

EAST AFR. PROT.
ZANZIBAR

15212

15212

Office of the Director

Foreign

1900

5 May

Previous Paper

Prisoners from Zanzibar
Question of removal to Mombasa.

Sends for Ohio papers rel. to case of Sudapt. Davis who was sentenced by the Court at Zanzibar & transferred to Mombasa prison but released by order of High Court on ground that Mombasa being in Sultan's dominions is not a place within His Dominion under Art. 21 of Zanzibar Ord. 1906.

~~W. Reed~~
W. Reed

It does not seem that Mr. Hamilton could have done otherwise than decide that the prison at Mombasa was not one of the places contemplated by Art. 21 (1) of the Zanzibar O. in C. of 1906.

As to the other line of argument viz. that Mombasa being in the dominions of the Sultan of Zanzibar, the Sultan's officers had a right to send a prisoner to the prison there, & the officers of the prison had a right to detain such prisoner, the judgment expressly states that this line

A. & E. W. - 2006/27 - 2500 - 11.08.07

subsequent Paper

21689

Copy cover for vol 299, 4 June 77

was not taken. The Ant. Crown Advocate
apparently maintains that it was taken.
We can hardly be expected to decide between
them on this question of fact. But, even had
this line been taken, would it necessarily
have been conclusive? ^{Even} ~~if~~ within the limits
of the Sultan's dominions, proper authority
for the detention of a prisoner would be
required. Such authority is, I gather, to be
sought in the ^{Jurisdiction of the} British Courts Decree 1908 as
quoted in the last enclosure in this letter:

"The Governors of our ports shall receive
all persons delivered to them under a
warrant issued by the British Court and hold
them in custody in accordance with the
terms thereof."

Is Mombasa prison, admittedly within
the Sultan's dominions, one of our ports
for the purposes of this Decree? Most probably
not. If not, the difficulty of detaining the
Sultan's prisoners there is not diminished
by the fact that the prison is within the Sultan's
dominions.

The prison is, in fact, a prison of H. M.
the King within the dominions of H. H. the
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Zanzibar authorities believed it to be and
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The prison is, in fact, a prison of H.M. the King within the dominions of H.H. the Sultan. To make the position what the Zanzibar authorities believed it to be and wish it to be, is not regarded as necessary

either to declare Mombasa to be within H.M.'s dominions for the purposes of Art. 21 of the Zanzibar O.C. of 1906 or to declare Mombasa prison to be, and with the agent of the Sultan, one of the Sultan's ports for the purposes of the Zanzibar jurisdiction of the British Courts Decree 1908.

So to serve in reply
HAB
May 10.

I think that the question involves two terms upon the problem - what is the real legal status of the coast strip of the Sultan's mainland dominions, including Mombasa -
A - under the E. Africa Dec. 1902 clause 1, this coast strip is to be included in the E.A.P. unless it has been excluded by order of the S.P.S. (as to which I have no information),
B - but Judge Hamilton in his judgement in this case says that by virtue of the Concession of 1888 the strip is adversely held in the Sultan's name under his flag and subject to his sovereign rights. This suggests that the coast strip, approximately to the position of the F.M.S. (in which case the port will be theoretically the Sultan's), but if there is so H.M. authority there has no jurisdiction there.

How do you reconcile "A" & "B" supra?
Please return the file to me for further investigation.
R.R. 13/5

Mombasa lies will be found at page 126 of Volume I of Hartslet's Map of Africa by Treaty. By Article I of that Concession the Sultan made over to the Company all the powers and authority to which ~~he~~ was entitled in the district in question, and conceded to the Company the whole "administration" of the territory, "to be carried out in His Highness' name and under his flag and subject to His Highness' sovereign rights".

But this Concession, of course, lapsed when the Imperial British East Africa Company ceased to exist as such. The present position is apparently governed by the Agreement made between His Majesty's Government and the Sultan on the 14th of December, 1905, a copy of which will be found at page 968 of the accompanying volume (No. 87) of State Papers. By this Agreement, the Sultan agreed that:

"As regards his possessions on the mainland
"the administration shall be entrusted to officers appointed direct by Her Britannic Majesty's Government, "to whom alone they shall be held responsible".

