

EAST AFR. PROT.

C O
38473



38479

1109
1910

Edward
Percy

MR. PERCY LINDHAY AND GROOM'S CONCESSIONS

1910

December

previous Paper.

states that the Crown Advocate is unable to advise that a Court could order a forfeiture of the leases at the present time. Sends statement by Mr. Groom with memo. by the Crown Advocate together with other papers. Thinks it would appear advisable to enter into a fresh agreement and that all material for a final decision would now appear to be available.

MOBO

W. Read

The enclosures in this despatch are the original papers from Sir P Groomard's own file. They are too bulky to copy & should I think be packed forthwith along with the despatch for submission to the Concessions Committee

W. Combe's memorandum of the 11th of Oct. deals fully with the whole question at once & it will not be necessary to add anything to it.

At 12.4. program of 11. 3300"
copy to Mr. Lindhays
copy to Mr. Groom

previous Paper.

order to put the Concessions Committee
in possession of the facts. I think that
the ~~concessions~~ ^{agreements} with Messrs. Lushington &
Crosby which appear as appendices
to W. Combs' memorandum, should
be printed. The two agreements with
W. Crosby are already printed on pp
267, 271 of African N^o 844. We have no
print of the agreement with W. Lushington
at all, but the draft of it is
on pp 30-32 of African N^o 774.
It is well worth while to reprint
the agreement with W. Combs & never
to make it a self-contained item
to insure perpetual back
reference to old prints.

HAB

at once

H. J. R.

207 x 11

see next page

~~1882~~

of returned 4/38279/10 E.M.
in (Franklin County) 1882

Monday, but one tried to
suggest that books of the
almanac should be returned
one volume (4/951)
of which to be kept
for permanent use.

17/8/20

13.8.25

Chandler

in 17/8/20 4/951

13/8

attached

The papers were brought before
the Executive Council at the XXXIXth
meeting held on 26th Dec 1890. An extract
from the minutes, in which Mr. T.
G. ... has concurred, is attached

1891 6/1/91

W. Read

I have arranged for Mr. ...
to ... next Tuesday ...
... will have
no objection to our attempting to
effect a compromise ...
approval

W. R.

W. R.

Everything finished at
reference.

W. R.

W. R.

W. R.

at one P.M. 9

act from the
ults of the
Fid. M. C. A.
Concession
in the field
2000 1910

SUBJECT 1.

The Governor pointed out that the Crown Advocate had reported that he was unable to advise that the Courts would order the forfeiture of the leases at the present time. The difficulties which ^{have} ~~had~~ arisen are not entirely the fault of the Concessionaires, and the local Government is in some measure responsible for the present impasse. The areas surveyed by Mr. Coryell, on behalf of Mr. Grogan, at the request and under the control of the Land Department, were not the areas ^{as requested by Government} ~~requested by Mr. Grogan~~, - subsequent action was delayed pending Mr. Hutchins' report, and, although some trees had been marked, the areas surveyed were most indifferently defined. The original mistake was in promising the lease of 125,000 acres of workable forest - a condition which it was impossible for the Government to fulfil. Mr. Butler pointed out that another difficulty was due to a contention put forward by Mr. Grogan that he was unable to work the forest without a railway, and that the Government, by the very fact of having leased the forests, was committed to the construction of a railway to them. This contention had been definitely repudiated, and in making agreements with Mr. Grogan care would have to be taken to exclude the possibility of ^{the} ~~the~~ ^{re-assertion} ~~re-assertion~~ being again put forward. The Governor expressed the hope that a compromise should if possible be arranged, and considered that Mr. Grogan had not shown himself able in the matter. It might be possible to ^{overcome} ~~overcome~~ the difficulty by offering to make up the 125,000 ^{acres} ~~acres~~ grants of land in a neighbouring area. The valuable part of the Concession was the 100 ^{acres} ~~acres~~ of land in Mombasa Island with a frontage on Kilimamboro Harbour, and Mr. Grogan had, as part of the compromise, agreed to waive his claim to one ^{of} ~~of~~ the areas. On the other hand, if the matter went to Court and the Government lost the case, there was the prospect of recovering any portion of the value of Mombasa Island. The general opinion of the

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appeared to be that, in all the circumstances of the case, it was very desirable to arrange a compromise if possible. The Governor remarked that, although Mr. Grogan had acted very openly in the matter, it was understood that he had some private letters from Sir Donald Stewart which he had not yet shown, and which, if produced, might complicate matters still further.

