

EAST AFR. PROT.

21865

No. 21

Date
1912CAPT GROGAN'S ~~LAND~~ FOREST CONCESSION

July

Previous Paper.

States that he absolutely refused to consider the payment of royalty on milled timber. Considers timber rights of value of some £300,000 have been surrendered on the basis of measurement of timber in the log.

15784

21787

Mr. Read

Sir G. Fuller

It is I think quite evident that, whatever document he may have signed, Mr. Hutchins never had any intention of recommending that Captain Grogan should be allowed to calculate his royalty on milled timber instead of on timber in the ^{log} tree. This being so, I cannot conceive how he came to let his name appear on a memorandum in which the words "milled timber" occur, namely the memorandum tacked in green in Gov. 15784. Captain Grogan's side of the case is stated in his letter of the 16th of April last, of which a copy is enclosed in the same despatch. It is pointed out in the letter ^{of} Mr. Hutchins on that paper that the document, as to the rate of royalty relied upon by Mr. Combe in his report to the Governor on the subject of this agreement, and by the Secretary of State in considering Sir P. Girouard's recommendations, was also a memorandum dated the 20th of October, 1910, signed by Mr. Hutchins and Captain Grogan, in which

Subsequent Paper

15702

Secretary of State

which there is no mention of the royalty being levied on milled timber. Fortunately the words "milled timber" have not been introduced in any of the subsequent correspondence - refer to the Governor's despatch of the 29th of April last (1910).

Mr. Hutchins's explanation of what the awkward second document, dated the 20th of October, 1910, may be (see marked passage on page 2 of this letter) is a very lame one and could hardly be quoted. I think we are bound to ^{refer} Captain Grogan on this question, as it appears from Mr. Hutchins's letter that the difference between a royalty on timber in the tree and a royalty at the same rate on milled timber will be a very serious thing for the Protectorate. Subject to anything which the Legal Adviser may say, (I think the papers should certainly be referred to him) we might take the line that the question of the royalty being calculated on milled timber has been brought before the Secretary of the State for the first time; that the agreement ^{between Mr. Hutchins and Capt. Grogan} as to royalty hitherto being raised by the Protectorate Authorities and the Secretary of State in discussing the proposed arrangement with Captain Grogan, contains no mention of milled timber, and that the Secretary of State is not prepared to agree to the royalty being levied on that basis, but must stipulate that the new rate of royalty shall be calculated on the basis of timber in the tree in the same manner as the royalty prescribed in the original leases, for which it was meant to be the equivalent.

The last paragraph of Mr. Hutchins's letter is very unfair to the Concessions Committee. The Concessions Committee had before them and advised the Secretary of State to accept the proposal for a compromise put forward by the Governor on the advice of his expert officers. Various modifications and amplifications have been made in those proposals in the course of

of the last two years, but the Governor or the Officer
 administering the Government has been consulted and
 has expressed his concurrence in every single instance.
 Mr. Hastings of course speaks in ignorance of the
 actual procedure which has been adopted.

27ab

July 7

I agree we must resist Capt. Poyan
 on this point. At the same time
 the case has awkward features.
 There can I think be little doubt
 that Capt. J. has all through been
 considering the matter from the
 point of view of milled timber.
 He seems to have explicitly stated
 this at the interview here on
 Nov. 10th 1850. See pp. 506 of memo
 1217. It is that interview
 however he had never had any
 suggestion from the reports that
 the distribution of timber was
 different methods of measurement
 by material. In fact, as stated
 in the S. G.'s memo on 15th 56, we
 expect the substitution of a new system

Mr. G. Fuller

Captain Grogan and Mr. Hutchins came for the conference on Friday ^{10th Oct.} Mr. Tennyson, and I were present. Two separate points were discussed:-

(1) The question of fact as to what basis for the calculation of the royalty of Rs.1.38 per 100 cubic feet had actually been agreed upon by Captain Grogan and Mr. Hutchins at their conference or conferences in the Protectorate in 1910.

