

EAST AFR. PROT
30111

30111
REC^d
REC^d 26 IN 15

Gov.
Bellfield 316
1916
30 May
Last previous Paper.

RAILWAY STAFF
LOCOMOTIVE AND CARRIAGE DIVISION

Reports as to vacancies and asks argrts
may be made for the appt of four Asst Loco Supts.
If Mr Nevill does not return there will be a
further vacancy.

W. Read
Mr Bottomley

With regard to Mr
Nevill, I do not know what grounds
the Gov. has for the statement that
he ~~will~~ may not return at all. But
he certainly will not return till the
end of the war, & not merely till
after the conclusion of local hostilities.
Mr. O'Sullivan's retirement
has been expected; and it now appears
that Mr. Barnes will shortly retire too.
This means that at the end of the war,
when these two have retired & Mr. Saunders
has reverted to Spalding, Mr. Nevill, Mr. Ford
& Mr. H. ... will be ...

Ch. Com. 3 July 16
= Answer to (City Admin.) 3 July 16

Next subsequent Paper
46923

EAST AFRICA PROTECTORATE
No. 316.

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA

May 30th, 1916.

30111
Rec^d
Rec^d 26 UNIG

Sir,

I have the honour to report that the General Manager of the Uganda Railway has recently addressed me on the subject of the staff in the Locomotive and Carriage division of his Department.

2. Under normal conditions the sanctioned cadre is:-

445
277
356
4457
3531

- 1 Chief Mechanical Engineer
Mr. W. E. Nevill
- 2 District Superintendents
Mr. B. L. Bremner & Mr. M. Gallagher
- 1 Workshops Manager
Mr. P. C. Ford
- 3 Assistant Locomotive Superintendents
Mr. G. F. W. Hartnell
Mr. R. H. Saunders (lent by the Indian Government)
(Vacant)

3. Mr. Nevill proceeded on leave in November last and is I understand now engaged on munitions work. His leave has expired, but

he

THE RIGHT HONOURABLE
ANDREW BONAR LAW, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

have sufficient seniority

or experience to fill the

posts of District Super-

intendants. The salary of
Supt is £350 p.a. except by annual increments

of £25 p.a. The Supplement is

£485 p.a. The Supplement is

of engagement on the

usual first class form of

engagement with salary at

the rate of £350 - £485 p.a.

4. In the event of any

the required number of men

being available for immediate

engagement, I am to request

you to report the fact to the

Sup. You should not, in any

case, definitely engage

candidates without further

reference to the S. of S.

(over here)



EAST AFR PROT
30117

30112
Recd 26

358

Gov
Belfield 31/1

1916
30 Army

Last previous Paper.
30/1

30/1

30/1

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EAST AFRICAN ESTABLISHMENT CONCESSION

Submits observations as to amount which may be reckoned towards development expense under new lease. Encloses memo. by Chief Secretary on subject of land belonging to Sheikh Mbaruk bin Rashid and other rebel Mazrui Arabs.

Mazrui rebels

The Secretary
for Head:

(Unavoidably delayed)

It is unfortunate that this matter was never allowed to get into such a tangled web but the aim is to show that every effort has been made to get at the facts. The question is summed up in paras 21 et seq. of the Secretary's memo.

His Majesty's Commission which was instituted in 1909, that in reference to the children of Hamud bin Wambo the Gov. enclosed with their petition, but that of the children of Mbaruk himself.

Mbaruk being dead, it is probably easier for practical purposes whether we deal with the case which was his from the point of view of the rights of the children of Mbaruk himself.

Enc. 538 - Copy of the ...

34225
59

Next subsequent Paper.

119
44/109

1916

and from the discharge in 1916, or from
the funds, having been ordered to have
done up the case, seems to be a
Selling the property mentioned in the
would seem to be a case of a
but it is not said to have taken place
and the only doubt would appear to be
whether the land (partially) is
the land which was the subject
why they should, but perhaps we should

prepare for the contingency of the Court
deciding against the land but in favor of
the children under the terms of the
will.

Can we, in buying the land, and in the
case, to the (2) parties with the
being the case, considered 7(c) of the

will, or is it? I doubt if we can. The
£2 would not be its £10,000 with interest
[unless the payment be 10% per
year and the land in money], but

it would be a cash payment with
the will. We can say on this
point is that there is the best of what
the estate is supposed to be used to

the £10,000 is having been restored to
the land and will not with
the land and its best.