"These officers shall have full powers with regard to executive and judicial administration, the levy of taxes, duties, and tolls, and the regulation of trade and commerce. They shall have control over public lands, forts, and buildings"

It was further provided that:

"This Agreement shall not affect the sovereignty of the Sultan of the above-mentioned territories from the Treaty rights of Foreign Powers".

It would appear, therefore, that the East Africa Order in Council, 1902, is correct in its preliminary assumption that by treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction within

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has not with
the present man
fully below
SSA

within the coast strip, as well as within the other territories covered by that Order in Council. It is equally true, apparently, that the Sultan still enjoys his sovereign rights in the strip. The position, therefore, appears to be more or less as already stated. Mombasa Prison is not a prison within His Majesty's dominions as contemplated in paragraph 21 of the Zanzibar Order in Council, 1906, nor is it a prison of the Sultan within the meaning of the jurisdiction of the British Court's Decree, 1908. The difficulty can apparently be got over, as you suggested verbally, by specifically mentioning Mombasa Prison in connexion with section 21 of the Zanzibar Order in Council. This means, I presume, an amendment of the Zanzibar Ord.

JAB
May 19

Mr. Butler

I agree with Mr Butler. Judge Hamilton's opinion to the concession of 1888 was somewhat misleading but the conclusion he arrives at was undoubtedly correct. HM's claim has proved in Mombasa on the coast strip and ~~the~~ as it is not part of HM's dominions - presume it not be recovered thence from Zanzibar under art 21(1) of the Zanzibar OMC 1906.

There remains the question - not decided by Judge Hamilton - whether Mombasa is part of one of the Sultan's gabs within clause 7 of the Zanzibar "jurisdiction Decree 1908". I do not know the history of this gab - it may have been lost since the grant of jurisdiction in 1895, in which case, although it is a matter

of courtesy, they fly the Sultan's flag on it, it is unquestionably an appearance of H.M.'s British Court for S. Africa.

on the other hand it may have been built by the same resigning Sultan before 1895 and if so w^d be one of the "buildings" handed over to British control under the Agreement of 1895 in this case property in it as a mere building continues vested in the Sultan but full control over it is exercised and its use as a guest regulated by the Court of the S.A. Prots. - in other words the building is the Sultan's but as a guest it is an appearance of H.M.'s British Court for S. Africa.

x
had his flag
as so matter of
in recognition
surrendering in
court ship

But even if this view is incorrect and Mombasa Guest is one of the Sultan's guests I am strongly of opinion that it is not one of the Sultan's guests within the meaning & intention of clause 7 of the "jurisdiction Decree 1908". "Our Guests" therein mentioned must, I think, necessarily be limited to guests situated within the geographical limits of the jurisdiction conferred on the British Court - i.e. within Zanzibar & Pemba (claus 1) - The warrant of the British Court we have no force or validity beyond its jurisdiction and it is only within the limits of that jurisdiction that Governors of the Sultan's guests can hold possession in accordance with the terms of a warrant issued by the British Court.

Mombasa is beyond that jurisdiction and clause 7 of the Decree imposes no duty, in my opinion, upon the Governor of Mombasa Guest, if that Guest be one of the Sultan's guests - which, I submit, is not the case.

writing to 20 for consideration

M.A. May 27
at mee

M.A. Taylor J.S.A. 24/5
Lagsee have nothing to add
W.P. 2/5 Draft

In any further communication on this subject, please quote

No. 15367/09.

and address—

The Under-Secretary of State,
Foreign Office,
London.

C. O.
15212
RECORDED
MAY 06 1909
FOREIGN OFFICE

May 5, 1909.

Sir:—

198

Clarke
No. 68

I am directed by Secretary Sir E. Grey to transmit to you herewith to be laid before the Secretary of State for the Colonies, a copy of a despatch from His Majesty's Agent at Zanzibar respecting the imprisonment and release of ex-Inspector Davis from Mombasa Gaol.

Sir E. Grey will be glad of the Earl of Crewe's observations on the subject.

I am,

Sir,

Your most obedient,

humble Servant,

W. Langley

The Under-Secretary of State,
Colonial Office.

C.O.
15212

199

Zanzibar,

REC'D
6 MAY 09

March 25th, 1909.