(2) The advantages and disadvantages of computing the royalty on the basis of "milled timber" and on an estimate of the cubic contents of the standing tree.

Encl. 1 to 10

On the first point it proved impossible to get anything satisfactory out of Mr. Hutchins. He was quite unable to explain the memorandum of the 20th of October 1910, in which the words "milled timber" occur. The nearest approach to a suggestion that he could make was that these words were put in by inadvertence and ought to have been crossed out, but that by an oversight this was not done. *In any case he was quite confident that he had not agreed to the "milled timber" basis.*

Captain Grogan reminded him that the part of the document in which these words occurred was typed by Mr. Hutchins's own clerk in his own office, and that the rest of the document was in Mr Hutchins's own handwriting.

For the rest, Mr. Hutchins could only appeal to his well known aversion to the calculation of royalty on milled timber, to which he has been consistently opposed, and to the fact that the memorandum signed by him and Captain Grogan (also dated the 20th of October 1910)

sent to the Crown Advocate and relied upon both by the

Governor

*and proposed
as far as
possible
to be
settled
in
the
form
in
which
Grogan gave it
1910.*

Governor and the Secretary of State in considering this question did not contain the words "milled timber". Against this Captain Grogan maintained that the first memorandum was signed in the morning and the second in the afternoon; that the earlier memorandum was concerned with an agreement as to the method of royalty payment, which the Governor was content to leave as a technical matter to be decided by the Forest Officer in consultation with Captain Grogan, and that the memorandum sent to the Crown Advocate was merely for the sanction of the Governor to the new system of payment by cubic feet instead of stumpage on the basis agreed upon in the earlier memorandum between Captain Grogan and Mr. Hutchins, and that it was therefore not essential that the actual words "milled timber" should appear in the second memorandum. He maintained quite clearly that Mr. Hutchins had expressly agreed to the calculation of the royalty at the rate of Rs.1.38 per 100 cubic feet on milled timber. He said that he did not wish to strain unduly the claim which he felt entitled to base on this ^{fact} ~~claim~~ he would prefer, if possible, to convince Mr. Hutchins by argument that calculation on "milled timber" was in any case the best method for all purposes concerned. **[N.B.]** It is quite clear from the memorandum which Captain Grogan addressed to the Governor on the 15th of September 1910, and out of which arose the conferences with Mr Hutchins, that Captain Grogan meant all along to get a royalty based on "milled timber". See marked passage on page 1B of the accompanying print of G/38479. Captain Grogan's words are:-

"Royalties

x N

"Royalties are to be assessed not on stumps, but a per St. Petersburg standard of milled timber, the rate to be the estimated equivalent of the Rs.2 per tree payable under the agreements, and to be agreed by myself and the Forest Officer."

It is also clear, as I pointed out in the preliminary minutes on this paper and in my minute on Gov/15764, that at the interview at this office on the 10th of January 1910, he was quite under the impression that the royalty was to be "royalty on milled timber". The divergence of opinion between himself and the Forest authorities has only been revealed ~~accidentally~~ quite recently as the result of the attempt to measure the royalty due in connection with the forest operations which Captain Grogan is actually carrying out on the strength of the ~~present~~ ^{new order discussed} compromise ~~going through~~.

On the other side one is bound to admit that Mr. Hutchins's dislike to calculation on the basis of milled timber was clearly expressed in the letter dated the 20th of October, 1910, which he wrote to the Crown Advocate. (Copy in Gov/15764).

On the second point Mr Hutchins stated that royalty on "milled timber" was originally adopted in South Africa but had been given up in favour of a royalty based on stumps, and that the latter form of royalty was also used in France. He had always been opposed to ^{calculating royalty on milled timber} it as in his opinion it prevented the concessionaire to try to mill all trees with any useful timber in them and encouraged the concessionaire to bring to the mill only the best trees which would yield the highest milled

results

resulting. He maintained that it was difficult to check the actual results of the mill and that it was far better to let the forester or the forest officer mark out the trees for felling and assess at the same time ^{as above} their cubic contents on a basis liberal to the concessionaire, and then to require the concessionaire to pay the royalty on all the cubic contents so estimated, taking his chance of sound or unsound timber when it came to the actual felling.