As regards the "Various Acts" - para. 3
of the will dated on 5/9/12 - it seems as if these
various acts to the land they have been
certainly been done, and we must call the
the position is, however, they will be

settled to have the refund of the £10,000

And, but if they don't get it I think
we shall still have to allow it as
development expenditure, or at least that
the best we can do is to allow it as
development expenditure. One and the same
349
351

I agree generally.

For example, of subarctic
forests, the first part announced
in the 1950s was to be used for
timber, but later the plan
was changed to use the land for
pasture, and the right to dispose
of the land was given to the
State.

But the
State, on the other hand, the
Government's recognition of
subarctic forests would not
necessarily affect the
question.

part of the State's
policy seems to be to distin-
guish between subarctic
forests and other forests, and
to give them a special status
within the national forest
policy, but this may be

A conflict between the two,
and after that we must
indicate this possibility to
the Co. & make it plain
that it will be for them to
establish their rights under
the contract before the
Concensus Court.

A: even as it is

at once

to J. R.

24/7/16

30112

6781-20

345

EAST AFRICA PROTECTORATE.
No. 317.

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.



30112
REC'D
OFFICE 26

May 30th, 1916.

Sir,

44
54422
Memorandum

I have the honour to acknowledge the receipt of your despatch No. 330 of the 31st of December last on the question of the amount expended by the East African Estates, Limited, on their Coast Estate up to the 31st of October, 1915, which may be reckoned towards the development expenditure prescribed under the new lease of the 31st of May 1915.

1. I agree with the opinion expressed in the final clause of paragraph 2.

3. The settlement proposed in paragraph 3 is quite satisfactory.

4. I enclose a copy of Memorandum of the Chief Secretary on the subject of the land belonging to Sheikh Mazruk bin Rashid and the other rebel Mazrui Arabs who were outlawed in 1896. The question is peculiarly complicated, but the deduction

THE RIGHT HONOURABLE
ANDREW BONAR LAW, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W.

No. 112 w Africa No. 1032

ENCLOSURE
Despatch No. 3 of May 3 1896

357

30112
REC'D
REG'D 26 JUN 1896

Your Excellency,

As reported in N.256 Vol.VI I have recently been engaged in searching our records for information concerning the land belonging to M. Mbaruk bin Rashid and the other rebel Masru'i who were outlawed in 1896. The results at which I have arrived are not very definite or satisfactory, but, such as they are, the position appears to be as follows:

2. ON APRIL 26th 1896 Sir A. Hardinge pardoned all the rebels with the exception of 10 viz: Mbaruk himself, his two sons, Hyeub and Sebe, Hamis bin Kumbo, Mahamed bin Hamis bin Kumbo, Salim bin Haseif, Mwanje Gaka, Mubarak bin Rashid, bin Hamis, Asis bin Rashid bin Hamis and Akeda Bakar'i.

3. The property of all these 10 was forfeited to the Crown except in the case of Mbaruk himself where it was proclaimed that, with the exception of certain specified houses, Government would hold the property in trust to be divided on his death between two non-rebel sons, viz: Rashid and Mahamed, or their heirs. It was further proclaimed that Mbaruk's daughters and other relatives not excluded from the estate would on his death also be entitled to a share in the estate to which they would be entitled under Mohammedan law.

4. From an African White paper I find that writing on June 18th, 1906, Sir A. Hardinge stated that one of these two sons, Hamid, was then in Kambasi in connection with his father's property, that he expressed a wish to reside in British East Africa but that Sir A. Hardinge was adverse to his doing so.

5. About April 1907, Mohamed bin Hamis bin Kembe, one of the unpardoned rebels petitioned Government to be allowed to return to British East Africa. In his despatch to the Colonial Office No. 517 of December 2nd, 1907, Sir James Hayes Sadler reported on the circumstances connected with the surviving rebels (6 in number viz: Mbaruk himself, Eyyub bin Mbaruk, Seb bin Mbaruk, Asis bin Rashid, Mahomed bin Hamis bin Kembe and Mwenyi Gaka) and recommended that they should be pardoned and that they be permitted to return to British East Africa. This was approved in Lord Elgin's despatch No. 8 of 6th January, 1908.

