to acknowledge the receipt of your despatch No. 108 of the 19th February with reference to certain representations made to you by the Joint East African Board with regard to the Stamp Duty and Registration Fees payable in this territory for title to and transfer of landed property.

2. I have had correspondence with a member of the Board, and find that there is misconception in regard to the registration fees which should be cleared away. It was thought that a purchaser was bound to pay the fee of one per cent. for investigation and assurance of title under the Land Registry Ordinance, 1923. This is not the case; the only registration fee that he is bound to pay is a negligible fee of Shs. 10 for registration of the document under the Registration of Documents Ordinance, 1923. Inasmuch as holders from the Custodian of Enemy Property have indefensible titles (section 3 (3) of the Enemy Property (Disposal) Proclamation, 1920), there is no reason to suppose that they will go to the expense of obtaining assurance of title under the Land Registry Ordinance.

3. Registration under the Land Registry Ordinance is compulsory only in the case of Crown grants issued since the Ordinance came into force, and a fee of one quarter of one per cent. is then charged (registration under the Registration of Documents Ordinance being in such case unnecessary). Kenya charges no fee in these cases, having no assurance "fund", and I should have no objection to a nominal fee of ten shillings being charged here instead of one quarter of one per cent., but in such cases the present fee of twenty shillings for registration of a transfer or change of ownership should be increased as a certain amount of investigation will be entailed. The present charge of one quarter of one per cent. has been regarded as covering all investigations throughout the life of the title. There is no reason why this should be at the expense of the first holder.

4. So far as registration for assurance of title is optional, that is, in all cases other than those dealt with in the preceding paragraph, one person only has so far taken advantage of the provisions of the Ordinance, and in his case, indeed, it was scarcely optional as he was exchanging a German leasehold title, with the right to freehold under certain conditions, for a British grant of freehold which automatically came under the Land Registry Ordinance for the reasons given in the first three lines of paragraph 3 above.

There is no optional assurance of title in Kenya, I am informed, and no comparison of fees arises therefore.

5. It will be seen from the foregoing that present holders of title can have no real grounds for complaining against the fees charged in this Territory for registering titles and conveyances on transfer, and I would ask that an opportunity should be taken to explain the true position to the Joint Board.

6. I am opposed to the reduction in the Stamp Duty from two to one per cent. in this Territory, in which land pays no other form of taxation. Purchasers from the Custodian of Enemy Property have little to complain of in this respect as they purchased the properties at very low prices.

7. I am sending a copy of this despatch to Kenya, Uganda, Nyasaland and Zanzibar. A copy of the correspondence will be sent to the Conference Secretariat, in order that the necessary material may be collected for submission of the question of uniformity in fees to the Conference indicated in your despatch.

I have, etc.,

(Signed) DONALD CAMERON.

*Governor.*

RIGHT HONOURABLE L. C. M. S. AMERY, P.C., M.P., &c.

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APPENDICES K, L, M AND N HAVE REFERENCE TO  
SECTIONS VI AND VII OF THE REPORT WHICH HAVE  
NOT BEEN PUBLISHED.

Comparative Table showing Powers of Judicial Officers in Eastern Africa.

