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1916  
October

*Attorney*

ARREST OF ITALIAN SUBJECT BIAGIO FIGLIA

for civil debt on board Italian Steamer "Siracusa".  
Tis copy letter from Italian Consul and memoranda by the Attorney General. A reply has been sent to the Consul in terms of para 13 of MR Barth's memo. of 14th Sept. Requests consideration of general question and issue of instructions.

Last previous Paper.

*Christy's copy of Smith's 1908*

~~30/2/1922~~ 09

*he looks*

*... several volumes ...*  
*In this case an Italian subject left 2 bar owing money, and the 2 bar court telegraphed to E. H. asking for his arrest. The Ct. Justice endorsed the tel for execution and so issued a provisional warrant of it. The warrant was served on board a Italian ship but the captain refused to hand the man over and was supported by the Italian Consul Agent, who was on board.*

*There seems to be no doubt that the document was a proper provisional warrant for the arrest under sec. 2 of the Judgments Extension Act, 1908, and the point is*

Last previous Paper.

10/08

*Vol. (inserted)*

Whether the E.A.P. Court had jurisdiction.

(1) There is no doubt that in 2 bars the Italian extra territorial jurisdiction has been surrendered and transferred to H.B.M. Court. In the particular case the C.J., E.A.P., was simply giving effect to the 2 bars jurisdiction. It would seem to the lay mind that the Italian interference at Bombay was certainly an infraction of the jurisdiction of the 2 bars Court, but Mr. Barth does not go further than to say that "his strong impression against the arrest could be maintained".

(2) But there is the more important point whether the E.A.P. Court itself (not merely assisting for the 2 bars Court) has jurisdiction over Italian subjects in the coast strip. This certainly is a question that the Notes of January 1905 should transfer the jurisdiction in the dominions. (Without going up to the level of the Secret to H.B.M. Court for 2 bars - established in the 2 bars Court of 1897. The final Notes of July 1905 have the same effect though the particular point is not mentioned.

I have searched the E.A.P. books for 1905 without finding any authority from here [he took over the E.A.P. from 14.05] for Mr. Stewart's notice of 22.8.05, and I can only conclude that he acted on information obtained from

in Gazette annex

Zanzibar

? Copy to H.O. and ask for their views as to whether the transfer of Italian extra territorial jurisdiction under the Notes of 1905 be the result of leaving the jurisdiction, in the case of the mainland dominions, to H.B.M. Court at 2 bars & not to the E.A.P. Courts, in a case, if they agree that this is the case, whether it would not be possible to put the matter right by a further exchange of Notes. Also ask whether there are any other Powers in regard to those similar actions as required.

[I do not quite understand the ref to France as the topic of Mr. Barth's second minute. What we said in 21522/04 was that the French Note of 17 is near & that French citizens re. were to be dealt with by the same Court as British subjects, whether mentioned in the Notes used as a pretext as to whether the Court with jurisdiction is on the mainland or at 2 bars.]

C.C.S. 8/17

It seems to me that at the back of the Consul's action (though he does not mention this point) was also the question as to the service of British legal process on board an Italian merchant vessel in British Protectorate waters.

This

This question is at any rate involved in the case now before us and I think we had better mention it in referring to the Foreign Office.

*of last date from the h...*

The penultimate paragraph of Article IX of the 1885 Treaty between Italy and Zanzibar says "Italian vessels will further enjoy in the ports belonging to the Sultanate of Zanzibar all the privileges, rights and immunities granted to those of the most favored nations".

These immunities do not probably include exemption from service of local legal process. So far as English law is concerned foreign merchant vessels are subject to our jurisdiction in British waters, but some foreign states, e.g. Germany and France, take a different line.

You will remember that we had trouble about serving a warrant in a criminal case on board a French ship in the Channel some time before the war and an interdepartmental committee (on which I represented this department) was appointed to consider the matter.

I have been thinking and discussing this line to want the collection of information on the following matters:-

- (1) To what extent such jurisdiction is actually exercised in practice in the big ports of the United Kingdom and
- (2) What is the law and practice as to the exercise of such jurisdiction by foreign countries.

The whole matter has been hung up by the war.

[ with regard to the last sentence of Article VIII of the Treaty, I suppose that Italy would contend that this does not apply to the present case as the creditor was not subject of the Sultan but a British Indian. ]

I think we should have Foreign Office observations not only as to the position of the East Africa Protectorate Courts in the exchange of Notes, but also on the general merits of this particular case and the question of service of local legal process on Italian merchant vessels in Zanzibar and East Africa Protectorate waters.

*JA*  
*20/1/17*

*Lab*

*at once*

*22/1/17*

EAST AFRICA PROTECTORATE.

No. 127.

CONFIDENTIAL

167  
RECEIVED

October 3rd, 1916.

Sir,

I have the honour to transmit herewith for your information a copy of a letter I have received from the Italian Consul at Mombasa relating to an order from His Britannic Majesty's Courts at Zanzibar for the arrest on account of a civil debt incurred in Zanzibar, of one, Biagio Ruglia, an Italian subject travelling on board the Italian steamer "Siracusa".

I enclose also two memoranda by the Attorney General on the subject.

2. I have caused the Italian Consul to be informed in terms of paragraph 12 of Mr. Barth's memorandum of September 14th and I should be obliged if consideration could be given to the general question and instructions issued to me in due course.

I have the honour to be,

Sir,

Your humble, obedient servant,

H.C. Balfour  
GOVERNOR.

