

EAST AFR. PROT.
36963

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NOV 11

1911



Area by...

Land at Kawasha & Jilgit.

Date.
Previous Paper.
2939

Enclosed letter from local manager... states in view of statement... that the carrying out of proposed arrangement may be deferred pending receipt of further report from manager. Also states that you may retain the right provided in the lease to purchase outright the whole of the 500 sq. miles.

Mr. Fisher.

This is a very different letter from what one would have expected after my interview with the Directors reported on R.A.32939. At the same time, it may be that they are only sparring for time, and we must do our best to prevent their dragging the thing on until we have no remedy against them.

As to the difficulties to which they refer, the Syndicate start by reserving 50,000 acres entirely for their own purposes. This ought, one would think, give them ample scope for a large sheep and ranching business. I am inclined to think that there may be a good deal in difficulties (2) and (3). We are clearly not in a position to form an opinion upon them without consulting the Governor. On page 2 of the letter the Syndicate ask that, notwithstanding any provision in the correspondence to the contrary, the Secretary of State will concur in retaining the right provided in the lease to purchase outright the whole of the

To CA
P. to Exp. some before 4. 1924
copy forwarded April 1911
31/10/11

50,000

500

Subsequent Paper

38610

500 square miles. This is an insidious suggestion under their original lease, subject to a specific amount of development having been effected, they have the right to freehold the whole of the 500 square miles for a lump sum of £50,000. They are bound to acquire the free-hold at one stroke or not at all. We have always understood that the Syndicate would find it difficult to put down this sum in one payment, and this difficulty suggested the opportunity of coming to some arrangement by which ~~the lease~~ might be broken up. The outline of that arrangement was that they should be allowed to acquire the free-hold by instalments and no question should be raised as to the fulfillment of their development obligations, if subject to a ^{provision} reservation of 50,000 acres, they would let the Government dispose of one-half of the remainder of the land on their behalf to other purchasers. In paragraph 6 of their letter of the 17th January, the Syndicate sought to retain the purchase the out-standing blocks of land but-right at any time, i.e. when they might find it convenient to put down the balance of the purchase price, and get rid of Government intervention in the sale of the land. We are unable to accept this, and stipulated that the Syndicate's right to purchase out-standing blocks should be subject to the same obligations as preceding, i.e. as ~~in the contract~~, of placing one-half of the blocks at the disposal of the Government, for sale on behalf of the Syndicate. If they agreed to what the Syndicate now proposes, they could, as soon as they are in a position to put down £50,000, get rid of all Government intervention and so destroy the object which we have had in view throughout, namely, to rescue some portion of this enormous area from the control of a single Syndicate.

At this point I would reply that the Secretary of State is not prepared to vary the terms as to the purchase of free-hold arranged in their letter of the 17th January and our reply of the 27th February, but that he is willing to consult the

the Governor as to the difficulties of details numbered (1) (2) (3) in their letter, if the Syndicate will first give an assurance that they have no intention of departing from the outlines of the arrangement made in the correspondence referred to and that they will not take advantage in this connection of the delay which will be caused by this further reference to the Governor.

20th Feb
 1929
 I am sure through Mr. Risley so that he may say what he can agree with A above.

I agree that the Co. proposed to be allowed to retain the right to purchase the whole 500 square miles (as provided by the original lease) would, if conceded, destroy the essence of the agreement concluded in January of this year for the modification of the lease. The Co. should be held strictly to that agreement because, if on receipt of the matter in any way, they will set up that the agreement has been rescinded and the status quo ante restored. i.e. that they have the full rights secured to them by the original lease, under which, after satisfying the conditions as to development & survey, they can at any time during the remainder of the term (up to 31 July 1929) purchase the whole 500 square miles for £50,000.

I should therefore have a clear understanding with the Co. that the agreement is not a good unless the Co. is bound

As to their point (1) it does not seem difficult to choose a compact area for themselves.

As to (2) no doubt the plan proposed is difficult but we sh^d not be unreasonable.

Reverting to Mr Fiddes first sentence, if this situation had ever to be explained to Parliament the C. C. w^d be blamed as well as the C. A.'s solicitors. Is it not possible to have a list of all the concessions + times for revision or dealing with ~~terms~~ conditions of development in each department? which ^{to} should be looked over from time to time by a responsible official & with a view to ~~to~~ our raising any demurrer within the specified dates.

C. 28.11

We must hold the Co. strictly to the agreement (if we can).
I think this is a good suggestion if it can be carried out.

H. 28.11.11

See now extract attached from a private letter from W. Read, a telegram to the C.A. I

* See further memo. on this point.

SPAB. Dec 8.

Mr. Fiddes.

It is now necessary to discuss the suggestion made in Lord Emmott's minute of the 23rd of November.