Captain Grogan stated his own case very clearly and elaborately on the other side. He pointed out that, even accepting Mr Hutchins's statement, a royalty of Rs.1.38 per 100 cubic feet was calculated ^{on the basis of measurements in the Kenia Forest. The measurements in the Kenia Forest, as will be seen from page 52, second paragraph of Mr Hutchins's report on the forests of British East Africa (Cd.4723), were concerned merely with the "cubic contents of serviceable, sawable timber in the bole"} on the basis of measurements in the Kenia Forest. The measurements in the Kenia Forest, as will be seen from page 52, second paragraph of Mr Hutchins's report on the forests of British East Africa (Cd.4723), were concerned merely with the "cubic contents of serviceable, sawable timber in the bole". Therefore, argued Captain Grogan, the milled timber equivalent of Rs.2 per tree, (the figure of the royalty in his original leases), would be less than Rs.1.38 per 100 cubic feet if all the serviceable, sawable timber in the bole ^{and limbs} were saved. Therefore, he ^{feels} ~~thinks~~ that the royalty payment of Rs.1.38 per 100 cubic feet on "milled timber" is an increase of payment upon the conditions originally agreed if he mills any timber over and above the sound boles. He stated that he was in fact actually using at the present moment the toppings and the branches of trees. He was nevertheless fully prepared to face this slight disadvantage for the sake of the advantages

secured

secured by the calculation of royalty on the milled output. These advantages he stated as follows:-

- (1) The Forest Officer has only to mark trees, not to measure trees.
- (2) Disputes as to measurement obviated.
- (3) Red logs need not be kept blocking the mill pending arrival of Forest Officer to grant rebate.
- (4) Simplicity in accounts and payments, since ^{and} auditor checks stocks of mill.

^{adding} As to the disadvantages mentioned by Mr. Hutchins in the basis of milled output, he pointed out that it would not be worth his while to leave in the forest any useful timber merely to avoid the payment of the royalty. He put the cost of opening up the forest, making a trail or tramway into it, and clearing and felling, as at least Rs.25 per 100 cubic feet. The royalty of Rs.1.38 per 100 cubic feet is a comparatively trifling addition to this initial cost, and no one would throw away the Rs.25 spent on the preliminary process in order to save Rs.1.38 involved by the royalty. He was quite certain that under the organization of his business there could not possibly be any tendency for the Manager of the mill to show less timber than had actually been milled, as part of the Manager's emoluments consisted of a percentage on the profit shown by the particular mill. In any case he was willing to submit to any reasonable ^{check} ~~check~~ which the Government could propose for ensuring that he milled all the useful timber.

Mr Hutchins suggested that, if the assessment of royalty on the basis of milled timber were conceded, the Forest Officer in marking trees for felling should roughly estimate their cubic contents, and that, in the event of any serious discrepancy between such an estimate and the milled results, Captain Grogan should be required

to

to show reason for it. Captain Grogan had no objection, but said that the simplest plan was for the Forest Officer to go through the coupe after the Concessionaire had done with it and see that no trees had been left lying that contained serviceable, sawable timber. He was quite prepared to pay royalty at the prescribed amount on any serviceable, sawable timber so found by the Forest Officer.

Mr Hutchins referred to the possibility of stealing, in which event the Government would lose its royalty, as the timber would not come to the mill. It was agreed that the prevention of stealing was a matter of common interest to both parties, and that, owing to the lack of communications and the difficulty of moving logs, the possibility of stealing on any appreciable scale was not to be anticipated and need not materially affect the discussion.