6. In his despatch No. 549 of September 23rd, 1908, Sir Percy Girouard reported that, with the exception of Sheikh Mbaruk himself, the pardoned rebels had settled peacefully in this Protectorate.

7. He stated further that although it was agreed in 1904 that, with the exception of Sheikh Mbaruk's estate, the properties of the other rebels were to be returned to the possession of one of them viz. Hamis bin Kembe, the children of the other rebels had been placed in possession of by Government. He also stated that the children of the other rebels had been placed in possession of their fathers' estates and recommended

475
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128
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... the ... 17th December 1906, but ...
matter ... to have been allowed to rest at that.
No account has as far as I know ever been submitted by
the administrator of the estate.

In a minute dated May 3rd, 1907, Mr.
Kellas, Secretary to the Administration, wrote:-
"with regard to the orders passed by Sir A.
Hardinge relating to the rebels' property it would
appear that except for Sheikh Mbaruk bin Rashid and
Hamis bin Kombo these orders have been a dead letter.
Sheikh Mbaruk's property is held in trust for his son
Mohammed, for the heirs of his late son Rashid, and for
his daughters. The administrator of the estate is
Abdul Karim bin Talib, although called on for an
account six months ago has not yet submitted it". In
the same minute he stated:-

There would be no objection to Sheikh Mbaruk
... having the use of his situated
... after his death they should pass
... Mbaruk and Mohammed, as advised by

... of this minute by
... 2nd December 1907
... addressed to the
secretary ... specific reference was made
in this despatch ... property. Nor in the
late despatch ... 1906, was any
mention of Sir A. ... concerning
Sheikh Mbaruk's property a
reference was made to those ar
restoration of Hamis bin Kombo's p.
... was recommended. It was for

that the children of the other eight rebels had been allowed to remain on their fathers' estates, a fact which can I think be deemed to have been tacitly approved by the Secretary of State who did not comment thereon in his reply which approved the recommendation regarding Hamis bin Kumbo's estate.

16. Still, Abdul Karim does not appear to have been called on again for an account and it was not until Mr. Merrison took up the matter on December 23rd, 1910, that the question was again raised. I was unable to ascertain what took place as a result of Mr. Merrison's representations but it appears that Abdul Karim transferred the property to Salim bin Kibarak, about this time, on verbal instructions from Mr. Hinde, the Provincial Commissioner, Mombasa. Abdul Karim executed the property transfer document in a document dated April 18th, 1911, and that document has the following postscript:-

"and I have seen Salim's wakala document during his father's lifetime he was agent, and wasi after his father's death, and the wasi documents beared Mombasa Registry, Salim received these properties during his father's lifetime and he sold some property in Mombasa when his father dead and paid Government fee in the High Court at Mombasa".

17. I asked the Hon'ble Attorney General, Mr. Barton, whether he could find out anything more about the estate when in Mombasa last month. He saw Mr. Byramji who was first appointed receiver of the estates. This must have been prior to August 1906 as in a letter dated August 7th, 1906 Mr. Crawford, Acting Commissioner and Consul General, informed Mr.

Mr. Gave, H.B.M. Consul, Zanzibar, that a receiver
had been appointed to collect the debts of the
estate and pay the same into the Mombasa Treasury in
trust for the beneficiaries. Mr. Gave states
that he was relieved of his appointment shortly
afterwards and it would therefore appear that the
two paragraphs of Sir A. Hardinge referred to in
paragraph 28 were written in 1896 or 1897, which
Mbaruk died at Dar-es-Salaam in 1911 and his son
Salim was appointed wali of his estate by Mr. Justice
Bonham Carter on 30th January 1912. The estate
never appears to have been wound up and there is a
note on the account to the effect that:-

"Land at Gazi and Kibekoni not disposed of
yet as there is a dispute with the Government". Mr.
Bath states that no wakalia from Mbaruk has been
registered with the Registrar of Documents and it
would therefore appear that Abdul Karim was incorrect
in stating that it had been registered at Mombasa.
He probably confused Mbaruk's wakalia with Salim's
appointment as wali after his father's death.