I think that suggestion was made under the impression that we negotiate here, or at least have on record here, all, or practically all, the concessions granted in the East Africa Protectorate. As you know, this is not the case. The number of land grants and concessions arranged in East Africa runs into hundreds in the course of a year. Those actually negotiated to any extent in this country and those of which we have actual copies can, I believe, be counted on the fingers of two hands. The vast majority of the grants and concessions are arranged locally, under laws, regulations, or general directions given by the Secretary of State, without any kind of reference to the Colonial Office beyond the recording of them, when made, in a bare list of grants at the end of each half-year. It is only when there is something out of the common about a concession, such as its size, the peculiar nature or peculiar importance of the subject matter, or difficulties as to financial arrangements, that it comes before the Colonial Office at all. Even then, when the concession has been negotiated, it is made on behalf of the Protectorate Government, is recorded in the Protectorate, and ranks with the other concessions and grants made in the Protectorate as one to the due observance of which the Protectorate Government must look. It is, under existing arrangements, just as much the duty of the Protectorate Government, who are on the spot and therefore in a position to determine exactly how things are going, to see that due development is being carried out.

as to look after the due collection of rents, royalties, and other payments, and the proper observance of the manifold other conditions of the grant. It would be very unwise, even if it were practicable, which I am sure it is not, to isolate this one stipulation as to development and try to attend to its observance in this country. The whole responsibility for keeping concessionaires and grantees up to their obligations should clearly rest upon the government of the country in which they are working. The Secretary of State should only intervene on the motion of the local Government.

These reasons are, I fear, conclusive against the adoption of the suggestion. It seems hardly necessary to refer in addition to the great increase of work and staff which would be involved by attempting to deal with hundreds of concessions, ~~even when~~ ^{see 1917-1918} offices, (for any criticism as to failure to fulfil obligations necessarily leads to such correspondence), or to the practical difficulties of criticising development which is taking place thousands of miles away.

This is all said of the East Africa Protectorate. It applies with equal force to Uganda and Nyasaland, and more forcibly still to all other Colonies and Protectorates, for there is little doubt that more special concessions are referred home for negotiation from East Africa than from other Colonies.

May I point out that what ^{has} happened in this particular case is not due to any failure of system? The East African Sub-registry have a careful method of noting in a special book and under a certain date all papers which are marked to wait or to be brought up at a specified time. This book is gone through daily under the heading for the day. In the present instance the papers were actually marked by ¹⁻² r. Read on the 4th of April last with the following words: "Re-circulate
w. hm

when we get from the Crown Agents the formal agreement with the Syndicate." The Sub-registry, ~~in consequence of the system described above~~, did not wait indefinitely, as this minute would have justified them in doing, but brought up the question in September. The Crown Agents were then reminded and the present correspondence has ensued. The failure, therefore, was an individual failure on the part of Mr. Read and myself, who had been intimately concerned with the negotiations, to direct that the papers should be brought up in sufficient time before the 12th of July to put further pressure on the Syndicate if they had not by that time completed the agreement. The failure on our part was no doubt due to a lack of sufficient imagination to conceive that the Syndicate would or could "wriggle out" of an agreement which they had themselves proposed and which they had at every stage shown themselves anxious to consummate. So marked was this disposition on the part of the Syndicate that we had ^{actually} told the Governor in March that there was no objection to his proceeding to give effect to the arrangement locally in advance of the agreement being actually signed. There was, in fact, no lack of knowledge that, according to the Governor's statements to the Syndicate, the Syndicate could not complete their due development by the 12th of July, 1911, but there was an individual failure on the part of Mr. Read and myself, and subsequently on the part of the Crown Agents' solicitors, to realise and put on record the importance of that knowledge in connection with the supplementary agreement under negotiation. Some excuse for this frame of mind may be found in the opinion given by Mr. Risley in January, (and recorded in the minutes of the meeting of the Concessions

Committee

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below.

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Committee attached to M.I. (1733), that, in view of the account given by Sir P. Girouard to the Colonial Office of the work actually done by the Syndicate, it would be practically impossible to cancel the lease on the ground of failure to comply with the conditions as to development. If this opinion is sound, bringing up the matter before the 12th of July would have given us only a further opportunity of "bluffing" the Syndicate, which might or might not have been successful; not an opportunity of taking effective steps to determine the lease.

28/13

Dec 8

M. 12

M 13 12

I think Mr Batters' minute is conclusive against any complete registry in this office of all concessions in Colonies & apparently our present systems ought to be sufficient to guard against contingencies of this sort.

E 29/1

Page

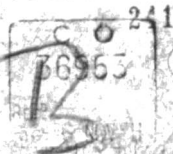
4-30-12

attached to W.P. 35963 Ear

(Extract from a letter from Mr H. J. Read to Mr. Butler, dated 14th November, 1911)

With regard to your interview with Villiers, Girouard is sending off MacDonald, the Head of the Agricultural Department, to see what the East Africa Syndicate have done in the matter, but it seems to me that the Syndicate cannot get away from their bargain with us. The arrangement put forward was not Girouard's but Edmund Davis's, and my impression is that the latter put forward his scheme not so much because we were putting the screw on but because his experience in a similar case in South Africa had led him to believe that the arrangement would be a good one for the Syndicate. At the meeting which we had with the Chairman and directors (including Villiers), I remember his saying that it was of no use keeping the land and looking at it. At any rate he carried the majority of the directors with him and the arrangement has been ratified by official correspondence, and I do not see how Villiers and Lord Pembroke can upset it now. Also Girouard still maintains that proper development had not been carried out.