Mr Hutchins said that other people working forest concessions would grumble at the low rates accorded to Captain Grogan. He was reminded that it was not a question of negotiating a new concession, but of devising some alternative to the low rate of Rs.2 per tree which Captain Grogan could claim under the leases of 1904 and 1905.

The general effect of the discussion on my mind was that Captain Grogan had the best of Mr Hutchins both on the question of fact and on the question of the relative merits of the two systems of computation in the case of this particular concession. I feel now that

6

In view of the strength of Captain Grogan's position as to what was actually agreed, there is not enough difference, on Mr Hutchinson's own showing, between the two methods of computation to warrant us in saying that we will throw up the whole negotiations rather than allow the royalty to be calculated on milled timber.

I am inclined ~~now~~ to inform Captain Grogan that the question of the royalty being calculated on milled timber has been brought before the Secretary of State for the first time in the course of these negotiations, (as proposed in my first Minute on this paper), and that the Secretary of State is not prepared to agree to the royalty being levied on that basis unless Captain Grogan will accept any check which the Government of the Protectorate may consider necessary to ensure that all serviceable, sawable timber in the trees marked for felling in the area of his concession ~~are~~ actually brought to the mill ~~and~~ passed through the mill; and also any check required to ascertain the accuracy of the mill output as shown in Captain Grogan's books.

afab
July 29.

Mr Baker's minute represents what took place at the Conference on the remainder of it. I agree that after progress had been made on both points, Mr Hutchinson seemed to me not to have considered the question with reference to the particular circumstances of this case at all, but to be simply animated by a general prejudice against the "milled timber" method. I agree

Yes - very
anxiously
x.2

that he ought not to upset the agreement on the other side, but on points of the detail of the particular difference of opinion, and I think that it should be left possible to lay down in detail which will in practice secure that payment is made on all sawable timber. My only doubt is

whether any regard is to be shown to the S.A.G. in case S. of his despatch on 10/2/04 & the work in the memo attached to a line which appears to be supported by the Protectorate (in para. 1 of memo) - he ought not to wind our affairs so as to leave the same the appearance of refusing to give in on the point, while at the same time intimating to him that we think he should do so on conditions as suggested above.

If it is decided to proceed then we should ask that the last of the first agreement to the royalty being levied on milled timber basis, the only proposal to accept any check be. 26/29/7

As proposed by Mr. Thompson & if
Capt. Progan agrees, as he almost
certainly will, to my suggestion, we
should try to bring matter to a speedy
conclusion by telegraphing to the
O.A.S.?

H. J. R.

29/III

Off about
the 20.7

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ANGCASTER ARMS HOTEL,
CALLANDER, N.B.

~~Ad~~

~~H. J. N.~~

~~9/8~~

1st Aug. 1912

Dear Read,

I am not going to trouble
with anything more official on the
intimate fronts of Brit. & Af! But,
has since occurred to me, that there

be one point that in our conference
that was not made quite clear:—

we will be a lot of wood in Grogan
that will never for thro the

all as timber viz. all rough wood for

many parts (split from stems): firewood.

and heavy logs. The Ry. Dept. takes
supplies of heavy logs to sawing -
own saw mill at Navaho. I put
them 1000 logs in 1910 - see
Yearly Rep. There should also be
quantity of heavy sleepers. None of the
will come to the mill.

~~For~~ failing standing measurement
in this forest, probably the most exact
basis of measurement, for all concerned
would be the Ry. weights. The
Ry. must take nearly every thing for
year to come.

Will today we have had capital
for the Arbor. Soc.'s tour, and even
has gone off well.

