

DOMESTIC

EAST AFR. PROT.
ZANZIBAR

C. O.
15456

REC'D
MAY 8 1909

15456

of or

Foreign

1909

May

Previous Paper

16
8428

Abolition of Slavery in Zanzibar

Sends further copies resp. Sultan's objections to proposed Decree affecting Concubines. Proposes to amend decree as indicated

W. Read

I think that the suggested addition to clause 7 of the draft decree is only a measure of common justice. We make it possible for a concubine to deprive her master of the rights which he has in all innocence acquired & exercised over her. It is only just that, if she elects to do so, she should at the same time forfeit her rights as against him, such rights having their sanction only in the social order which the decree destroys.

Concur in the suggested alteration.

J. A. B.

May 10

Approved by Sultan 17922

U.S.W. 2002/27-2000-11-28

Subsequent Paper

1909

I imagine that this is the
most satisfactory amendment that
can be devised & that the
S. of S. will not dissent.

W. L. G.

17.5

Lord Crewe

It is a difficult question involving
a knowledge of Eastern custom, and
especially of the Indian precedents
to which I can lay no claim whatever.

The amendment might be harshly
criticised in the House of Commons,
but if I can announce on your
behalf 'the total abolition of
the legal status of slavery in
Zanzibar' every thing else will
be forgiven.

W. L. G.

17.5

I see no reason to
object to this assertion of
equal rights for the two
sexes

C. 19.5

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most satisfactory amendment that
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be forgiven.

Wm
17.5

I see now no reason to
object to this assertion of
equal rights for the two
sexes.

C. 19. V

In any further communication on this subject, please quote

No. 13742/09.

and address—
The Under-Secretary of State,
Foreign Office,
London.

C O. 230
15456

REC'D
MAY 09
FOREIGN OFFICE

May 7th, 1909.

mediate.

Sir:

With reference to my letter of the 16th February last respecting concubinage in Zanzibar, I am directed by Secretary Sir E. Grey to transmit to you to be laid before the Earl of Crewe copies of further correspondence on the subject. Lord Crewe will observe that the Sultan's main objections to the proposed decree affect two points, one that the Sheri law forbids Moslems to retain free women as concubines, the other that the freed concubines will retain all their rights while the present owners will lose all their rights. These objections undoubtedly have considerable force.

Sir E. Grey has decided that it is practically impossible to deal now with the first point, but in order to meet His Highness' wishes as far as possible he proposes, unless Lord Crewe sees grave objection,

to

Under Secretary of State,
Colonial Office.

Handwritten notes:
Clarke
12 Jan 14
Cave
and 15
Clarke
No 25 (P)
Clarke
No 23 (P)
Clarke
No 34 (P)
i of Zanzibar
Jan 14

to make the following suggestion which is understood to have the general assent both of Mr. Cave and the Agent and Consul-General: that Clause 7 of the draft Decree shall be amended by the insertion after the words "Mahomedan Law" of the words, "provided that any concubine who shall leave her master without his consent shall sacrifice such rights, including the right to the custody of her children by him".

I am,

Sir,

Your most obedient,

humble Servant,

W. Langley

EAST AFRICA

February 8.]

154

CONFIDENTIAL

SECTION I.

REC'D
FIG. 8

[5133]

No. 1.

Consul Sinclair to Sir Edward Grey.—(Received February 8.)

(No. 12. Confidential.)

Sir,

Zanzibar, January 14, 1909.

I HAVE the honour to acknowledge the receipt of your despatch No. 306 of the 12th November last, instructing me to obtain the Sultan's signature to the Slavery Decree which was inclosed therein, in order that it might be issued simultaneously with the British East Africa Ordinance.

In my telegram No. 154 of the 23rd ultimo, I stated that His Highness had refused to sign this Decree as it stood, and that the only grounds on which he would consent to do so would be that the rights at present enjoyed by owners of concubines legally held should be maintained so far as regards these women.