KENYA.	UGANDA.	TANGANYIKA.	ZANZIBAR.	NYASALAND.	NORTHERN RHODESIA.
<p>FIRST CLASS MAGISTRATES (SENIOR COMMISSIONERS AND RESIDENT MAGISTRATES).</p> <p><i>Jurisdiction.</i>—Province to which appointed.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>(i) Imprisonment for a term not exceeding two years including such solitary confinement as is authorised by law;</p> <p>(ii) Fine not exceeding £300;</p> <p>(iii) Whipping.</p> <p><i>Accused Native.</i></p> <p>May try for any offence under I.P.C. or any other law other than offences under Chapter VI (Offences against the State), murder, culpable homicide not amounting to murder and attempt and abetment of such offences and may pass any sentence authorised by I.P.C. or any other law as aforesaid.</p>	<p>DISTRICT COURTS AND ADDITIONAL DISTRICT COURTS OF THE FIRST CLASS.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>(i) Ditto Kenya;</p> <p>(ii) Fine not exceeding £50;</p> <p>(iii) Whipping.</p> <p><i>Accused Native.</i></p> <p>Has full criminal jurisdiction and may pass any sentence authorised by law, provided that the High Court may by general or special order direct that any such case or class of such cases in any district be committed for trial before itself or a Court of Session.</p>	<p>A COURT OF THE FIRST CLASS.</p> <p>POWERS:</p> <p>Imprisonment for a term not exceeding two years.</p> <p>Fine not exceeding £150.</p> <p>Whipping.</p> <p>Powers of Magistrates of F. under Indian Code of Criminal Procedure and may be invested additional powers described in Schedule to that Code.</p> <p>No distinction between and native cases.</p>	<p>SUBORDINATE COURTS OF THE FIRST CLASS.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>(i) Ditto Kenya;</p> <p>(ii) Fine not exceeding Rs. 3,000.</p> <p>(iii) Ditto Kenya.</p> <p><i>Accused Native.</i></p> <p>Ditto Kenya.</p>	<p>DISTRICT COURTS.</p> <p><i>Accused European or Asiatic.</i></p> <p>May pass any sentence authorised by the law for the time being in force in and for England, or any Order-in-Council or by any Ordinance made thereunder except a sentence of death or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding six months, or any fine exceeding £20 shall be subject to confirmation by the High Court.</p> <p><i>Accused Native.</i></p> <p>May pass any sentence authorised by the law for the time being in force in England or by any Ordinance, but any sentence of imprisonment for a longer term than six months or of fine exceeding £5 or of whipping exceeding 12 lashes or any sentence in which more than two of the aforesaid forms of punishment are ordered, shall be subject to confirmation by the High Court.</p> <p>District Court is an Appeal Court for Sub-District Court.</p>	<p>(A) COURT OF THE MAGISTRATE;</p> <p>(B) COURT OF THE NATIVE COMMISSIONER;</p> <p>(C) JUSTICES OF THE PEACE.</p> <p>(A) A Magistrate is also a Native Commissioner and he sits as such in a Native Commissioner's Court.</p> <p>A Magistrate's Court has full jurisdiction to hear and determine in a summary manner every offence committed within the local limits of the district.</p> <p>The powers of punishment by a Magistrate's Court are limited to a fine of £25 and/or imprisonment not exceeding twelve months, with or without hard labour and with or without a whipping or caning not exceeding 12 strokes (subject to confirmation by the High Court not exceeding 24 strokes). A Magistrate may inflict any other or greater punishment when specially authorised by law so to do.</p> <p>No female may be whipped or put to hard labour in any street or public place.</p>
<p>SUBORDINATE COURTS OF THE SECOND CLASS (DISTRICT COMMISSIONERS).</p> <p><i>Jurisdiction.</i>—District to which appointed.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>(i) Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law;</p> <p>(ii) Fine not exceeding £75;</p> <p>(iii) Whipping (if specially empowered).</p> <p><i>Accused Native.</i></p> <p>The same powers as in 1st class Magistrate.</p>	<p>ADDITIONAL DISTRICT COURTS OF THE SECOND CLASS.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>(i) Ditto Kenya.</p> <p>(ii) Fine not exceeding £20.</p> <p>(iii) Whipping.</p> <p><i>Accused Native.</i></p> <p>May try for any offence under the I.P.C. or any other law other than offences against State, murder, culpable homicide not amounting to murder and attempt and abetment of such offences. Provided that the High Court may by general or special order direct that any such case or class of such cases in any district be committed for trial before itself or a Court of Session or be tried before a District Court or an Additional District Court of the 1st Class.</p>	<p>A COURT OF THE SECOND CLASS.</p> <p>POWERS:</p> <p>Imprisonment for a term not exceeding twelve months.</p> <p>Fine not exceeding £75.</p> <p>Whipping not exceeding 12 lashes.