19, ST. SWITHIN'S LANE,
LONDON E.C.



THE EAST AFRICA SYNDICATE LIMITED.

15th November, 1911.



Sir,

Referring to my letter to you of the 17th January last on the subject of the terms and conditions of the lease of 500 square miles of land in the neighbourhood of Naivasha and Gilgil held by this Syndicate, and to your letters of the 27th February and 16th March, 1911, numbered 1733 and 7863 respectively, I am directed to point out that the Company's General Manager, Mr. J. K. Hill, who was for some years Manager of the Government Farm at Naivasha, raises the following points:-

1. That it is absolutely necessary for the success of a large sheep and ranching business to have a definite boundary enclosing a compact area, and that the splitting up of the land into divisions, sub-divisions and blocks requires much consideration as not to hamper the business of the Syndicate by reason of the scattered nature of the land it might retain and thus prevent its successful working.
2. That although on the plan it appears to be a simple matter to block out the land in the manner provided for by the correspondence between us, yet, owing to the actual conditions, that is to say, the configuration of the land

Mr. Hon. Lewis Harcourt, M.P.

E.A.S.Ltd.

(2)

15/11/1911.

with high escarpments in some places and swamps in others, in would be impossible to mark out the land in the suggested blocks, and at the same time provide for such areas being of the general characteristics required to carry out the terms proposed by the correspondence.

- 3. That although 1d. per acre was added to the price mentioned in the original proposal to cover survey expenses, so much sub-division will entail a great expense for surveys and fencing, and without fencing grave risks from disease would be run on a large number of farms of comparatively small areas.

Having regard to the strong objections from a practical point of view held by our Manager on the spot, my Board asks that the carrying out of the proposed arrangement may be deferred until a further and final report by the Manager on the scheme can be received.

My Board would be glad, notwithstanding any provision in the correspondence to the contrary, if you could see your way to concur in the Syndicate retaining the right provided in the lease to purchase outright the whole of the 500 square miles.

It may be of interest to the Government to know that the 30th September, 1910, the Directors' estimate of expenditure on the Land Grant (including a proportion of London expenses) amounted to £52,125, and that at this date, including the last remittance to the General Manager, the

Rt. Hon. Lewis Harcourt, M.P.

E.A.S.Ltd.

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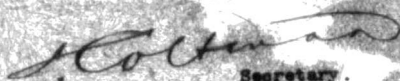
18/11/1911.

total money provided on capital account is £63,917, shewing that a very large amount of additional capital has been invested in the business during the current year.

I have the honour to be, Sir,

Your obedient Servant,

For THE EAST AFRICA SYNDICATE LIMITED.



Secretary.

Rt. Hon. Lewis Harcourt, M.P.

One of His Majesty's Principal Secretaries of State,

Colonial Office,

S.W.

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Sent 1. D per
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DRAFT

Telegram

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MINUTE

Mr. Baker. Dec 4

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completed development

Mr.

Mr. Fiddes

Sir H. Just

Sir J. Anderson

Lord Lucas

Mr. Harcourt

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H.I./36963/1911.
East Africa Protectorate.

DRAFT.

Crown Agents
for the Colonies.

Downing Street,
4 December, 1911.

MINUTE.

Mr. Butler. *Dec 1* Gentlemen,

Mr. With reference to the correspondence

Mr. Fiddes. *2/3* noted in the margin, I am directed by Mr.
Sir H. Just. *1004* Secretary Harcourt to inform you that ~~he~~

Sir J. Anderson. *observes that*
Lord Kinnear. *attention has been called to the fact that*

Mr. Harcourt. *before the 12th July last*

to C.A. (Sec/E.A.P./30) your Solicitors omitted to call attention to

to C.O. the delay on the part of the East Africa

to C.O. Syndicate, Limited, to complete the supplemen-

to C.A. tary agreement arranged with them, before the
12th July last, that being the date by which

the Syndicate were under the obligation of
completing certain developments under the terms
of their lease dated 12th July, 1904.

Mr Harcourt is not prepared to relieve
~~this department of the whole of the responsibility~~
~~for the failure to mark the importance of the~~
~~date in question, but he cannot but feel that~~
your Solicitors, in whose hands the matter then
was, might have been expected to call attention
to the approach of so critical a date and the
fact that there was a danger that the Syndicate
would postpone beyond it the completion of
the agreement arranged with them. The failure

~~to do so~~ ^{I am, etc} ~~may be found to have~~ ^{been so seriously}
prejudiced the position of the
Govt in face of the unwillingness
now manifested by the Syndicate
to execute the agreement.

I am,

Yours