I first saw the Sultan on this subject on the 14th ultimo, when I showed His Highness a copy of the new Decree and explained its provisions. His Highness, after remarking that no mention of the matter had been made to him whilst in England, said that, whilst he had no objection to the other clauses, he did not understand how His Britannic Majesty's Government could expect him to sign that dealing with concubines, in view of their former promises not to interfere with the family life of the Arabs. I replied that, although His Britannic Majesty's Government had stated in 1897 that no interference in this respect was contemplated, I was not aware that any definite promise had ever been made that concubines would never be freed, and pointed out that steps had been taken, by the insertion of provisions for the maintenance of the rights of concubines and of their children, to guard against any greater disturbance in this respect than was absolutely unavoidable.

His Highness then said that he would consider the matter further, and I left him a copy of the Decree.

The following day His Highness sent for the First Minister and Legal Member of Council, and discussed the matter with them, and requested the latter to put down his (the Sultan's) views in the form of a letter. On receipt of your telegram No. 160* of the 19th December, I again visited His Highness, and told him that I had been instructed to inform you on what date the Decree would be signed. His Highness replied that he could not consent to sign it in its present form, and stated the objections which appear in Mr. Grain's letter, which I subsequently received, and a copy of which I have the honour to inclose herewith. I represented to His Highness that the whole question had already been most carefully considered by His Britannic Majesty's Government, that although, as I had already told him, I was sure that there was no intention on their part to unduly disturb the domestic peace of the Arabs, yet it had been a long-standing source of grievance with the British public that there still existed a form of slavery in the British Protectorates on this coast of Africa. I pointed out that in India, where there was a very large Mahomedan population, slavery had been totally abolished, and that His Highness' refusal to consent to it here would undoubtedly lead His Britannic Majesty's Government to think that he lacked the enlightenment which might justly be expected of him. His Highness replied that he could not reconcile it with his conscience to assent to the terms of a Decree which were in contradiction to his religion, and referred to the great indignation amongst the Arab and personal unpopularity which his predecessors Seyyid Khalifa and Seyyid Ali bin Said had suffered in consequence of the Slavery Decrees issued by them. He also stated that, in his opinion, the issue of this Decree would lead to a great increase in the number of prostitutes, and also to a certain amount of private cruelty on the part of the Arabs, who would undoubtedly, if they could not legally prevent their women from leaving the harem, take their own measures to do so.

As it was evident to me that His Highness had no intention of giving way, I requested him to again reconsider the matter, at the same time stating that I could hold out no hope that his proposal to add a provision, under which the owners of concubines could retain their rights over them, would be acceded to.

* Asking on what date the Decree would be issued.

On the receipt of Mr. Grain's letter of the 22nd December formulating His Highness' objections, and after awaiting the arrival of your despatch No. 317 of the 7th ultimo, which I found contained nothing to alter the terms of the Decree, I suggested to His Highness that we should again discuss the matter, and that Mr. Grain should be present to give us the benefit of his legal knowledge; to this proposal His Highness assented, and I accordingly attended at the Palace to-day. His Highness, who was attended by Mr. Ashmead-Bartlett, received us, and as that gentleman was still present when His Highness proposed that we should discuss the question of the Decree, I requested that, as there were matters it might be necessary to touch upon which I thought His Highness would prefer not to be discussed in Mr. Ashmead-Bartlett's presence, he would be so good as to request him to leave us. His Highness at first demurred, but eventually complied.

We then proceeded to discuss His Highness' objections. With regard to the first, I pointed out that, although a concubine is, so long as she is in her owner's house, entitled to food and clothing, there is apparently nothing to prevent the owner turning her out whenever he wishes to get rid of her, and that he would certainly do so if she refused to obey his orders or was guilty of misconduct. His Highness replied that the owner would probably not wish her to leave, and went on to discuss the question of her right to take away her children. This appears to be a point which ought to be considered, but us, under the Law of Islam, a woman could only claim their custody provided she did not marry again, and also that if it were proved that she was leading an immoral life she would sacrifice her rights in this respect. It is probable that the right of custody would revert to the father in most cases. According to the law as expounded by the Sunis, a free woman—and it is clear that a concubine would have this status after the issue of the Decree—has the right of custody of her children of both sexes. The Ithabis, however, hold that the father has the right of custody of his sons, and the mother of the daughters only.

His Highness' argument, which is put forward in the penultimate paragraph of Mr. Grain's letter, which is to the effect that, as no Mahomedan is allowed to hold a free woman as a concubine, the Arabs would, after the issue of the Decree, be compelled to either turn out their concubines or to marry them, is, although specious, not one which they would be likely to carry into effect. It is well known that the Arabs privately maintain that such of those Decrees which are, in their opinion, at variance with the Law of Islam are not binding upon their consciences, and they will certainly not go to the length of turning out of their harems any of the women they wish to keep on account of their being legally free.