</p> <p>Powers of Magistrates of 2nd Class under Indian Code of Criminal Procedure and may be invested additional powers described in Schedule to that Code.</p> <p>No distinction between E and native cases.</p>	<p>SUBORDINATE COURTS OF THE SECOND CLASS.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>(i) Ditto Kenya.</p> <p>(ii) Fine not exceeding Rs. 750.</p> <p>(iii) Ditto Kenya.</p> <p><i>Accused Native.</i></p> <p>The same powers as in 1st class Magistrate.</p>	<p>ASSISTANT RESIDENTS AND OTHERS PRESIDING IN SUB-DISTRICT COURTS.</p> <p>POWERS:</p> <p><i>Accused European or Asiatic.</i></p> <p>Sentence of imprisonment for a term not exceeding one month or of fine not exceeding £5 or both.</p> <p><i>Accused Native.</i></p> <p>May pass a sentence of imprisonment not exceeding six months or of fine not exceeding £1 or of whipping not exceeding 12 strokes or of flogging not exceeding 12 lashes, but any sentence of imprisonment exceeding one month or any sentence in which more than two of the aforesaid forms of punishment are ordered, shall be subject to confirmation by the District Native Court.</p>	<p>(B) A Native Commissioner's Court has similar jurisdiction in respect of natives only but the powers of punishment are limited as follows:—A Native Commissioner may pass a sentence of a fine not exceeding £5 and/or imprisonment not exceeding six months with or without hard labour and/or whipping or caning not exceeding 10 strokes; an Assistant Native Commissioner is similarly limited to a fine of £2 and/or imprisonment for three months and/or whipping or caning of 5 strokes.</p> <p>A return of all cases tried in a Native Commissioner's Court is made monthly to the Magistrate of the district who may, on review, increase or vary any sentence correct any error or quash any conviction. The High Court may similarly call for the record of any case and review the same.</p> <p>When a Native Commissioner trying a case considers that the punishment merited is beyond his powers, he forwards the case to the Magistrate of the district, with his recommendation as to sentence. The Magistrate then fixes the sentence (within his jurisdiction). Similarly a Magistrate forwards cases to the High Court with a recommendation as to the appropriate sentence, when the same exceeds his powers.</p> <p>An appeal lies from a Native Commissioner's Court to a Magistrate's Court and from the latter to the High Court. There is no criminal appeal from the High Court.</p>
<p>SUBORDINATE COURTS OF THE THIRD CLASS (A.D.C.'s).</p> <p><i>Jurisdiction.</i>—District to which appointed.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>May pass sentence of imprisonment for a term not exceeding one month and fine not exceeding £15.</p> <p>No jurisdiction to try Europeans but may take cognisance and issue process made returnable before a Magistrate having jurisdiction to try the case.</p> <p><i>Accused Native.</i></p> <p>The same powers as are in 1st and 2nd Class Magistrates to try the case but not to sentence to imprisonment for a term exceeding six months or a fine exceeding £20 or both.</p>	<p>ADDITIONAL DISTRICT COURTS OF THIRD CLASS.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>May pass sentence of imprisonment for a term not exceeding one month or fine not exceeding £5.</p> <p><i>Accused Native.</i></p> <p>Same powers as are in Additional District Court of the 2nd Class to try the case but not to sentence to imprisonment for a term exceeding three months or a fine exceeding £15 or both.</p>	<p>A COURT OF THE THIRD CLASS.</p> <p>POWERS:</p> <p>Imprisonment for a term not exceeding six months.</p> <p>Fine not exceeding £25.</p> <p>Whipping not exceeding 8 strokes unless the High Court shall otherwise direct. But any sentence of imprisonment for more than one month or fine exceeding £5 shall be subject to confirmation by the District Police Officer.</p> <p>Powers of Magistrates of 3rd Class under Indian Code of Criminal Procedure and may be invested additional powers described in Schedule to that Code.</p> <p>No distinction between and native cases.</p>	<p>SUBORDINATE COURTS OF THE THIRD CLASS.</p> <p>POWERS:</p> <p><i>Accused Non-Native.</i></p> <p>May pass sentence of imprisonment for a term not exceeding one month or a fine not exceeding Rs. 150.</p> <p>No jurisdiction to try Europeans but may take cognisance and issue process made returnable before a Magistrate having jurisdiction to try the case.</p> <p><i>Accused Native.</i></p> <p>Same powers as are in 2nd Class Subordinate Court to try the case but may pass a sentence of imprisonment for a term not exceeding six months or a fine not exceeding Rs. 200.</p>	<p>(C) Justices of the Peace may conduct Inquests and Preliminary Enquiries and may commit an offender to prison pending trial.</p> <p>Trial is without jury but the Magistrate may summon assessors and always does so in murder cases.</p>	