15367

APR 24 1909

Sir:-

with reference to Mr. Sinclair's telegram No. 11 of the 17th ultimo in which he reported that Police Inspector Davis had been sentenced to one month's imprisonment I have the honour to transmit herewith copies of correspondence with respect to his imprisonment and release from the Mombasa Jail.

It will be seen from that correspondence that before the actual trial took place in view of the probability of the Inspector's conviction and of the inadvisability of allowing him to undergo his sentence here the *first*

Minister requested Mr. Sinclair to obtain the permission of the Governor of British East Africa for the prisoner to be received at Mombasa; Mr. Sinclair accordingly wrote to the Governor who gave his consent to the arrangement and Inspector Davis who was sentenced on the 12th ultimo

WAS

to Secy. 23 Jan.
to Secy 27 Feb.
to Commr. N.S. 16 Feb.
to Commr. 16 Feb.
to Secy 15 Feb.
to do 19 Feb.
to do 22 Feb.
to Secy 24 Feb.
to do 25 Feb.
to do 3 Feb.
to do 3 Feb.
to do 6 Feb.
to do 30 Feb.
to do 30 Feb.

to Right Honourable,
Sir Edward Gray, Bart, M. P.,
to do, to do, to do,

was in due course despatched to Mombasa and incarcerated there on the 17th ultimo.

On the receipt of His Excellency's telegram of the 18th ult. after ascertaining the grounds on which Inspector Davis claimed his release, I called a meeting of the Council of the Zanzibar Government which His Majesty's Judge also attended, as a result of which my telegram of the 25th ultimo was sent and a further warrant was also despatched by mail.

In spite of our efforts however the ex-Inspector was released by an order of the Mombasa Court on the 3rd instant thus escaping 9 days of his punishment.

From the copy of the Judgment and of the opinions of the Attorney General and His Majesty's Judge which I also beg leave to enclose it seems clear that had the point, that Mombasa being within His Highness' Dominions there was no real transfer of the prisoner, been taken the Judge could not have found that the prisoner was illegally detained.

It appears from the notes on the judgment that Mr. Young the Assistant Crown Advocate who appeared for the Crown states that he did take this point the Judge on the

other hand distinctly denies this.

It is extremely unfortunate that Inspector Davis who has not yet returned to Zanzibar should have escaped any part of his sentence but the blame for such a miscarriage of justice appears to me to rest entirely with the authorities of the East Africa Protectorate.

I have the honour to be,

With the highest respect,

Sir,

Your most obedient

Humble Servant,

(Signed) *Edward Clarke*

P. S. Since the date of this despatch I was informed by the Governor of British East Africa that on the 29th ultimo ex-Inspector Davis left Mombasa for Marseilles by S.S. "Melbourne".

5-4-09.

(sd) *Clarke*

202

C. O.

15212

MAY 09

Inclosure 1 in Mr. Clarke's No 68 of March 25th, 1909.

Mr. Sinclair to Colonel Sir J. H. Sadler

Zanzibar,

January 23rd, 1909.

15367

APR 24 1909

Sir,

With reference to the trial of the Police Inspectors for the conduct of which I am informed by the Secretary of State for Foreign Affairs that Your Excellency has been good enough to arrange to send down a judge in the first week of February next, the question has now arisen as to where, in the event of a conviction being secured, Inspector Davis should undergo his sentence.

Inspector Davis is a native of the West Indies, and although a man of colour, is well educated and could not be treated like a native. The present arrangements for the treatment of prisoners other than on the native scale in Zanzibar are very inadequate and it would, in any case, be obviously undesirable that he should be placed under the

charge

charge of native officials whom he previously controlled.

The Zanzibar Government have consequently requested me to approach Your Excellency with a view to ascertaining whether it would be possible, in the event of his conviction, allow him to undergo his sentence in the Mombasa Jail and, if so, what charges would be made.

I have &c.,

J.H.S. John H. Sinclair.

15212

204

REC'D
FEB 6 MAY 09

Inclosure 2 in Mr. Clarke's No 66 of March 25th, 1909.

Colonel J. H. Sadler to Mr. Sinclair

Nairobi,

2nd February, 1909.