This argument is further stultified by the fact that, although there can at the present moment, owing to the effect of the Decree of 1890, be no legally held concubines under the age of 18 years, the harems undoubtedly contain many girls under that age who are regarded and treated as such. His Highness admitted this, but requested me, nevertheless, to lay the objections before you in the form in which they were drafted.

On my again pointing out to His Highness that the effect of the provision which he wishes to be inserted, and which appears in the last paragraph of Mr. Grain's letter, would be to render the principal object of the Decree, which was the total abolition of slavery, abortive, His Highness replied that he could not in any case consent to it without this provision. I thereupon reminded His Highness of the conditions which he had signed on his accession, one of which was that he "would be guided by such advice as His Majesty's Government might tender through their Representative in all matters relating to the question of slavery," and said that I felt sure that in the face of this that he had refused to carry it out. His Highness appeared to have forgotten that he had ever signed such a condition, and on being assured that this was so seemed rather taken aback.

After again making use of some of the principal arguments before mentioned, His Highness seemed more inclined to be reasonable, but requested that I would nevertheless lay his views before you.

It is difficult even for those best acquainted with the Arabs to foretell what will be the exact effect of the new Decree as regards the number of concubines who will leave their home, but it is generally anticipated that a large number of them will do so, and that those who do not actually leave will be more difficult than they are at present to control. Of those who do go, a considerable number will probably marry, for the fact of their having been the inmates of Arab harems will, in the eyes of the native, add to, rather than detract from, their value from a matrimonial point of view;

and others will, if it is to be feared, join the ranks of the numerous women, known as "hawati," who, though not prostitutes in the strict sense of the word, nevertheless lead an immoral life, cohabiting with anyone who takes their fancy or who can afford to keep them.

I feel that I should be neglecting my duty if I omitted to report that, the idea being firmly rooted in the minds, not only of the Arabs, but also of the members of the British and foreign communities here, that His Britannic Majesty's Government, have given definite assurances that they would not interfere with the family life of the Arabs, the issue of the proposed Decree will consequently be regarded as a breach of faith. This is a point which is felt very strongly by those officers of the Zanzibar Government who were here at the time of the issue of the Decree of 1897 and have themselves given such assurances to the Arabs.

Although I have held out no hope to His Highness that his request for the retention of their rights over concubines at present lawfully held can be granted, I nevertheless feel strongly—and this feeling is shared not only by all the principal officers of the Government, but also by the Bishop of the Universities Mission—that if, whilst declaring concubines free, it were found possible to reserve to the Arabs the same restrictive rights over them as they possess over their wives, the evils of increased immorality and the loss of British prestige might be avoided.

I am informed, though I cannot guarantee the accuracy of the information, that in the native States of India, although no status of slavery exists, any woman who is formally admitted into a harem is subject to these restrictions and her children still retain their rights of inheritance. It is certain that, whatever laws are made, the Arabs will still continue to maintain concubines, and if their status is no longer recognized there will be an ever-increasing number of illegitimate children.

There is one other point which appears to have escaped notice in connection with the reservation to existing concubines of the rights they at present enjoy under the Mahomedan law. Under this law a concubine is entitled to food and clothing, so long as she remains with her master, she also has certain rights of inheritance through her children: thus if a concubine bears a child to her master and her master then dies, the child inherits; and if the child then dies, the mother inherits through that child. If a concubine freed under this Decree leaves her master and leads an immoral life, it would be considered unfair to the other inheritors that she should still retain these rights of inheritance; and I would therefore venture to suggest that, if no wider concession can be made, the words "provided that any concubine who shall leave her master without his consent shall sacrifice such rights" might be inserted after the words "Mahomedan law," which occur in clause 7 of the new Decree.

I have, &c.
(Signed) JOHN H. SINCLAIR.

Inclosure in No. 1.

Mr. P. Grain to Captain Barton.

Sir,
Zanzibar, December 23, 1908.
I HAVE the honour to state that on Wednesday, the 16th December, I attended at the Palace at the request of His Highness the Sultan.

