

EAST AFR. PROT.

20480

No 20480

10 JUN 07

Year or Triennial

Day

1907

15 June

Previous Paper.

Costs due to Crown in Cartersworth Case

Inquire whether any better offer than the above
has been offered. Cannot agree to acceptance of bill
that cost is due unless assured that no better offer
can be expected. Ask that a V.L.A. be consulted by telegraph

or please send copy of bill to the V.L.A. as to better offering
(London.)

Mr. Read

Telegraph
Sutton

Northallerton
10 June

Aug 1896
referring to my def No. 191

Beddithes and Crown
are you

Admiral Dr. Parker
subscribed that

Hunting offer June
mobile

P.T.O

Tunably
No 420

Katroy
Lester

Rocky

to be returned from

Charlesworth

Superior
Tank

Lyne

10/6

10/6

10/6

White June 10
at once

20430
Recd
10 JUN 07

In the reply to this Letter the following
Number should be quoted.

TREASURY CHAMBERS,

247

1071
09

June 1907.

Sir,

I have laid before the Lords Commissioners of
His Majesty's Treasury Mr. Antrobus's letter (1958/1907)
of the 6th instant in which the Earl of Elgin seeks to be
informed with reference to the costs in the Charlesworth
appeal case, whether the representations of Mr. Charlesworth
afford, in Their Lordships' opinion, any sufficient ground
for varying the decision communicated in Treasury Letter
(21612) of 12th December last that the firm's offer of
Rs. 4000 in full satisfaction of the claims of the Crown
should not be accepted.

In reply, I am to point out that My Lords have no
means of judging of Mr. Charlesworth's ability to pay the
costs in which he is liable, and that They have no informa-
tion as to what action has been taken by the Authorities of
the East Africa Protectorate in pursuance of the instructions
of the Secretary of State in despatch No. 791 of 18th
December last. I am to enquire whether any better offer
than Rs. 4000 has been obtained; and to say that, while
Their Lordships have no wish to drive Mr. Charlesworth into
bankruptcy, They cannot agree to compromise the claim of the
Crown for less than the full sum until They receive a definite
assurance either from the Secretary of State or from the
Protectorate authorities that no better offer can be expected.

Under Secretary of State
Colonial Office

I am to suggest that the Commissioner and the Crown Advocate should be consulted by telegraph on this point.

As regards the question raised in paragraph 5 of the letter under reply, I am to enclose a copy of a memorandum by Their Lordships' Solicitor.

I am,

Sir,

Your obedient servant,

Wm. Chalmers

10 JUN 1902

As regards the costs - It is perfectly true that there is an ancient doctrine that in matters at Common Law "the Crown ~~never~~ never received costs" but this doctrine, speaking generally, is applicable only when the litigation affects some prerogative of the Crown, a small proportion only of cases in which the Crown is concerned.

In the particular case the proceedings arose under an Indian Act, "The Land Acquisition Act 1894" - corresponding somewhat with our Lands Clauses Act, - and under this Act the Crown is entitled to and was awarded costs by the Privy Council.

The question as to whether the doctrine can be applied in a particular case, is sometimes one of considerable difficulty, and can only be dealt with as it arises. A leading case on the subject is now *H. v. Archbishop of Canterbury* reported (1902) 2 K.B. 503.