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2000

712

KENYA.
No. 691



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
5-JAN 1932
GOV. OFFICE

12 DECEMBER, 1931.

Sir,

No 5

I have the honour to refer to Lord Passfield's despatch No. 373 of 4th June 1931 on the subject of this Government's agreement with the Kenya Angling Association and to inform you that at a Meeting of the Central Lands Trust Board held on the 2nd November 1931, I, with the advice and consent of the Board, ratified the agreement, a copy of which was enclosed with Sir Edward Grigg's despatch No. 305 of 12th May 1930.

No 1

No 4

2. Lord Passfield in his despatch No. 17 of the 6th January 1931, asked me to state the specific points raised by the Chief Native Commissioner (Mr. Maxwell) and to indicate how far these were met.

3. The specific conditions to which Mr. Maxwell took exception were:-

(a) "The right to take fuel for private use of the Association on payment therefor".

Maxwell (8)

It is possible that this clause is unhappily worded, but, however that may be, the intention of it is not to confer a right (which no agreement could possibly do) to take by force fuel which is the property of others, but to make it perfectly clear that all fuel must be paid for. This is the natural interpretation and is the one that is adopted in practice. The clause has caused no friction and is not likely to do so.

(b) ...

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CURLIFFE-ELSTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWING STREET,
LONDON, S. W. 1.

(b) "Not to divert streams without the consent of the Governor and in any case not to divert without returning to the river"

together with the

"Right to make and construct weirs and other works incidental to pisciculture".

Mr. Maxwell held that no such rights should be conferred "except by a proper permit obtained from the Director of Public Works in the usual manner."

I cannot believe that the exercise of such rights (with the safeguards imposed) to effect minor improvements in the possibilities of the streams in the interests of fishermen can affect adversely the interests of the local natives and I have not considered that there is any good reason for amending the agreement in this respect.

(c) the right to erect huts in a native reserve.

Mr. Maxwell expressed the opinion that "Where it is desired to put up buildings of any kind there must be a specific arrangement for a lease or temporary occupation license of the area on which the buildings are to stand".

You will note, however, that the right is limited to the building of "temporary fishing huts". The type of hut contemplated is no more than a wattle and daub shelter and the erection of any permanent building would be an infringement of the agreement. In my opinion the right to erect a temporary shelter may reasonably be held to be appurtenant to the right of piscary and is unlikely to cause any hardship whatever to the local natives and I have not therefore considered it necessary to delete this right.

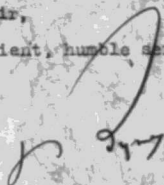
4. In practice the relations between fishermen and ...

the local natives are generally very friendly. The latter appreciate the opportunities of selling to the farmer such produce as chickens, eggs, milk and fuel and of earning quite considerable fees as shillies. A fisherman usually meets with a very cordial welcome when he arrives at the water.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL.

G O V E R N O R.

C. O.

16186/1930 Kenya

415

Mr. Eastwood 11

Mr. Allan 10

Mr. Parkington 20.1.31

~~Mr. ...~~

X Sir C. Balfour 20.1.

Sir J. Shackburgh.

Sir G. Grindle.

+ Perm. U.S. of S. 8/6/31

Parly. U.S. of S.

X Secretary of State. 7/1

Downing Street,

8. January, 1931.

C. O.
R 8-JAN
D E 6

Sir, 8/4

DRAFT. for conson.

KENYA

No. 17

OAG

3

1

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2

I have, etc., to ack. the receipt of your despatch No. 742 of the 24th November, in which you reported a correction in the facts stated in Sir Edward Grigg's despatch No. 305 of the 12th May, regarding agreement with the Kenya Angling Association. I appreciate that when the Governor's despatch was written, there was a genuine misunderstanding; ^{but} ~~and~~ in view of the terms of my despatch No. 931 of the 24th November, I do not propose to comment ~~any further~~ ^{but} I would, however, ⁽²⁾ ~~add that~~ I should be glad if, in replying to ^{my} ~~that~~ despatch, you would state the specific points raised by the Chief Native Commissioner to which

which you refer in paragraph 3
of your despatch, and would indicate
how far these were met and, where they
were not met, the reasons for not
meeting them.

I have, &c.