In the course of my interview with His Highness he stated that he objected to sign the new Slavery Decree on account of Article 7 of that Decree.

His Highness stated to me his objections and his reasons for those objections, and has requested me to communicate them to you for the purpose of having them forwarded through His Britannic Majesty's Agent and Consul-General to His Britannic Majesty's Secretary of State for Foreign Affairs.

His Highness states that he objects to the Article, because by it the concubine retains all her rights, while all the owner's rights are abolished, namely, the children of the concubine retain their right to inherit the property of the owner of the concubine (subject to the first-born having been acknowledged), and the concubine is entitled to maintenance and clothing, so long as she resides in her owner's house, although the owner under the Decree has no control over her and she is free to go in and out of the house when she likes, and is consequently no longer an inmate of the harem.

If she has children by her owner (parentage acknowledged) she can leave her owner's house and take away and retain control of his children: in case of a son, until he

is 7 years old; and in case of a daughter, until the age of puberty; the owner and the father having no power to prevent her as she is a free woman, and, as mother of the children, entitled to the custody of them.

And a further reason for objecting to the Decree is that, as according to the "Sheria" (the Law of Islam), no Mahomedan is allowed to have a free woman as a concubine, all Arabs will be compelled to dismiss from their houses all those concubines who are at present in occupation of the harem or to marry them. But in the majority of cases the Arabs will be unable to marry them, because the number of wives allowed by Sheria is already complete. Consequently there will be a great number of women suddenly turned out from what have been their home, who will have nowhere to go and nothing wherewith to support themselves.

His Highness suggests that Article 7 should be redrawn on the following basis:—

After the words "previously enjoyed under the Mahomedan law," to add: "and provided that the owners of those concubines lawfully held at the time of the signing of this Decree shall continue to be entitled to all the rights and privileges over and concerning those said concubines only, which they have previously enjoyed under the Mahomedan law."

I have, &c.
(Signed) PETER GRAIN,
Attorney-General and Legal Member of Council.

C. O.
15456

MAY 09

Copy.

WEST CLIFF COTTAGE, 234
HERNE BAY,

15th March, 1909.

10120).

Sir:-

With reference to your despatch (5133/09) dated the 24th ultimo calling upon me for any observations which I may have to offer upon the objections raised by His Highness the Sultan of Zanzibar to the proposed new Slavery Decree, I have the honour to submit to you the accompanying Memorandum on the subject which I have prepared in obedience to your directions.

I have &c.,

(Signed)

Basil S. Cave.

E. Grey, Bart., M.P.,
&c., &c., &c.

Confidential.

C O
15456

RECORDED
MAY 09
235

Memorandum on Mr. Sinclair's despatch No. 12, Confidential, of the 14th January, 1909, and His Highness the Sultan's letter of the same date.

The Sultan's objections to the proposed new Slavery Decree appear to me to be very reasonable.

When I proceeded to Mombasa in June last to discuss this question with the Governor of British East Africa my desire was so to frame the draft decree as to leave the position of existing concubines undisturbed, not only as regarded their own privileges and the legitimacy of their children, but also in the matter of the control exercised over them by their masters. Sir James Sadler assured me, however, that he was in possession of information from official sources which made it quite clear that no proposals would be acceptable to His Majesty's Government which did not provide for the immediate emancipation of all concubines, and it was on this assumption that we proceeded to discuss and draft the proposed decree. My own view of the matter, I may add, is clearly set forth

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in the concluding paragraph of Chapter 92 of my report of the 2nd. Novemter last, where I declared myself as being "strongly of opinion that no interference should be allowed with legally-held concubines who are already inmates of the harem".

If it is still felt that the rights of emancipation to be conferred by the new decree must be extended to existing concubines, I think that a way may be found to meet the principal objections to this procedure which have been raised by the Sultan and his advisers.

It has apparently been proposed with this object that the masters of freed concubines should be permitted to exercise the same degree of control over them as over their wives, but I do not consider that this would prove a satisfactory solution of the difficulty either from the masters' point of view or from that of the concubines, who, in that event, would still be unable to leave their masters if they desired to do so.

I would suggest, in the first place, as Mr. Sinclair

clair

Sinclair does, that the preservation by existing concubines of their rights as such should be made dependent upon their remaining with their masters, unless the masters themselves wished to be rid of them.