The Committee then proceeded to discuss the terms on which a compromise might be arranged. It was pointed out that, subject to the settlement of the three points specified in the Crown Advocate's memorandum of the 9th November 1910 (enclosure in 36479), Mr. Grogan was prepared to accept the conditions embodied in the Provisional Agreement drawn up for consideration by Mr. Grooms. The effect of the Agreement would be that Mr. Grogan would get the total acreage originally agreed upon to the amount of 30,000 acres within the original area and the balance between that area and the Railway. The Government would be freed from the present deadlock and would secure the important advantage of recovering half the area of 100 acres promised on Mombasa Island. In this connection the Governor stated that for land recently acquired at Mombasa the Government paid £100 an acre, while the land the subject of the Agreement with Mr. Grogan was probably worth £200 an acre at present and would possibly be worth £500 an acre in ten years' time. The question was raised whether Mr. Grogan was prepared to withdraw his rights as to railway siding, ^{and other} ~~for their~~ construction, &c. on the area on Mombasa Island. It was pointed out in reply that the matter was covered by clause

3 of the Provisional Agreement, and Mr. Cox stated that, in law, the clauses of the Provisional Agreement, if it were finally accepted, would supersede all the conditions formulated by Mr. Grogan in the previous correspondence, including his letter of the 15th September (enclosure "F" in JB479).

In explanation of clause c of the Provisional Agreement, the Governor stated that large glades occurred in the forest area and in some cases it might be advisable to let such glades for agricultural or grazing purposes. In that event, the lessees desired to have notice of the Government's intention, and to be given the option of taking up such land on specified terms, with a view to the protection of their forest. This appeared reasonable: a rent would be charged for such lands. They would be included in the area of 125,000 acres. In that case the lessees would get 125,000 acres of forest and glade. The Government would be in a position to grant such an area, although Mr. Grogan might possibly be content with less. He would probably select the best timbered portion of the area surveyed by Mr. Coryall and ask for an additional area between the surveyed areas and the Uganda Railway.

As regards Mr. Lincham, the Governor stated that he was under the impression that that gentleman was in financial difficulties, and that his affairs were in the hands of trustees. Mr. Grogan appeared to hold some power in regard to Mr. Lincham's affairs, and he had stated that he could satisfy the Colonial Office that Mr. Lincham's rights under the original agreement had passed to him and that

that he was in a position to deal with both leases. It was agreed that it was necessary first to clear up any doubts as to the relations between Mr. Grogan and Mr. Lincham. Mr. Lincham is understood to be at present in Canada, but Mr. Grogan is in England, and the Committee thought that in the first instance he should be requested to discuss the matter with the Governor and Mr. Bond.

The discussion then turned on the three points in the Provisional Agreement upon which Mr. Grogan and the Crown Advocate were not agreed (paragraph 1 of enclosure C in 30474).

Point (1.) Reduction of fee from royalty.

The Governor said that he had no particular opinion on the matter. Under the arrangement desired by Mr. Grogan the Government would receive nothing except the licence fee of, in any year, the royalty payable amounted to less than Rs. 5,000, and, in such cases, the Lessee would be entitled to deduct from the royalty payable the next year (if such royalty exceeded Rs. 5,000) not only the licence fee of Rs. 5,000 in respect of that year but also the difference between the fee and the royalty for the preceding year. It was considered that Mr. Grogan should be afforded an opportunity of stating his side of the case; but, subject to any considerations that he might urge, the general view of the Committee was that his proposal was too unfavourable to the Government. If, however, it should prove to be the sole outstanding point of difference, an effort should be made to meet him in the matter, as it is very desirable that an otherwise satisfactory compromise should not fall through on that

account.

Part (2) Licence to cut timber between

area surveyed by Mr. Cervell and the Uganda Railway.