Sincerely yours
E. Hutchins

By Capt. Foster
Rs 1.38 per 100 cu ft in agree as the
sawable sawable timber in the logs
of the 2nd log tier

The milled timber quantity of Rs 2. The trees
could be less than Rs 1.38 if all the sawable
sawable timber in the logs and timber were sawed
Quality payment of Rs 1.38 per 100 cu ft of
milled timber in an increase of payment also in
the conditions originally agreed if I ~~can~~ mill any
timber over and above the sound holes

Notes of mill output actual

- (1) Forest Officer has right to check trees, and to receive trees
- (2) Dispute as to measurement method
- (3) Saw logs need not be kept blocking the mill pending arrival
of forest officer to make results
- (4) Disputes as to accurate and payments since various checks books of
mill

In Hatching general collection that millers may cut to waste
and leave without timber rather than pay royalty
great the as a general principle has validity
But cannot apply to this particular case for following reasons
The cost of opening roadway clearing and filling is at least
Rs 25 per 100 cu ft (Hutchins estimate)
The royalty is
Rs 1.38 per 100 cu ft

one will throw away Rs 25 to save Rs 1.38

1865



Rectory Cottage
Ridley, Wrotham
Kent

Under Secretary of State
Colonial Office
London

12th July 1912

163

Sir,

15/7/12

I beg to acknowledge receipt of your letter of the 1st inst, and in reply to state that my provisional agreement with Capt. Grogan related solely to the amount of timber in the log that might be taken as the equivalent of $\text{Rs } 2$ stumpage fee. My memorandum dated 20th October 1910 signed "D. R. Hutchins" and about S. Grogan makes no mention of milled timber and concludes with the words "the being the mean figure for the Keria forest, excluding Camphor". It will be remembered that at that date (and I believe still) no timber had yet been milled in the Keria forest so that no data from which to deduce an equivalent for milled timber were then in existence. As a fact, the figure $1:38$ per 100 C. Ft. is derived from the measurements of standing timber in the Keria forest made by me with the assistance of Mr. Bathcombe the Forest Dept. and of Mr. McG. Ross of the P. W.

Thus, there were at the time no data in existence for framing an agreement in milled timber.

The origin of the paper entitled "Memorandum of agreement re method of royalty payment" I am at a loss to account for. I should be glad to see it! I note that Mr. Combe states he has not seen it. As it bears the same date as the first Memorandum and is said to be partly typed and partly in my handwriting, I conjecture it may have been signed as a duplicate of the first Memorandum, the words "milled" being, by oversight, omitted to be crossed out. I recall that when, after a prolonged discussion, Capt. Grogan left me with the first Memorandum, it was lunch time, and there was no one in the office to make a type-written copy.

I have a distinct recollection that Capt. Grogan urged me to consider measurement of milled timber, but I stated I was unable to do so, my objection being that expressed by Mr. Bathiscombe in his letter attached to these papers. I may call attention to my note of the 18th April 1911 beginning "(2) 'Stumpage' quoted at page

5 of the Crown Advocate's letter dated Nairobi 23rd April 1912. This expresses clearly my view on the subject of payment on milled timber. The practice was abandoned many years ago in working this class of forest in South Africa. Thus my position was, that I absolutely refused to consider the question of payment by milled timber; and that for the substitution of payment in the log for stump age, a concession of more favorable forest conditions, should be obtained from Capt. Grogan.

I may add that it would be wrong to attach too much importance to the Memorandum I gave Capt. Grogan on the 20th Oct. 1910. It was merely an office Memo. embodying the result of a calculation which was given for the purpose of a joint interview with H/E the Governor, Capt. Grogan, and myself. This interview, as regards myself, never took place; and Sir Percy Girouard and Capt. Grogan left the Protectorate without any expression of opinion from the Forest Dept., either by interview or formal report, on a matter which concerned the forests so vitally.

Then we consider the difference in forest rates between
 Capt.

of Grogan's rates and the current forest rates: or (2) the average value for the highland forest (an item discussed length in my Report on the Forests of British E. Africa, 1909, pages 25-40 and para. "Value of Forests" in the summary) the result is about the same viz: —
a surrender, in 1911 by the London Concessions Committee, to Cpt. Grogan of timber rights worth some £500,000, on the basis of the measurement of timber in the log. What that surrender might amount to, on the basis of milled timber, it would be difficult to estimate.