18. I gather that Salim was Mbaruk's
youngest and favourite son. He was probably not
known of when the wakalia was granted by Sir A.
Hardinge in 1896, as not being specifically mentioned
with Salim and Yusuf and would certainly
have been included with Mbaruk's other
sons as potential heirs to the property.

Only two months' notice has been received
from the Court, Mombasa, that Mohamed bin
Mbaruk has applied to be appointed wali of his
father's estate in the place of his brother Salim
who is in enemy country and to act as trustee for the
properties

(3) When Mbaruk was pardoned in 1907-08 the question of restoring his property to him was not raised.

(4) When the Colonial Office were addressed in 1909 with the request that Hamis bin Kambo's property might be restored to his children, Sir A. Hardinge's arrangements regarding Mbaruk's property were referred to and there was no suggestion that they should be modified in any way.

(5) Nor is there any thing to show that the restoration to Mbaruk of his property was ever formally mentioned or even considered.

(6) In about 1911 Abdul Karim, the administrator of the estate, was instructed or permitted to transfer the property to Mbaruk's attorney, Salim bin Mbaruk.

The position thus appears to be that the property was restored to Mbaruk without any special authority at all.

22. This probably occurred (1) because the matter was dealt with in succession by a number of different officials who were not cognizant of the early history of the case and (2) because it was assumed that the pardon extended to Mbaruk included the restitution to him of his property.

23. From the wording of the amnesty it is quite clear that Government assumed control of the estate during Mbaruk's lifetime and undertook to restore it to his rebel relatives on his decease. Sir A. Hardinge's reasons for this arrangement are given in his despatch to Lord Salisbury of April 22nd, 1896, vide Africa No. 6 (1896) and were that he did not consider it desirable that

(3) When Mbaruk was pardoned in 1907-08 the question of restoring his property to him was not raised.

(4) When the Colonial Office were addressed in 1909 with the request that Kembo's property might be restored, Sir A. Hardinge's arrangements regarding Mbaruk's property were referred to and there was no suggestion that they should be modified in any way.

(5) Nor is there any thing to show that the restoration to Mbaruk of his property was ever formally sanctioned or even considered.

(6) Yet about 1911 Abdul Karim, the administrator of the estate, was instructed or permitted to transfer the property to Mbaruk's Attorney - Salim bin Mbaruk.

The position thus appears to be that the property was restored to Mbaruk without any special authority at all.

22. This probably occurred (1) because the matter was dealt with in succession by a number of different officials who were not cognizant of the early history of the case and (2) because it was assumed that the pardon extended to Mbaruk included the restoration to him of his property.

23. From the wording of the amnesty it is I think quite clear that Government assumed control of the estate during Mbaruk's lifetime and undertook to restore it to his non-rebel relatives on his decease. Sir Arthur Hardinge's reasons for this arrangement are given in his despatch to Lord Salisbury of April 22nd, 1896, vide Africa No. 6 (1896) and were that he did not consider it desirable

that

26. The question now naturally arises whether, through carelessness or apathy on the part of the Government, any injustice has been done to any of those of Mbarak's relatives who were by Sir Arthur Hardinge's proclamation made heirs to the estate. I am inclined to think not. It would I think be a mistake to refer for Government when Mbarak's estate was a mortgaged one arranged to be taken by Sir Arthur Hardinge and to have restored to him his confiscated property.

Again the fact that Mr. Morrison does not appear to have proceeded with his contemplated prosecution against Abdul Karim seems to show that he was satisfied that the property had been administered more or less regularly.

Finally the fact that Mahomed bin Mbarak has only now come forward and applied to be made WARE of his father's estate in State of Salim goes to prove that, as one of those directly interested in Sir Arthur Hardinge's arrangements, he was satisfied with the position of affairs.

27. I am therefore inclined to recommend that we treat the property which was confiscated by Sir Arthur Hardinge's proclamation as having been restored to Mbarak and that we do not contest any claims, which may be made by his wife or by Colonel Owen Thesle (by virtue of his agreement with Mbarak of December 17th, 1919,) to any property which should have devolved on Mbarak's death on the relatives mentioned in the said proclamation.