15367

APR 24 1909

Sir,

In reply to your letter of January 23rd I have the honor
to inform you that in the event of Police Inspector Davis
being convicted, I shall have no objection to his under-
going his sentence in the Mombasa jail.

The charge is 8 annas per diem.

I have &c.,

Sd/- J. Hayes Sadler.

Governor.

C. O.
15212

205

15367

RECEIVED
MAR 16 1909

APR 24 1909

Inclosure 3 in Mr. Clarke's No. 33 of March 25th, 1909.

Code Telegram.

Zanzibar,

February 16th, 1909.

Provincial Commissioner,
Mombasa.

With permission of Governor East Africa Protectorate,
Inspector Davis is being sent by S.S. "Kaiser" to Mombasa
to undergo sentence of one month's imprisonment February
19.

Sd/ John H. Sinclair.

C. O.
15212
REC'D
MAY 09

15367
APR 24 1909

Inclosure 4 in Mr. Clarke's No. 68 of March 28th, 1909.

En Clair Telegram from Mombasa.

d. 9 a.m.
r. 9.58 a.m.

February 16th, 1909.

Governor approves.

Sd/- Hinde.

Inclosure 5 in Mr. Clarke's No 68 of March 25th, 1909.

Decoded Telegram from Nairobi

C.O.
15212

15367

APR 24 1909

d. 4.20 p.m. }

February 14th, 1909.

r. 5.05 " }

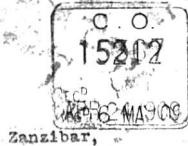
Prisoner Davis has been sent without warrant for removal from Zanzibar endorsed by Secretary of State for the Colonies as required by the Prisoner's Removal Act 1907 Cannot be detained unless you can indemnify us against any claim for damage. Otherwise he must be released from prison.

Immediate reply requested.

Sd/- Governor.

Inclosure 6 in Mr. Clarke's No 68 of March 25th, 1909.

Code Telegram.



February 19th, 1909.

Governor,

East Africa Protectorate.

Prisoner Davis.

Zanzibar Government accept responsibility.

Despatch follows.

Sd/- Clarke

209

C. O.

15212

MA 09

Inclosure 7 in Mr. Clarke's No 68 of March 25th, 1909.

Code Telegram.

15367

APR 24 1909

Mombasa,

February 22nd, 1909.

Governor,

Nairobi.

Your telegram of 18th instant.

Prisoner Davis.

We cannot trace Prisoner's Removal Act 1907 and are unable

to consider our position until we know what you refer to.

Let us know.

Sd/- Clarke

C. O.
15212REC'D
F. MAY '09

Inclosures in Mr. Clarke's No 68 of March 25th, 1909.

Decode Telegram.

15367

APR 24 1909

Nairobi.

d. 2.25 p.m.

24th February 1909.

r. 3.2 p.m.

Writ of Habeas Corpus issued and made returnable for
 March 1st calling on Government to show cause why Davis
 should not be released from custody. Can you justify
 imprisonment in this Protectorate?

Sd/- Sadler.

C. O.
15212

Inclosure 9 in Mr. Clarke's No 68 of March 25th, 1909. E MAY 09

Code Telegram.

15367

APR 24 1909
Zanzibar,

February 25th, 1909

Governor,
East Africa Protectorate.

Nairobi,

Your telegram of February 24th.

Mombasa being in the dominions of the Sultan and the
goal flying his flag in our opinion there has been no
removal at all.

In any case however neither the Colonial Prisoners
Removal Act 1884, nor the Order in Council thereunder can
apply to prisoners from Zanzibar as it is not a British
possession.

But in case it be held that the matter is after all
governed by Art. 21 of the Zanzibar Order in Council, 1906,
we are forwarding warrant duly drawn up under § 3 of that
Art.

34/- Clarke.

212

C. O.
15212

REC'D
6 MAY 09

Inclosure 10 in Mr. Clarke's No 58 of March 25th, 1909.

Decade Telegram

15367

APR 24 1909

Nairobi.

a. 10.55 a.m. }
r. 12.30 p.m. } 3rd March 1909.

High Court of Judicature has ordered release of Davis.

Sd/- Governor.

C.O.
15212

MA' DC

Enclosure 11 in Mr. Clarke's No 68 of March 20th, 1909.

Cypher Telegram #.