(Signed) PASSFIELD.

163

KENYA.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

No. 742

RECEIVED
22 DEC 1930
COL. OFFICE

24
27th November, 1930.

My Lord,

No. 1

I have the honour to refer to Sir Edward Grigg's despatch No. 305 of the 12th of May, 1930, in which he reported the circumstances in which approval had been given to an agreement with the Kenya Angling Association which was executed on the 2nd February, 1928.

Amud-17-8 JAN 1931

2. Prior to the execution of this agreement the question was considered at a meeting of Senior Commissioners, and the Acting Chief Native Commissioner, as long ago as January, 1926, recommended the action proposed. On February 20th, 1926, an officer of the Native Affairs Department, writing to the Colonial Secretary on behalf of Mr. Maxwell, stated that he was "instructed by the Chief Native Commissioner to inform you that he has no objection to fishing rights on the terms mentioned being granted to the above Association in the Native Reserves". Relying upon this letter the statement was made in the despatch under reference that the agreement was entered into with the approval.....

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S. W. 1.

approval of the Chief Native Commissioner.

3. Mr. Maxwell has, however, drawn attention to the fact that two months later, in April 1926, he wrote a letter to the Attorney General in which he suggested that the draft agreement should be forwarded to the Senior Commissioner of the Province in the first instance for consultation with the Local Native Council, and raised certain specific points for consideration. His contention is that this letter completely cancelled the letter of the 20th February to which I have already referred. He therefore takes exception to the fact that he has been quoted as approving an arrangement to which he was opposed, and desires that the position should be explained to Your Lordship.

4. Mr. Maxwell has definitely stated in writing that "subject to native consent I should have no objection in principle to such a licence", but he does not wish to be quoted as party to an arrangement which should strictly have received Your Lordship's prior consent after the agreement of the natives had been first formally obtained. I therefore caused inquiries to be made on this latter point, and I have ascertained that it is unfortunately the case that formal native consent was not first given. While I much regret that this very necessary step was not taken at the time, I am glad to be able to inform Your Lordship that the Provincial Commissioner of the Kikuyu Province.....

approval of the Chief Native Commissioner.

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Province.....

Province reiterates the statement already made in paragraph 2 of Sir Edward Grigg's despatch that this arrangement and the exercise of fishing rights by members of the Association is causing no friction whatever. In these circumstances I trust that Your Lordship's formal approval of the agreement will be communicated to me in due course.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble
servant,



ACTING GOVERNOR.

19 2

O.O.

Mr. Axel 17.11.30

Mr.

Mr.

Sir C. Bottomley

Sir J. Stuchburgh

Sir G. Grindis

Parly, U.S. of S.

Parly, U.S. of S.

Secretary of State

X. 16.11.30 Kenya

S.54.

C. D.
R 20 NOV
D

W.P.

19.11.30

DRAFT. Kenya No 931

002

In

21 NOV 1930

I h. the h. to ask the receipt of L. Edward Grigg's deposit No 305 of the 12 May relative to the agreement made in February 1928 with the Kenya Angling Association.

(2) As the agreement was entered into with the approval of the Chief Native Commissioner, I have no doubt that the covering approval of the Govt. will have been given, and it has been submitted for

such approval at the time
of its execution. Nor do I wish
to suggest, especially in view
of the statement made in
para 2 of the despatch, ~~that~~
the agreement is open to
objection. But the position
has been altered since the
execution of the agreement
by the enactment of the
Native Lands Trust Ordinance,
1930, and the setting up
of the Native Lands Trust
Board under that Ordinance.
Had that Ordinance been in
force in February 1928, the
consent of the Board to the
agreement would have been
required; and I suggest
that even now it would be
desirable that it should be
submitted to that Board
for covering approval.
Provided that the Board
is satisfied in the matter,
I shall be prepared to

such approval at the time
of its execution. Now I wish
to suggest, especially in view
of the statement made in
para 2 of the despatch, that
the agreement is open to
objection. First the position
has been altered since the
execution of the agreement
by the enactment of the
Native Lands Trust Ordinance,
1930, and the setting up
of the Native Lands Trust
Board under that Ordinance.
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force in February 1928, the
consent of the Board to the
agreement would have been
required, and I suggest
that even now it would be
desirable that it should be
submitted to that Board
for covering approval.
Provided that the Board
is satisfied in the matter,
I shall be prepared to

O. O.

Mr.