I have the honor to be
Sir
Your obedient servant
W. Hutchins

~~163~~ 163/5

21865
5 AUG
1912



Downing Street,
7 August, 1912.

DRAFT

Miss 2-19139

MINUTE.

- Mr. Butler 1 Aug.
- Mr. Thompson 1
- Mr. Hadden Head 2
- Sir H. Just.
- Sir J. Anderson 2
- Lord Emmott.
- Mr. Harcourt.

Sir,

I am directed by Mr. Secretary
 Harcourt ^{to inform you} that he has received a despatch
 from the Officer Administering the Gov-
 ernment of the East Africa Protectorate
 relating to your forest concession in
 the neighbourhood of the Eldama Ravine,
 from which it appears that, at a meeting
 in the Protectorate on the 25th ^{of} February
 last, certain out-standing questions were
 settled between you and the late Governor

of

copy of a 25 July 1912

save time ^{direct} send the copy
 of the 25th with
 extract from the
 other minutes of 24
 the 24th July
 [1302-20]

of the Protectorate. A copy of a memorandum
 relating to this meeting and the plan referred
 to in the memorandum are enclosed herewith.

I am to enquire whether you accept and confirm
 the account of the arrangements given in the
 memorandum and the division of the land on
 the island shown on the plan. I am to
 request that the plan may be returned with
 your reply.

Mr Harcourt would have been glad
 to find that the settlement of these questions
 disposed of all the difficulties which have oc-
 curred in connection with your Concession. He
 regrets, however, to learn that a new question
 has arisen, viz: whether the royalty of Rs1.38
 per 100 cubic feet should be levied on the basis
 of milled timber or on ^{an estimate} ~~a number~~ of the cubic con-
 tents of the standing tree. This question has now
 been brought before the Secretary of State for the
 first time, as the agreement signed by you and Mr
 Hutcheon on the 20th October, 1910, hitherto relied
 upon by the Protectorate authorities and by the
 Secretary of State in discussing the proposed
 arrangements

arrangements, contains no mention of
 milled timber. You have explained your
 attitude in the matter, and your claim
 to have a royalty assessed on milled
 timber at a meeting at this Office on
 the 26th of July, 1910, which I have
 seen previously. The Officer Administering
 the Government of the Protectorate has,
 however, given, in his clear opinion,
 that your claim in this respect should
 not be admitted, and Mr Harcourt is there-
 fore unable to proceed further in the
 matter without reference to him. I am
 to inform you, however, that the Secre-
 tary of State could not in any case approve
 of the royalty being levied on the basis
 of milled timber unless you stated your
 willingness to accept any check which the
 Protectorate Government might consider
 necessary to ensure that all merchantable
 suitable timber in the trees marked for
 felling in the area covered by your
 licence

Handwritten notes:
 Enclosed in 11/10/10
 Plan enclosed in 11/10/10

Handwritten notes:
 * Enclosed in 11/10/10
 + Enclosed in 11/10/10

of milled timber or on an estimate of
 the timber in the standing tree. I
 enclose an extract from the account of
 the meeting which will show you the
 course of the discussion. I enclose
 also a copy of a letter which has been
 addressed to Captain Grogan as the
 result of the discussion. I shall
 communicate with you further on the
 receipt of his reply.

3. I take the opportunity of
 transmitting to you a copy of a letter
 from Mr. Hutchins relating to certain
 points which he omitted to deal with on
 the occasion of the meeting mentioned
 above. The points raised in Mr.
 Hutchins's letter will have to be
 taken into account if and when it is
 agreed that the royalty may be levied on

the

the basis of milled timber and you
 are considering what check it is
 necessary to impose to ensure that
 all serviceable sawable timber in
 the trees marked for felling in the
 area of Captain Grogan's concession
 is actually passed through the mill.

I have etc.,

*I think the point
 made in Mr Hutchins
 letter to you of the
 4th of August was
 sufficient impetus
 to warrant this*

§ Attached to 11/2/55.