15307

APR 24 1909

Zanzibar,

March 3rd, 1909.

Governor,

Nairobi,

You are probably aware that the Foreign Office attach the greatest importance to Davis serving his proper term of imprisonment and should he not do so, there is no doubt that the matter will be subjected to a most searching enquiry both by Foreign and Colonial offices.

What are the grounds of decision?

Is it not possible to detain him until we can send the Kilwa for him: this we could do immediately? Or is it not possible to lodge an appeal against the decision in the Zanzibar Court of Appeal?

Sd/- Clarke.

C.O. 15
15212

REC'D
500 6-MAY 09

Inclosure 12 in Mr. Clerk's 58 of March 26th, 1909.

Recede Telegram

15367

Nairobi. APP

d. 7.25 p.m. }
e. 8.0 p.m. } 6th March 1909.

Your telegram 3rd March, release was ordered by Judge on ground that Mombasa was not a place in some part of His Majesty's dominions.

I have been advised that nothing more can be done here Person named is in Mombasa still and it is believed intends to leave by next mail for Zanzibar.

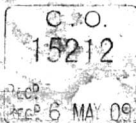
Sd/- Governor.

Inclosure 2 in Mr. Clarke's No. 68 of March 25th, 1909.

In the High Court, at Mombasa.

East Africa Protectorate.

Criminal Case, No. 19 of 1909.



Application for a writ of habeas corpus.

Re. R. N. Davis.

Judgment.

The prisoner on whose behalf this application has been made is a British subject legally sentenced to a term of imprisonment by the British Court in Zanzibar, but now detained in a prison of the E.A. Protectorate at Mombasa having been sent there from Zanzibar with the approval of the Government of East Africa. Among the papers that accompanied his arrival there was no duly signed removal warrant, but the Government have now obtained such a warrant and placed it before the Court, and Mr. Young argues that the prisoner is legally detained in Mombasa prison by virtue of s. 7 of the Foreign Jurisdiction Act 1890 and art. 21 (1) (5) of the Zanzibar O. in C. 1906.

The case stated originally in the affidavit of the Asst. Crown Advocate viz. that the Mombasa Prison is part of H.H. the Sultan of Zanzibar within H.H.'s mainland dominions and that H.H.'s officers had the right to incarcerate therein persons sentenced

sentenced by the British Court at Zanzibar, has not been put forward. Now, art: 21 (1) of the Zanzibar O. in C. 1906 states that, where the Court proceeds under S. 7 of the Persian Jurisdiction Act 1890, the place to which the convict may be removed shall be a place in some part of His Majesty's dominions out of the United Kingdom the Government whereof consents that offenders may be sent thither under this art; and the warrant being now in correct form I have only to decide whether Mombasa prison is a place within H.M.'s dominions as contemplated by the O. in C.

By art: 1 of the concession of 1888 by the then Sultan to the I.E.S.A. Co, H.M.'s mainland dominions, including Mombasa, were then placed entirely under the administration of the Co. which administration was to be carried out in H.M.'s name, under His flag and subject to H.M.'s sovereign rights. Except that the government now stands in the shoes of the Co, this position remains.

H.M.'s Government rules under H.M.'s flag, there is a 'dominium in dominio,' and though Mombasa is undoubtedly subject to the control of H.M.'s Government it is in H.M.'s mainland dominions. So long as H.M.'s flag flies over it, the dominion being that of the flag, I do not think it can possibly be held

to be a place in some part of H.M.'s dominions.

The Foreign Jurisdiction Act merely says the place of confinement shall be 'such place as may be directed by O. in C.' the O. in C. directs in this instance that the place shall be 'in some part of H. M.'s dominions. It is a direction affecting the liberty of British subjects and should be interpreted strictly and, though it may seem somewhat anomalous in view of the fact that Bombay Prison is under the rule of H.M.'s government, I am unable to hold that it is a place in H.M.'s dominions.

That being so I am of opinion that the applicant cannot be legally detained in Bombay on the warrant now before the court and I direct that he be set at liberty.

(Signed) H. W. Hamilton.

2. 3. 09.

I certify that this is a true copy of the original.

(Signed) T. A. Hamer.

3.3. 1909 Deputy Registrar.

