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1913

March

Last previous Paper.
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EAST AFRICAN ESTATES LTD'S CONCESSION

Considers it would be unwise to permit survey to be put in hand until the natives rights have been settled and defined. States reasons. Thinks Coy should be informed that if new terms of Concession are not accepted it will be cancelled. States as to neglect of labour and possibility of proceedings being instituted.

~~Mr. Read~~ ~~Mr. Temperley~~
Mr. G. Fiddes

In our letter of February 5th, 1913, to the East African Estates, Ltd. we stated that a communication was being made to the Governor regarding the question of survey, and that on receipt of a reply from the Governor, a further letter would be sent to the Company.

2079/Eng.

The Governor has now reported that until the native rights within the area conceded have been settled and defined, it is not practicable to proceed with the survey; but that it is hoped that the work of settlement will be expedited by the constitution of a separate tribunal to hear

Secretary's copy & abstract: to first Tabl

(G 151). Wt. 29 [illegible] 41,000. 11/12. [illegible]

Next subsequent Paper.
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to deal with the native rights, south of Kamloops, and that the finishing portion of the work will be completed during the current year. He further stated that if the Company have not been prejudiced by delay in the surveying operations, or a sufficient extent of land has been placed at their disposal to enable them to comply with the conditions of the lease, and that providing a final agreement as to the actual extent of land to be leased to the Company it is not expedient to embark on the surveys.

In the concluding paragraph of his despatch the writer (Mr. Moberly) makes remarks as to the legitimate rights of the aborigines by the Company. We feel, however, we are only concerned with giving the Company a right above the surveys.

? Informed the Company that, after consultation with the Governor, Mr Harcourt is of opinion that it is not practicable to proceed with the surveys until the native rights within the area concerned have been settled and defined; and that, under the arrangements which the Governor proposes to make, it is

anticipated that it will be possible to expedite the work of settlement. That it is not apparent why the absence of the surveys should prejudice the intents of the company as a sufficient area of land free of native claim to enable them to comply with the conditions of the agreement appears to have been placed at their disposal.

Then leaves it to the Company to take the next step in the negotiations.

Mod
15.4.13

I think that we ought also write to the Co.y in the sense of paras. 6.7. & 8 of the Gov.r's desp. except that I would omit the words "and admitted" in the first sentence of para. 6. I do not think that they make any formal admission) — & I also think that we should now keep out of the discussion as far as possible & leave the Gov.r to settle with them, subject of course to the final approval of the S. of S. of any agreement which may be arrived at.

H. J. R.
16/IV/13

I agree
C.O.

P. i. r.

I confess I am not so sanguine about this case as the Governor is. I can't help feeling that if we were to terminate the lease & the case were to go to arbitration or into Court the Co. would make out a very strong claim on the ground

(i) that our failure to survey had prevented them from finding sufficient land to work on.

(ii) that they have been stopped by shortage of labour

As to (i) we know there have been difficulties - e.g. with the heirs of Mbarak. Further I imagine they will have no difficulty in producing plenty of native claimants to lands within the area & plenty of evidence of their attempts to work having been interrupted by such claimants. Against this we shall probably have to rely on mere assertion & cross-examination & I don't see what evidence we can

likely to get) & we shall undoubtedly find our delay in the matter of the survey very much against us.

Under the circumstances I should like to see the case settled if possible, & I would suggest that instead of giving the substance of the Gov's para 9 we should conclude with a para saying that under the lease unless the Coy are able to make some counter proposal on the basis of our letter of Sep. 9 1912 (25221) which proves acceptable to the Gov. we shall be bound to terminate the lease

The only thing against this course is para 8 of the Gov's despatch of the

Co's Treatment of their labour is as bad as is stated perhaps we ought to get them out at all costs. The proceedings of Sinclair & Fox appears wh presumably be under the Master & Servants Order 4/00. There seems to be no relevant provision in the lease.

Perhaps under the circumstances we should make it a necessary condition that the Co should make a satisfactory answer to the foreman's charges on this point.

C.T. 19/4/13.

Mr Tennyson's view maybe the sounder advice as from lawyer to client, but having regard to 88 after deep I do not propose to proceed on it the previous minutes are of the Co Pert. outlines in the end.

I agree with Sir G. Fiddes. Rm. 21.4.13

Ch. 21.4.13

Aud. I E 22.4.13.

Aud. 2 H 23.4.13

L. Stimson

Co's Treatment of their labour is as bad as is stated perhaps we ought to get them out at all costs. The proceedings of Sir Charles Fox should presumably be under the Master & Servants Order 4/00. There seems to be no relevant provision in the law.