Mr.

Mr.

Sir C. Bottomley.

Sir J. Shackburgh.

Sir G. Grindle.

Pres. U.S. of S.

Pres. U.S. of S.

Secretary of State.

DRAFT.

If the agreement
is now approved,

give my formal sanction
to the action which so
has been taken.

(3) I am however
advised that, in the
absence either of notice
or of breach, the
obligation on the Governor
to renew the lease of
the fishing rights in
question is perpetual,
and I have therefore
to request that notice
should be given in due
course to terminate
~~the agreement~~ at the
end of the 10 year
period for which it
runs, in order that
the position may be
reconsidered and
any application for
renewal dealt
with in the ordinary

way under the native
Lands Trust Ordinance.

2

(Signed) PABSFIELD

Mr. Allen
in subject

I apologise for troubling you
again!

Please see Swemor's Covenant

4.

Does the reference to "like
Covenants, conditions & stipulations
as are herein contained" mean
that in the event of renewal
at the end of 10 years, the
Covenant as such must be
included in the renewal part
If so is not the agreement in effect
retroactive to the
absence of breach & nonobservance
in the past with Swemor.
(Minor cause & can be
determined at any time at
six months notice)

It would appear that this
is so, though I don't if this
was the intention.
22/10/30 H.D.

No; but there is really nothing
more in this because of the provision
about 6 months' notice.
22/10/30 H.D.

H. Allen
22/10/30



KENYA.

No. 305

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

12th May, 1930.

RECEIVED
- 5 JUN 1930
COL. OFFICE

My Lord,

I have the honour to report to Your Lordship that in February, 1926, I gave my approval to an agreement with the Kenya Angling Association permitting sole and exclusive rights of fishing in the Northern and Southern Mathioya Rivers (within the South Nyeri Native Reserve), for a term of ten years together with right of access to the said rivers and certain other subsidiary rights as set out in the formal agreement which was executed on the 2nd February, 1926, a copy of which I enclose. As Your Lordship will observe, the agreement is subject to the payment of an annual rental of Shs. 200/-. This agreement was entered into with the approval of the Chief Native Commissioner and has been in operation for the past two years.

The Association has spent considerable sums of money in stocking the rivers with fish. On the Southern Mathioya a camp was constructed in 1928 and a sum of £150 has been contributed by the Association to the Local Native Council for the making of a road to the camp and the erection of bridges. On the Northern Mathioya the Association also subscribed towards the cost of constructing a road, and now proposes to build a series of temporary huts along the banks of the river. Dues received from the Association in the form of rent are paid into the funds of the Local Native Council.

2./ The

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWING STREET,
LONDON, E.W.1.

124 NOV 1930

2. The Provincial Commissioner, Kikuyu, reports that the Association has co-operated both courteously and generously with District Officers and that no friction has arisen in the District as a result of its activities.

3. In these circumstances I trust that I shall receive Your Lordship's covering approval for my action. I regret that through oversight this matter was not reported to Your Lordship at the time when the agreement was entered into.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

Edward Gigg

GOVERNOR.

THIS INDENTURE made the Second day of February One thousand nine hundred and twenty eight BETWEEN EDWARD WILLIAM MACLEAY GRIGG Knight Commander of the Most Distinguished Order of Saint Michael and Saint George Knight Commander of the Royal Victorian Order Companion of the Distinguished Service Order upon whom His Majesty has conferred the decoration of the Military Cross, Lieutenant-Colonel in His Majesty's Army (retired) the GOVERNOR and COMMANDER -IN-CHIEF of the Colony of Kenya (hereinafter referred to as the Governor) of the one part and HUMFREY TRICE MARTIN of Nairobi in the Colony of Kenya Civil Servant and ARTHUR LEONARD SMITHSON of Nairobi in the Colony of Kenya Civil Servant The Vice President and Honorary Secretary respectively of the KENYA..... ANGLING ASSOCIATION (hereinafter referred to as the Trustees which expression shall where the context so admits include their respective successors in office and assigns) of the other part WITNESSETH AS FOLLOWS:-