Inclosure in Mr. Clarke's No. 68 of March 25th, 1909.

15367

APR 24 1909

Mr. Clarke,

The judgment on the point decided appears to me to be right, but I do not understand why the Judge has given no decision on the point, that the prisoner was not removed from His Highness's Dominions.

The point according to the judgment was raised in the affidavit of the Assistant Crown Advocate and a note in the margin of the copy of the judgment says that he took the point; but the judge says he did not, and gives no decision.

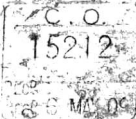
I myself (although I have not had the opportunity of hearing it argued) am still of opinion that there was no technical removal but that the prisoner was in due course imprisoned in one of His Highness's prison (the prison itself daily flies His Highness's flag) in His Highness's dominions.

It might be said that as the officials there were

not directly under the control of this administration that
leave should be granted by the head of the administration,
but this was done His Excellency the Governor having given
written permission to send the prisoner there.

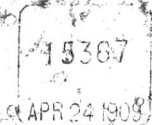
(Signed) Peter Grain

20/3/00.



Inclosure in Mr. Clarke's No. 68 of March 28th, 1909.

 Cmc.



It under stands that when Davis was sent to the Zanabazar Jail (here for many years he had been in considerable authority) he took advantage of his former position to intimidate the jailors and render his incarceration there impossible.

On Captain Durand referring the matter to the Attorney General he advised that the prisoner should be sent to the only other suitable jail in His Majesty's dominions viz. Lompasa.

Mr. Durand was naturally influenced in this regard by the fact that the Government had (having with some foresight anticipated that there might be trouble with Davis), already communicated with the Governor of British East Africa, and he, presumably acting upon legal advice, had agreed to receive Davis in the event of his being imprisoned.

Judge

Judge Bonham Carter, one of the Judges of the High Court of East Africa and therefore conversant with the law and peculiar position of British East Africa, who himself passed the sentence of imprisonment, was informed of the proposed removal of Davis and did not suggest there was any legal objection to the course suggested.

When Davis arrived at Mombasa none of the local or civil authorities raised any objection to receiving Davis or to detaining him in Mombasa Prison.

Some days after a wire was received from the Governor of Mombasa asking for an indemnity as the Secretary of State had not signed the warrant and this Government was also informed that Davis was applying for his release on the ground that Mombasa being in British Dominions he could not be detained there as the provisions of the Colonial Prisoners Removal Act and Order in Council had not been complied with.

It now appears from the judgment that Davis was released for exactly the opposite reason viz. that Mombasa was not in the British dominions and therefore it presumed the first ground put forward was bad. Without expressing any opinion as to the correctness of otherwise

of that judgment I would venture to make the following observations:

b. Although the prisoner was a prisoner of the Zanzibar Government and incarcerated in a prison flying the Zanzibar Government flag the Zanzibar Government here were not made parties to the application and therefore had no chance of engaging any one to put their arguments before the Court there or of bringing to the notice of the Judge the Zanzibar enactments dealing with the point.

The position of the Zanzibar Authorities was the more prejudiced by the fact already mentioned that the argument actually raised before the Judge was exactly the opposite to the one this Government was informed was the basis of Davis's claim to release.

c. The Government here wired to the Governor that the main point that they relied on was that Pemba prison, if not in British dominions was in His Highness's dominions and therefore there had been no removal of the prisoner.

The Judge refers to this point as appearing in the affidavit of the Assistant Crown Advocate but states that it was never argued and therefore gives no ruling with

regard to it. The judgment consequently does not deal with the most important point.

3. Although I have not had the advantage of hearing the question argued I would suggest that the prison at Tombase must either be in British dominions or in His Highness's dominions.

If in British dominions then His Majesty there is under a warrant of the Court and is specifically provided for in section 21 of the Order in Council.

If in His Highness's dominions then as it flies the Sultan's flag it is presumably His Highness's and Section 7 of the Jurisdiction of the British Courts Decree 1906 would seem to apply viz: "The Governors of our realm shall receive all persons delivered to them under a warrant issued by the British Court and hold them in custody in accordance with the terms thereof".