In the second place, I would give a master the option of retaining in his own custody any children born to him of a concubine who elected to leave him under the provisions of the decree.

And, in the third place, steps might be taken to legalize the status of existing concubines who were freed under the provisions of the decree but who remained with their masters. I do not believe that there are many persons in Zanzibar who are so rigid in their observance of the letter of the law that they would drive away a concubine because she was no longer a slave, but the absence of such a provision might possibly give rise to legal difficulties in the future, and in any case it might be advisable to be on the safe side.

If these suggestions are adopted any existing concubine could avail herself of the provisions of

the

the new decree and leave her master, but she could only do so by forfeiting the privileges which she now enjoys under the Mohammedan Law and by abandoning her children, and I think that such an arrangement would go far towards meeting the objections which the Arabs entertain to the decree in its present form. It would not have any great effect upon the increase of immorality which would naturally follow the promulgation of the decree, except in so far as it would decrease the number of concubines who availed themselves of its provisions to leave their masters, but this danger is hardly so great as the Sultan would have us believe. A good many of these women would undoubtedly indulge, as nearly every unmarried Swahili woman does, in promiscuous sexual intercourse; but very few of them would adopt prostitution as a profession. A great social upheaval such as the abolition of concubinage is bound to bring some evils in its train, and it may well be argued that an increase in the general immorality, regrettable as it would be, is a far lesser evil than the worst and most degrading form of bondage which domestic slavery entails.

Paraphrase of telegram from Sir E. Grey to Mr. Clarke, dated March 29th, 1909, No. 25.

C. O.
15456

"Slavery Decree.

I have consulted Mr. Cave with regard to Mr. Sinclair's despatch No. 12 of January 14th and the following is the substance of the suggestions made by him.

He considers it unsatisfactory to give the masters the same control over their freed concubines as over their wives, as in that case the freed concubines, if they wished to leave their masters, would be unable to do so.

He is of opinion secondly that the preservation by the existing concubines of their rights as such should, unless their masters wish to get rid of them, be made dependent upon their remaining with them.

If a concubine elects to leave her master, Mr. Cave thinks the master should have the option of retaining in his custody any children she may have had.

Thirdly, in order to obviate the legal difficulties arising from the fact that Mohammedan law does not allow free women to be retained as concubines it

Paraphrase of telegram from Sir E. Grey to Mr. Clarke, dated March 29th, 1909, No.25.

C. O.
15456

*Slavery Decree.

MAY 09

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is advisable to legalize the status of the existing concubines who are freed but remain with their masters."

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15456
REC'D
MAY 31 1909

Paraphrase of telegram from Mr. Clarke, Zanzibar to Sir E. Grey, No. 23, dated April 13th, 1909.

742/091

"Slavery Decree.

We agree with points 1 and 2 of your telegram No. 25 of March 29th respecting the status of freed concubines who elect to remain with their masters. With regard to the third point raised in your telegram we are of opinion that the legalisation of the status of freed concubines would result in the creation of a status unknown to Mohammedan or English Law hitherto. It is possible that such a Decree might be objected to both by Christians and Mohammedans. The former might object on the grounds of its legalizing immorality, and the latter on the grounds that by giving rights to a class not known to Mohammedan law we were interfering with their personal Mohammedan law, which we are pledged not to do"

C. O. 241
15456
REC'D
MAY 09

Paraphrase of telegram from Mr. Clarke, Zanzibar,
to Sir E. Grey No. 54, dated May 5th, 1909.

10/09)

"Slavery Decree.

It appears to me that point 2 in your telegram
No. 25 of March 29th meets the point as to children
raised in His Highness' letter, a copy of which was
enclosed in your despatch No. 74 of March 24th. My
telegram of April 13th informed you of our concurrence
on that point.

Although we are willing to agree to this arrange-
ment, it would perhaps have been better if I had
pointed out in my telegram of April 13th that an al-
teration would be effected in personal Mohammedan law
by giving the father control over the children.

I am of opinion that there can be no doubt that
there is a great deal in favour of the views held by the
Sultan with regard to the concubines themselves. The
danger which His Highness indicates, however, is one
against which it seems to us impossible to guard, as

long

long as it is considered inexpedient to allow the masters to exercise the same control over their concubines as over their wives. It is probable, however, that the Surias will be restrained from leaving their masters against the latter's wish by the prospect of being obliged to leave their children behind them.