## Officers in Eastern Africa.

ZANZIBAR.	NYASALAND.	NORTHERN RHODESIA.
<p>INATE COURTS OF FIRST CLASS.</p> <p>POWERS :</p> <p><i>used Non-Native.</i></p> <p>Kenya ; not exceeding Rs. 3,000.</p> <p>Kenya.</p> <p><i>ccused Native.</i></p> <p>ya.</p>	<p>DISTRICT COURTS.</p> <p><i>Accused European or Asiatic.</i></p> <p>May pass any sentence authorised by the law for the time being in force in and for England, or any Order-in-Council or by any Ordinance made thereunder except a sentence of death or of imprisonment for a term exceeding seven years ; but any sentence of imprisonment for a term exceeding six months, or any fine exceeding £20 shall be subject to confirmation by the High Court.</p> <p><i>Accused Native.</i></p> <p>May pass any sentence authorised by the law for the time being in force in England or by any Ordinance, but any sentence of imprisonment for a longer term than six months or of fine exceeding £5 or of whipping exceeding 12 lashes or any sentence in which more than two of the aforesaid forms of punishment are ordered, shall be subject to confirmation by the High Court.</p> <p>District Court is an Appeal Court for Sub-District Court.</p>	<p>(A) COURT OF THE MAGISTRATE ;</p> <p>(B) COURT OF THE NATIVE COMMISSIONER ;</p> <p>(C) JUSTICES OF THE PEACE.</p> <p>(A) A Magistrate is also a Native Commissioner and he sits as such in a Native Commissioner's Court.</p> <p>A Magistrate's Court has full jurisdiction to hear and determine in a summary manner every offence committed within the local limits of the district.</p> <p>The powers of punishment by a Magistrate's Court are limited to a fine of £25 and/or imprisonment not exceeding twelve months, with or without hard labour and with or without a whipping or caning not exceeding 12 strokes (subject to confirmation by the High Court not exceeding 24 strokes). A Magistrate may inflict any other or greater punishment when specially authorised by law so to do.</p> <p>No female may be whipped or put to hard labour in any street or public place.</p>
<p>INATE COURTS OF SECOND CLASS.</p> <p>POWERS :</p> <p><i>used Non-Native.</i></p> <p>Kenya.</p> <p>not exceeding Rs. 750.</p> <p>Kenya.</p> <p><i>ccused Native.</i></p> <p>powers as in 1st class</p>	<p>ASSISTANT RESIDENTS AND OTHERS PRESIDING IN SUB-DISTRICT COURTS.</p> <p>POWERS :</p> <p><i>Accused European or Asiatic.</i></p> <p>Sentence of imprisonment for a term not exceeding one month or of fine not exceeding £5 or both.</p> <p><i>Accused Native.</i></p> <p>May pass a sentence of imprisonment not exceeding six months or of fine not exceeding £1 or of whipping not exceeding 12 strokes or of flogging not exceeding 12 lashes, but any sentence of imprisonment exceeding one month or any sentence in which more than two of the aforesaid forms of punishment are ordered, shall be subject to confirmation by the District Native Court.</p>	<p>(B) A Native Commissioner's Court has similar jurisdiction in respect of natives only but the powers of punishment are limited as follows :—A Native Commissioner may pass a sentence of a fine not exceeding £5 and/or imprisonment not exceeding six months with or without hard labour and/or whipping or caning not exceeding 10 strokes ; an Assistant Native Commissioner is similarly limited to a fine of £2 and/or imprisonment for three months and/or whipping or caning of 5 strokes.</p> <p>A return of all cases tried in a Native Commissioner's Court is made monthly to the Magistrate of the district who may, on review, increase or vary any sentence correct any error or quash any conviction. The High Court may similarly call for the record of any case and review the same.</p> <p>When a Native Commissioner trying a case considers that the punishment merited is beyond his powers, he forwards the case to the Magistrate of the district, with his recommendation as to sentence. The Magistrate then fixes the sentence (within his jurisdiction). Similarly a Magistrate forwards cases to the High Court with a recommendation as to the appropriate sentence, when the same exceeds his powers.</p> <p>An appeal lies from a Native Commissioner's Court to a Magistrate's Court and from the latter to the High Court. There is no criminal appeal from the High Court.</p>
<p>INATE COURTS OF THIRD CLASS.</p> <p>POWERS :</p> <p><i>used Non-Native.</i></p> <p>sentence of imprisonment not exceeding one month exceeding Rs. 150.</p> <p>tion to try Europeans but misance and issue process able before a Magistrate iction to try the case.</p> <p><i>ccused Native.</i></p> <p>ers as are in 2nd Class Court to try the case but a sentence of imprisonment not exceeding six fine not exceeding Rs. 200</p>		<p>(C) Justices of the Peace may conduct Inquests and Preliminary Enquiries and may commit an offender to prison pending trial.</p> <p>Trial is without jury but the</p>

## APPENDIX P.

LETTER FROM STATISTICIAN ATTACHED TO GOVERNORS'  
CONFERENCE SECRETARIAT TO COLONIAL SECRETARY OF  
KENYA.

Ref. No. D.K. 26.

STATISTICAL DEPARTMENT,  
CONFERENCE OF EAST AFRICAN GOVERNORS,  
NAIROBI.  
27th August, 1926.THE HON'BLE ACTING COLONIAL SECRETARY,  
NAIROBI.

SIR,

From inquiries which have been made at this office for population returns on the part of certain insurance companies, I understand that some of the industrial insurance societies contemplate opening a branch or branches in East Africa.