28. I do not think that the fact that Salim bin Mbarak is residing in enemy territory

1896.
December 17th.

5. Abdul Karim called upon by the
Secretary for an account of his trusteeship.

1907.
May 2nd.

6. In a minute Mr. Helle, Secretary to
the Administration, states that there would be no
objection to Zbaruk residing on and having the use
of his estate during his lifetime but that after
his death they should pass to his sons Anshid and
Mahamed as ordered by Sir A. Harcourt.

1907.
December 2nd.

7. Sir James Hayes Sadler recommends that
the surviving rebels, six in number including
Zbaruk, shall be pardoned and allowed to return to
British East Africa.

1908.
May 6th.

8. Lord Selkirk approves recommendation in 7.

1909.
September 23rd.

9. Sir Percy ... the last ...
exception of Zbaruk ... rebels had
settled peacefully ... He
refers to the arrangement ... as regards
Zbaruk's property, reports ...
that the confiscation order had been a
dead letter and asks that the latter's heirs may
be granted what was left of their father's estate.

1909.
September 3rd.
Received Sept.
20th and dealt
with after 5
had been dis-
patched.

10. Six of Zbaruk's children ... except
the rebels ... petition the law
government through the Diplomatic Agent and Consul
General, ... the restitution to them of
their father's property. The petitioners consist
of ... and (Lain) and four ...
... the petitioners having died
... name appears for the
... .

Some labels and (part) property confiscated.

1916.
April

24. Muband bin Mbarak petitioned the High Court to be appointed Wali in place of his brother Salim who is in enemy country.

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MEMORANDUM ON THE QUESTION BY O. F. WATKINS,
DISTRICT COMMISSIONER.

1. It is a matter to be in mind for 1898
land had no value. The early Arab colonist
bought the land by force. There was no for all. Con-
sequently there was no hard to acquire, to. Each man
occupied as much as he developed and a more.

2. Development by war slaves, who were
in small groups of 2 or 3 couple. They cleared
and planted coconuts and cereals. A proportion of
this was payable to their owner. The rest the slaves
could dispose of always with the knowledge that
their owner was their heir. Profit went to the pur-
chase of more slaves and more development. Plantations
might be a little about at some distance from each other,
or, since they were the trees that withered and not the
land, the boundaries of several members of the same
family might be in a terrible confusion, a cluster
of trees belonging to A being surrounded by trees
belonging to B, with more trees belonging to A being
in a ring again. Boundaries were never demarcated

3. A successful man would need a small armed
force to protect his properties and control his
slaves. As development progressed he would be in-
clined to claim a "sphere of influence", to lay
out the limits of his family and relations, and
to extend the circle of his plantations and
as a result, a number of spheres of in-
fluence would be formed.

buy out the rights over one and the same patch of three distinct parties.

384

- A. "Sheikh Mbaruk and his heirs".
- B. "Various Arabs and Swahilis".
- C. "Possible tenant rights".

18. If as is most probable, the actual tenant at C. proves before the land court a superior title to either A or B, his area will have to be cut out of the surrounding Masrui area, meaning more demarcation and more delay.

19. Here again it would be far better to reach a settlement on broad lines e.g.,

1. The East Africa Estates buy up all plausible claims lodged with a period of limitation fixed by statute.
2. They surrender all their rights to Government.
3. Government includes all lands so surrendered in the area leased.
4. Government allows purchase price to be included in development expenditure.

There would seem to be no reason why this should not come south of the TIWI River even if the proposal did not recommend itself to the Company to the north of it owing to the amount of freehold land involved.

(Sd.) G. F. Watkins.

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of the ...
shown

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... will be ...
... further ...
... the account.

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lease.
 question of the
 14. The land which formed
 the subject of the agreement
 with the Baruk is not free
 from difficulty. Under
 the amnesty granted ^{in 1896} after
 the Magyari rebellion,
 the Austrian Government
 considered that it was not
 bound to give the land to the
 rebels. The Government
 of the Kingdom of Hungary
 has since then been
 in possession of the land
 and has been able to
 give it to the rebels
 who have been
 in possession of it
 since the rebellion.

DRAFT.

The amnesty by which the rebels were pardoned in 1896 was not intended to give them the land which they had occupied during the rebellion. The Government of the Kingdom of Hungary has since then been in possession of the land and has been able to give it to the rebels who have been in possession of it since the rebellion.