The Governor hereby grants and demises unto the Trustees ALL THAT the sole and exclusive rights of fishing in the Northern and Southern Mathioya Rivers from their source to their juncture with all streams tributary to them between the points mentioned which said rivers are situate in the Kikuyu Province of the Colony of Kenya and are coloured red on the plan annexed hereto— Together with the right of access from the main roads to the said rivers and streams through the Native and Forest Reserves and the right for the Trustees to pass and repass along both banks of the said rivers and streams subject nevertheless and

without prejudice to all existing rights and privileges if any on or over the said banks ... Together also with the right to build temporary fishing huts within reasonable proximity to the said rivers and streams Together also with the right to make and construct weirs and other works incidental to pisciculture TO HOLD the premises unto the Trustees for the term of ten years from the First day of January One thousand nine ..17.... hundred and twenty eight Paying therefor the yearly rent of Shillings two hundred in advance on the First day of January in every year ..17.... Subject to either party giving six calendar months notice in writing for the earlier determination of the term hereby granted. The Trustees... for themselves and their successors and assigns to the Intent that the obligations may continue throughout the term hereby created hereby ..17.... covenant with the Governor as follows :-

1. To exercise all the rights and privileges hereby granted in a proper and sportsmanlike manner.
2. To keep the said rivers and streams free from weeds except such as may be necessary for the said fishery.
3. To keep banks in reasonable repair or prevent from choking streams through falling in.
4. To give full and free access to the Fish Warden to inspect the waters over which the Association are hereby granted fishing rights.
5. At all times during the continuance of ..17....

the term hereby granted to keep the said rivers and Streams properly stocked with fish to the... satisfaction of the Fish Warden or such other ... Officer as the Governor may appoint for that purpose and to replenish and restock the same from time to time as may be necessary.

6. So to exercise the rights and privileges granted as to do as little injury as possible to the property of the natives and others occupying land adjoining the banks of the said rivers and streams and to make compensation for all damage which may be done.

7. Not to fell standing timber but to take fuel for private use of the Association on payment therefor.

8. Not to divert stream without the consent of the Governor and in any case not to divert without returning to the river.

9. To observe the provisions of existing fishing legislation and to assist Government in their enforcement but the Association shall be allowed to make its own bye-laws as to baits and to take such measures as it may deem fit as to the extirpation of undesirable fish.

10. Not to sublet or assign (except on the appointment of a new Trustee or Trustees) the fishing rights hereby granted without the previous written consent of the Governor Provided Always and it is hereby expressly agreed and declared that the said Association shall have power to appoint new Trustees of these presents in place of any Trustee or Trustees who through death retirement or any other cause

shall cease to be a Trustee or Trustees or who desire to be discharged or who refuse or become unfit to act by resolution passed in General Meeting of the said Association.

The Governor hereby covenants with the Trustees as follows :-

1. Fishing Licences which shall be issued by Government shall specifically exclude from such licences the waters leased by these presents.

2. Not at any time during the said term (so far as it shall be within his power to prevent such act or omission) to prevent any act or thing to be done or omitted whereby the waters from the said rivers and streams may be drawn off or lowered or polluted so as to cause any injury to the fish therein.

3. Not to cause or permit or allow to be caused any diversion of water from the said rivers or streams which shall be detrimental to the rights of the Association.

4. That the Governor will on the written request of the Trustees made six Calendar months before the expiration of the term hereby granted and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the Trustees hereinbefore contained Grant to the Trustees a lease of the said fishing rights for the further term of ten years from the expiration of the said term of such rent as the Governor shall then consider reasonable and containing the like covenants conditions and stipulations as are herein contained.

IN WITNESS WHEREOF I the said
Governor have hereunto set my
hand and the seal of the Colony
at Nairobi this 3rd day of
February One thousand nine
hundred and twenty-eight.

S/ a Edward Grigg.

In the presence of :-

S.d. E. Bird,
Chief Clerk
Government
House.

SIGNED SEALED AND DELIVERED by

The Trustees in the presence of :

S/d Dacre A. Shaw.

S/d H. T. Martin.

S/d C. Wilfrid Wright
Accountant Nairobi.

S/d A. L. Smithson.