2. I have had occasion to consider the detailed working of industrial insurance amongst the native races in Mauritius, and, in view of the methods adopted there, I consider that unless such undertakings are closely controlled by Government and work under serious guarantees, they are, from their nature, liable to abuse, while if properly controlled they may become a source of considerable benefit to the industrial classes.

3. It would be most unfortunate if insurance canvassers should be allowed to arouse any suspicion amongst the non-Europeans of the Colony, whether Indian, Goanese or natives, while the Government is endeavouring to secure accurate statistical returns from them.

4. I do not find that any legislation exists dealing with insurance companies. It might be advisable to submit the question of the advisability of legislation for life insurance, in all its phases, to the Hon. Attorney General.

(Signed) A. WALTER,  
*Government Statistician.*

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APPENDIX I.

After heading and before letter No. J.C. 1178/13-19 of the  
23rd June, 1925, insert following:-

No. J.C. 292/13-19.

LAW COURTS,

NAIROBI.

12th February, 1926.

His Excellency the Governor,  
NAIROBI.

S i r,

With reference to the draft Penal Code sent under cover of the Secretary of State's No. 1217 of the 2nd December last, I have the honour to state in my opinion that it is not desirable as a member of the Court which will have to deal with the innumerable questions which will arise out of the draft, if it become law, that I should in advance discuss its provisions which must be the subject of judicial interpretation. In my view the draft Ordinance is inferior to the Indian Penal Code as a body of law which has to be construed very largely by laymen. If I may I should like to quote Your Excellency's opinion on the Indian Penal Code expressed in Your Excellency's book "The Greatest Experiment in History" at page 143: "Macaulay establishes the Indian Penal Code which is, I think, universally recognised as one of the world's best bodies of law. I should like respectfully to associate myself with that opinion. I should also like to refer to Halsbury's Laws of England, Volume X, page 616, note E. "Like other Indian Codes the Penal Code has for its basis the Law of England stripped of technicalities shortened and simplified but modified in some few particulars to suit the local circumstances". There is no reason why the Indian Penal Code should not be adopted to the local circumstances of Kenya.

The effect of nearly 24 years experience of the Indian Penal Code has been yearly to increase my admiration for the simplicity and completeness of its definitions and provisions. It is a body of law which either designedly or not has been framed for administration by laymen and with which magistrates in Kenya are familiar. It also has been the subject of judicial interpretation for many years. It is now sought to replace it by something new. The result will be to create confusion and uncertainty in the minds of those lay magistrates who have to administer the new Code with a consequential adverse effect on administration of criminal justice.

I cannot conjecture the reason underlying the attempt to impose a new Criminal Code on the East African Dependencies. The Indian Penal Code is in force in Kenya, Uganda, Tanganyika and Zanzibar either as an applied Act or in the shape of an Ordinance based on its provisions. It would seem far more

reasonable to apply its provisions to Nyasaland if an attempt to satisfy a passion for uniformity which will be most difficult to achieve is to be made, than to upset the administration of justice in those Colonies where the Indian Penal Code forms the basis of the Criminal Law.

I should like to refer to my No. J.C. 1178/13-19 of the 23rd June last addressed to the Acting Governor, a copy of which I attach for ready reference. I may add that the Indian Penal Code and the Criminal Procedure Code on which our Criminal Procedure Ordinance is based are the two Indian Codes which, to the best of my knowledge and belief, have been free from any serious adverse criticism. A certain amount of unformed criticism has been from time to time directed in Kenya to the Indian Penal Code on the ground that it is the "Indian" Penal Code, a local adaptation would evade that criticism. The only other criticisms I have heard are: (1) that it is so complete that it enmeshes most wrongdoers; and (2) that adultery is an offence!

I enclose a copy of memorandum which Mr. Justice Pickers has made on the draft Bill. It is not by any means exhaustive but it shows some of the difficulties that await us if the draft become law. I should like especially to refer to the illogics and archaic division of offences into felonies and misdemeanour for which I can see no reason unless, as Mr. Justice Pickering suggests, the classification will affect the procedure to be prescribed by the model Criminal Procedure Ordinance which has not yet been received.

As I am President of the Court of Appeal for Eastern Africa might I suggest that Your Excellency send a copy of this letter and of enclosures to the Governments of Uganda, Tanganyika, Nyasaland and Zanzibar.

In conclusion I would urge that the Kenya Penal Code should be based on the Indian Penal Code with those alterations and additions which experience has shown should be made to adapt it to local conditions and consolidating with it special legislation such as that in force in Kenya dealing with sexual offences.

I have the honour to be,

S i r,

Your obedient Servant,

(Signed) J.W. BARTH.

CHIEF JUSTICE.