The amnesty by which the rebels were pardoned in 1896 was not intended to give them the land which they had occupied during the rebellion. The Government of the Kingdom of Hungary has since then been in possession of the land and has been able to give it to the rebels who have been in possession of it since the rebellion.

lease.
 question of the
 44. The land which formed
 the subject of the agreement
 with the Baruk is not free
 from difficulty. Under
 the amnesty granted ^{in 1896} after
 the Bagyari rebellion,
 the British Government some
 compensation for the land
 in exchange for the land
 administration in the

DRAFT

... the ...
 ... of ...
 ... of ...
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 ... of ...

The "Baruk" is
 which has
 been ...
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... of ...
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in 1908 but his personal rights to the land were not formally restored until then or subsequently. It seems however to have been after his pardon arranged that he had some interest in the property, and it would appear that ~~the land~~ was to be transferred to the ~~land~~ ~~company~~

in 1911 shortly before his death the management of the property was transferred to the Government of the State of Bihar

Post 1. In 1901 the Govt is to give the land to the Govt with the understanding that in 1901 personal rights were restored to the land but it is possible that the Govt, when the Govt title comes to be considered, may take the obvious view, and in fact some is handed over to the Govt's family to

in 1908 Govt of the land after that date power to Dept of the land

agreement for sale to the Company 332
7. The Board have suggested for the Company's account that the land in question should be leased as a ~~lease~~ ~~lease~~ ~~lease~~ ~~lease~~

125. Of the Board's title
- (i) The ~~title~~ ~~title~~ ~~title~~
 - (ii) The ~~title~~ ~~title~~ ~~title~~
 - (iii) The ~~title~~ ~~title~~ ~~title~~
 - (iv) The ~~title~~ ~~title~~ ~~title~~

lease.
 question of the
 14. The land which formed
 the subject of the agreement
 with the Barak is not free
 from difficulty. Under
 the amnesty granted ^{in 1896} after
 the Paganini rebellion,
 the British Government some act
 of forgiveness...
 in the...
 administration...
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 of it...
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DRAFT.

The "amnesty" in
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in 1908 but his personal rights to the land were not formally returned either then or subsequently. It seems having to have been arranged after his pardon, assumed that he had some interest in the property, and it would appear that the management of the property was transferred to the Government by the Sal...

in 1911 shortly before his death the management of the property was transferred to the Government by the Sal...

in 1908 it is clear that he had after that date power to dispose of the land,

but it is possible that the Crown Court, when the C of S's case to be considered, may take the obvious view and in that case it would be open to the Court to find that the...

reference to the agreement for sale to the County.

7. The Board have suggested for the Corporation's consideration the land in question should be leased with an option to purchase.

12.5. By the Board's 27th... (i) The...

under the...

(ii) ... area of 2000 acres referred to as ... Part of the land of the 31st of May 1911

(iii) ...

(1) A receipt for any amount
under the name of
in respect of the land,
quarter at the rate,
of cents for every acre
The receipt to
show any from the
date on which the purchase
is completed.

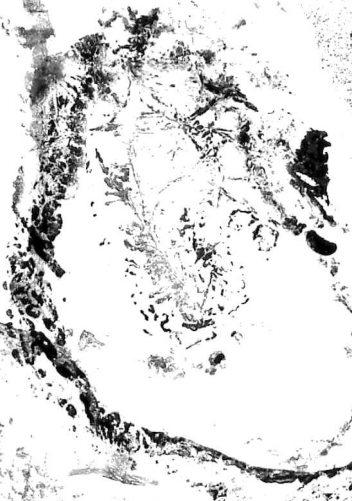
If the receipt for the
purchase of the land
is not in the name of
the person who has
the right to sell
the land, the receipt
shall be void.

(2) The receipt for the purchase of
the land shall be valid if it is
signed by the person who has
the right to sell the land.



as development under
 a (iv) above. In H. 388
 Belfield will have no
 objection to this
 and concurred provided
 the C^o agree to the
 terms of the proposed
 arrangement.

9. Referring to the
 land sold from
 some 1000000
 of the
 and the
 and the
 and the
 and that the land which
 they sold to General
 Thomas was formerly
 and that
 in that



in that
 will be
 title to