The Governor stated that the total area of 128,000 acres in all must be made up. The area surveyed by Mr. Cervell was 130,000 acres of which 80,000 acres were forest. Under the Provisional Agreement the licensees could cut this 80,000 acres of forest and in addition 5,000 acres of land, not being forest land, within the surveyed area, and also the option of taking up further areas of glade land as already described. With respect of the balance of 4,000 acres, Mr. Greig desires to obtain a licence to cut timber in forest land between the surveyed area and the Uganda Railway. The situation of such forest land is indicated in the last paragraph of part (1) of his letter of the 10th September (enclosure F. in 36479). The land if leased would, it was held, have to be granted on the usual forest terms, as it would be difficult to justify exceptional terms, especially to the south of the Railway, where ^{lands} there are ^{lands} still to be disposed of. The grant would not restrict the supply of fuel for the Uganda Railway, in fact the railway would probably take most of the licensees' timber; also the Governor did not consider that the grant of licences in this area near the line would lessen the prospects of the working of the more distant areas. The area near the railway is of course in a favoured position as regards transport etc. (The Governor instanced the area leased to Dr. Abinson as pastoral land, which was found eventually to be forest land, and stated that the licensees had contracts on hand

for

for 20,000 sleepers.) It was of course important to safeguard the right of access to the Railway. Reverting to the question of Railway construction, Mr. Butler read the letter on the subject addressed to Mr. Grogan on the 4th February 1909, and emphasized the necessity of obviating any claims on the part of the Lessees that the Government, by granting the licences to lessees, incur any obligation to provide the Lessees with means of access to the forests.

Point (3). Calculation of royalty.

In view of the fact that, after consultation with Mr. Grogan the Conservator of Forests had agreed to the payment of royalty on the basis of Rs. 1.36 per 100 cubic feet as practical equivalent of Rs. 2 per tree, the Committee saw no reason to dissent from the proposed arrangement.

It was agreed that, before any further agreement is signed, a plan should be prepared showing exactly areas to be leased.

It was then Resolved that: "The Committee recommend

- (a) That Mr. Grogan should be asked to show how far he is in a position to deal with Mr. Lingham's interests; and
- (b) that, if Mr. Grogan can satisfy the Colonial Office on the above point, Sir E. P. Girouard and Mr. Read should be authorized to confer with him with a view to ascertaining the prospects of a settlement on the lines suggested, and should report the result to the Secretary of State".

KFN
3/12/09

~~Mr. Butler pointed out that~~

C O
38479

COLONIAL OFFICE.

L O N D O N.

16th December 1910.



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Sir,

With reference to your Despatch No. 345 of the 14th June 1910, I am to inform you that Captain Grogan duly visited East Africa and had many consultations and interviews both with myself and with the Departments concerned, with reference to the cancellation or otherwise of the Lingham & Grogan Forest concessions. I personally - with the Crown Advocate - gave detailed consideration to the very voluminous and complicated correspondence which covers these concessions.

2. The Crown Advocate, after perusal of all papers relating to the matter in question, was unable to advise me that a Court would order a forfeiture of the leases at the present time.

3. Under the circumstances I thought it advisable to ask Mr. Grogan if he could submit any suggestions which might lead to a basis for a discussion and necessary amendment of the existing agreements. His statement, with a memorandum on the whole question by the

Crown

The Rt. Hon. LEWIS HARGREAVES, P.C.

COLONIAL OFFICE.

L O N D O N.

Crown Advocate, are enclosed as also:-

The Agreement entered into by Sir Donald Stewart in April 1905:

A report by the Forest Department of March 28th 1906:

The original agreement between Mr. Hoxley and Mr. Grogan of 25th July 1904:

A memorandum of modification of conditions as agreed to by the Commissioner of Forests, Mr. Hutchins, and Mr. Grogan in October 1910,

and

A provisional agreement drawn up for consideration by the Crown Advocate, dated 25th October 1910.

Followed finally by

A memorandum by the Crown Advocate after an interview with me in the presence of Mr. Grogan, of the 9th November 1910.

4. If the contention advanced by the Crown Advocate, that the Courts of the Protectorate would probably not give judgment in favour of the Government, is correct - and I see no reason to doubt it - it would appear desirable to enter into a fresh agreement with the concessionaires.

5. The concession as from the beginning was arranged in a most hurried and unsatisfactory manner, both to Government and to Lessers. Lingham & Grogan, but all material necessary for a final decision by the Secretary of State would now appear to be available.

Mr. Grogan has been informed that the matter would be submitted to you on my arrival in England, and he himself is available should his presence be required when the subject is being considered - which I hope may be possible at an early date in January.

I have the honour to be,

Your humble obedient servant,



GOVERNOR.

East African Protectorate