Finally I would point out that under the Old Order in Council 1887 the Consul General had power to send a prisoner to serve his sentence in any place in Zanzibar or in the East Africa Protectorate or in any place in His Majesty's dominions the Government of which agreed to receive them.

Under these provisions a special tariff was arranged by the British Court with Mombasa and Bombay for the custody of its prisoners and several prisoners were sent to both these places.

No difficulties ever arose under this arrangement and it is a little difficult to imagine that the framers of the new Zanzibar Order in Council whilst allowing prisoners to be sent to any British possession, deliberately intended to prevent prisoners being in future sent to Mombasa Prison which is the nearest and most convenient prison to Zanzibar and the only other prison besides Bombay where terms have been specially made and prisoners already sent. I cannot help thinking that they were of opinion when they framed the new Order in Council that it covered East Africa either as British dominions or as part of His Highness's Dominions.

As the views expressed by the High Court prohibit any more prisoners being sent to Mombasa I would ask that the necessary legislation be enacted as soon as possible so that it may be possible to send prisoners to Mombasa jail it being the only available prison to which short sentence prisoners whose removal is

necessary can be sent.

(Signed) Lindsey Smith

March 26th, 1909.

S 3 P
E.O. East Africa Protectorate.
15212.

DRAFT.

THE UNDER SECRETARY OF STATE
FOREIGN OFFICE.

Downing Street,
Edmund
1909.

MINUTE.

Sir,

Mr. Butler. May 28 I am directed by the Earl of Crewe
 Mr. Rosley 28
 Mr. Read 29 to request you to inform Secretary Sir
 Mr. Just. *Edmund*
 Mr. Antrobus. 29 *Edmund* Grey that he has had under his con-
 Mr. Cox. sideration your letter (No. 15367/09) of
 Sir C. Lucas. the 5th of May, relating to the imprisonment
 Sir F. Hopwood. and release of ex-Inspector Davis, of
 Col. Seely. Zanzibar, from Mombasa Gaol.
 The Earl of Crewe.

for cousin

2. Lord Crewe is advised that Mr. *the Judge of the High Court of the E. A. P.* Hamilton was correct in arriving at the conclusion that Mombasa Gaol cannot be held to be a place in some part of His Majesty's dominions. His Lordship is not

sure,

29. 4 June 09

for cousin

It ~~was~~ further provided that, "This agree-
 ment shall not affect the Sovereignty of
 the Sultan of the above mentioned or the
 territories.
 "Treaty rights of foreign Powers".

3. In view of the last quoted clause, ~~it appears to afford a~~
~~ground for~~ ~~Mr. Hamilton's decision quite~~
~~as valid as that on which he purported to~~
~~rest his judgment.~~

^a
 The prisoner, therefore, could
 not be removed to Mombasa Gaol, which is
 within the territory covered by the above-
 quoted Agreement ^{of the 14th of Decr. 1895,} under Art. XXI (1) ^{21 (1)}
 of the Zanzibar Order in Council of 1906.

4. There remains the question, not
 decided by Mr. Hamilton, but raised in the
^{principally}
~~communication from~~ Mr. Lindsey Smith
 dated the 26th of March, 1909, a copy of
 which forms the last sub-enclosure in your
 letter, whether Mombasa Gaol is one of the
 Sultan's gaols within ^{the meaning of} clause 7 of the
 Zanzibar Jurisdiction ^(of the British Court) Decree, 1906. On

5. The position, therefore, appears to be that Mombasa ^{Gaol} Prison is not a prison

DRAFT.

within His Majesty's dominions as contemplated in ^{article} paragraph 21 of the Zanzibar Order in Council 1906, and is not a prison of the Sultan within the meaning of the Zanzibar Jurisdiction of the British Court Decree ~~No. 7~~ of 1908. It would seem, therefore, that the difficulty involved in sending a prisoner from Zanzibar for detention at the Mombasa Gaol can only be got over by specifically mentioning ^{Mombasa} the Gaol in connexion with Section 21 of the Zanzibar Order in Council. This, it is presumed, would involve the amendment of that Order, and Sir E. Grey will no doubt, consider the propriety of having such an amendment made.

6. A copy of your letter and of this reply has been sent to the Officer ^{Adminis-}trating the Government of the East Africa

Protectorate

lectorate for his information.

I am, Sir,

R. H. A.