Perhaps under the circumstances we should make it a necessary condition that the Log should make a satisfactory answer to the Governor's charges on this point.

C.O. 19/4/13

Mr Tennyson's view is right. We cannot advise as from lawyer to client. Law having regard to 80 after days I do not propose to proceed on in the previous minutes. Case of the Co. Prot. suffers in the end.

I agree with Sir G. Fiddes. 21.4.13

21.4.13

Aud. I 22.4.13.

Aud. 2 23.4.13

12199

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GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

C. O.
12199
APR 13

17th March 1912.

[illegible] AFRICA PROTECTORATE

CONFIDENTIAL No. 29

198

Sir,

With reference to your Confidential despatch of the 5th ultimo* respecting the land held by the East African Estates Ltd., I have the honour to make the following observations on the question of the survey of their Concession.

2. It would be unwise, I consider, to permit the survey to be put in hand until the native rights within the area conceded have been settled and defined.

3. In this connection I would inform you that on the occasion of my visit to Mombasa last month I held an inquiry into the system on which the work of settlement was proceeding and finding deficiencies in it which were causing needless delay I instituted changes of procedure which will have the effect of materially expediting the work.

4. I am now conferring with the Provincial Commissioner with a view to constituting a separate Arbitration Board to deal with the native rights South of Mombasa and I hope that the greater part of the work may be completed during the current year.

5. I regret that I am unable to admit that the Company

THE RIGHT HONOURABLE
LEWIS HARCOURT, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

* No. 3579

Concessions 15996-20

Company have been in any way prejudiced by the absence of survey as a sufficient area of land free of native claims to enable them to comply with the conditions of their Concession appears to have been long ago placed at their disposal.

6. In August last the breach of certain conditions of the Concession was proved to the representatives of the Company and admitted. In consequence new terms were offered as an alternative to the cancellation of the Concession vide your Confidential despatch of the 28th of September 1912, and these the Company have recently declined to accept.

The reduction of the area from 300,000 to 120,000 acres was included amongst these and therefore, apart from other reasons, I submit that survey should not be put in hand until the area has been finally determined.

7. I am quite unable to understand upon what grounds the Company claims the right to refuse the terms offered. Having failed to carry out the conditions originally agreed upon it would appear that there is no other course for them than to accept what is offered or submit to the alternative of cancellation.

Personally I consider the new terms to be extremely liberal and in excess of what they have a right to expect. I would suggest that they should be reminded of their position and informed that if the new terms are unacceptable to them the Concession will be cancelled.

+ No

3.

5. I have the less compunction in expressing this view because I have within the last week received from the Provincial Commissioner, Bambaca, a report of his inspection of the property which discloses so disgraceful and systematic neglect of the labour force and such total disregard of their health that I have prohibited the engagement by them of any more natives from any part of the Protectorate. Matters have reached such a pitch that I am consulting with the Attorney General as to the possibility of instituting proceedings.

I have the honour to be,

Sir,

Your humble, obedient servant,

H. Conway Belfield

GOVERNOR.

Gov
12/9 Sept.

Amd 18461

DRAFT.

Secretary
East Africa Syndicate Ltd.

30 April 1913.

MINUTE.

Mr. Harcourt 24.4.13
Mr. Bottomley 24.4.13
Sir G. Fiddes.
Sir H. Just.
Sir J. Anderson.
Lord Emmott.
Mr. Harcourt.

Sir,

I am directed by Mr. Harcourt to acknowledge the receipt of your letter of April 17th, 1913,* expressing the wishes of the land in the East Africa Syndicate hold by your company, and to inform you that, after consultation with the Governor, he is of opinion that it is not practicable to proceed with the survey until the boundaries rights within the above

* N. 13070

Copy for East Africa 18 June 1913

cancelled have been settled and signed. In view, however, of the arrangements which the Government propose to make, it is anticipated that it will be possible to expedite the work of settlement, and probably to complete the major portion of it during the current year.

At the same time, the Government feel that the interests of the Company have been prejudicially affected by the absence of a survey, so the Government have already offered to place at the disposal of the Company a sufficient area of land free of rights claimed, to enable it to comply with the conditions of the agreement.

3. I am to explain that it was ~~said~~ the failure of the Company to fulfil its obligations with regard to the development of the property which led to the new terms being offered, as an alternative to the cancellation of the concession of April 20th, 1910. These terms, however, the Company has, up to the present time, failed to accept. As one of the new conditions contemplates the reduction of the area to be granted from 200,000 to ~~120,000~~ 120,000 acres, it would obviously be impracticable to proceed with the survey of the land in the absence of a definite agreement as to the extent.

4. ~~He has also~~ I am further ~~desired~~ to observe that as the