THE PALACE,
ZANZIBAR,

January 14th, 1909.

My dear Friend:-

I am writing to you - not with any desire to hinder the action of His Majesty's Government in the final abolition of Slavery in my Dominions, which action, at its commencement had the loyal and earnest support of my late father, whose example in this matter it has been both my wish and my intention to follow - but in order that you may be informed of the grave danger to the public morality of Zanzibar that is bound to arise as the result of certain clauses in the Decree called Slavery. It is for this reason that I have been unable to agree to the promulgation of the Decree (as requested by His Britannic Majesty's Acting Agent and Consul General) until I am certain that you have had the opportunity of considering my views on the following grave points.

In

Right Honourable
Sir Edward Grey, Bart., M.P.,
&c., &c., &c.

In regard to the existing Concubines now held by most of the Arabs in Zanzibar. They can, if this Decree becomes operative in its present form, leave their masters at any time they like, taking with them their children up to the age of seven. Now my dear Friend I ask you to consider that these women are uneducated and of a low moral standard. If for some caprice of temper, or anything of that nature they elect to leave their master it is perfectly obvious that the only course open to them is to join the ranks of vice thus making not only themselves but their masters also, a reproach and a shame in the eyes of the whole community. Moreover the distress of the father at the sight of his child in the sole charge of an ignorant woman of low morals, passing its tender years in a neglected state and amid surroundings such as I have described can better be imagined than written about.

Again I would ask you to consider what are likely to be the effects on the morality of this town, and country, if a large number of uneducated women without protection and without resources are suddenly to be flung on the streets, as I am sure they will be if this Decree

in

Decree in its unaltered state becomes law. I appreciate the evils of Concubineage, and I give my wholehearted support to that part of the Decree which abolishes it for the future, but at the same time I think that it must be clear to all thinking men that Concubineage, where the Concubine is fed, clothed, cherished, and for the most part well cared for is preferable to low and promiscuous vice. It is for this reason that I earnestly recommend that the Decree should only affect Concubineage entered into after its promulgation, that is to say it should be directed to the prevention of the taking of fresh Concubines, and that the Concubines at present held should remain in Statu Quo.

No personal considerations are affecting me in writing thus to you. It is the alarm, so well founded, and the annoyance that it will cause in its present state among the leading Arabs. It is the breaking of Family ties, and the terrible effect it is bound to have on Morality that force me, whilst earnestly wishing to follow the desire of His Britannic Majesty's Government,

Government, to make these earnest and sincere representations to you.

They are founded on personal knowledge. There were a number of female slaves belonging to my Household. They became free, and some of them started to run away. I called them together and said "Those of you who wish to stay and serve me can stay, and those of you who wish to go can go". About three quarters of them left. It afterwards came to my certain knowledge that, whilst some of them were starving in the streets, others were leading a life of shame, a danger both to the health and to the morals of the whole Community.

If you think that this Decree must be enacted as it stands, despite my warnings, I shall do my best to faithfully and loyally carry out the wishes of His Majesty's Government, but I shall do so with a clearer conscience in that I have made these representations to you.

I have sent a copy of this letter to the Foreign Office and I am sending this one to your private Address in order to insure that you see it.

Yours very sincerely,

(Signed)

Abdul Hamid.

F.O.-15456 B.A.P.

Zanzibar

21
27

The U. S. of S.
Foreign Office

Handwritten initials

DRAFT.

21 May 09

Sir,

I am etc. to ack. the recd. of your
letter No. 13742 of the 7th of May, and
to inform you that his Lordship concurs in
the amendment to Clause 7 of the draft Decree
relating to slavery in Zanzibar, ^{which} suggested by
Secretary Sir Edward Grey *Admiral & Supt*
I, etc.,

MINUTE

Mr. Dumb 20 May

Mr. Bull 20

Mr. Just.

Mr. Antrobus.

Mr. Cox.

Sir C. Lucas.

Sir F. Hopwood.

Col. Seely.

The Earl of Crewe.

Handwritten notes:
17922
Ans'd
Copy for Comd 14 June 1882

(Signed) R. L. ANTROBUS