THE RIGHT HONOURABLE

ANDREW BONAR LAW, F.C.S., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S. W.

Italian  
Consul Mombasa  
8-8-1916.

Memoranda

ENCLOSURE (1)

Despatch No. 127 of 19 October 1916  
Mombasa

REC'D  
REG'D 26 DEC 16

168

CONSOLATO

8th August 1916.

S.N. Il Re D'Italia

in Mombasa.

No. 497/18.

Sir,

I have the honour to address Your Excellency on the following matter.

The Captain of the Italian Steamer "SIRACUSA" at 7.30 p.m. on the 3rd August at Zanzibar reported to me (I being at the time on board that ship on a voyage to Mombasa) that the Police Authorities in Zanzibar desired to arrest or board the ship a second class Italian passenger named Biagio Puglia for a civil debt alleged to be due by the latter to a British Indian merchant of Zanzibar.

The Police Authorities at Zanzibar had no authority from the Acting Italian Consul at Zanzibar to arrest an Italian subject on an Italian ship in Zanzibar waters, and the Captain told me that he had refused to have this passenger arrested.

On arrival in Mombasa Harbour in the afternoon of the 4th instant the steamer "Siracusa" was boarded by the local Police who stated that they had instructions to arrest the abovenamed Biagio Puglia at the instance of the British Court in Zanzibar.

I was present at the interview on board between the Police Inspector and the Captain of the ship.

To His Excellency  
Sir Henry Conway Belfield, K.C.M.G.,  
Governor and Commander in Chief,  
East Africa Protectorate  
Nairobi.

At

At this interview the Captain asked the Police for their authority to effect the arrest contemplated, and the only authority produced was what purported to be a telegram from Zanzibar. There was no warrant, and no instructions from the Italian Consul at Mombasa.

The Captain thereupon refused to hand over Biagio Puglia to the Police, unless, as Italian Consul in Mombasa directed him to do so.

Owing to the abrupt manner adopted by the Police Inspector and as there was no warrant or regular authority for this arrest, I declined to order the Captain to hand the passenger over. The Inspector thereupon left.

No application, through the usual official channels was made to me to sanction this arrest of an Italian subject on an Italian ship in Zanzibar territorial waters, and by virtue of the Treaty of May 1885 between Italy and Zanzibar I regret that such an application should have been made through Your Excellency.

Furthermore as the accredited representative of His Majesty the King of Italy to Your Excellency, I consider that the Police should in the first instance have approached me when it was desired to arrest an Italian subject under such conditions; moreover by adopting this course any danger of a misunderstanding between the Police and the Captain of the ship would have been avoided.

I have, etc.,

Il Regio Console

Sd/- L. FRIGERIO.

Reggente.

In Encl. No. 27 of 3 October 1916  
September 14th, 1916.

The Hon. Chief Secretary,

Reference No. S. 14820/B of the 16th ultimo.  
re Arrest of Biagio Puglia.

With reference to the above the facts appear to be that on the 4th ultimo a telegram was received by the Chief Justice from His Britannic Majesty's Court at Zanzibar asking for the arrest of an Italian Biagio Puglia a defendant in a civil case brought in His Britannic Majesty's Court at Zanzibar. The telegram stated that a warrant had been issued and would follow. The Chief Justice issued a provisional warrant by endorsing the telegram for execution and handing it over to the police. The provisions applicable to the issue of such a warrant are to be found in the Judgment Extension Ordinance, 1908, Section 2. There has been no suggestion that the 1908 Ordinance authorises the issue of a warrant under the Ordinance.

1. Biagio Puglia arrived in Mombasa on an Italian ship the Captain of which refused to hand him over to the police. The Italian Consul stationed at Mombasa who was on board and was a passenger in the ship from Zanzibar to Mombasa apparently approved the Captain's action and refused to give any orders alleging that the man could not be arrested without his orders.
2. The Italian Consul further alleged that there was no power to arrest the man.
3. The Chief Justice on the 4th ultimo issued a formal provisional warrant which was handed to the police on the 5th ultimo but which was not executed.

I gather that in view of the Italian Consul's continued opposition no attempt was made to execute it.

5. The Consul was addressed on the 5th ultimo by the Chief Justice who reminded the Consul that the Italian extraterritorial jurisdiction had been surrendered to the British Courts in the Sultan's dominions and that an Italian subject could claim no higher rights than a British subject. The Chief Justice asked the Consul to be good enough to inform him if he withdrew his objection or if he persisted in his opposition to the arrest. The Consul replied that he could not alter his decision.

6. The Chief Justice further addressed the Consul on the 8th ultimo asking for his reasons for objecting to the execution of the warrant. The Consul replied that he was addressing the Governor on the facts and his letter of the 8th ultimo to His Excellency was sent.

7. Before dealing with the Consul's letter to His Excellency I will, for the purpose of ascertaining jurisdiction the Protectorate Courts have over Italian subjects, refer to the treaty of 1885 between Italy and Zanzibar and the subsequent agreement between Italy and Great Britain contained in the notes exchanged in 1905. The treaty of 1885 between Italy and Zanzibar provided that Italy should exercise extraterritorial jurisdiction in the dominions of His Highness the Sultan of Zanzibar (vide Article 5). The notes exchanged between Lord Lansdowne and Signor Faasi on 18th January 1905 provide that the extra territorial jurisdiction exercised by His Majesty the King of Italy in His Highness's dominions should be transferred to His Britannic Majesty's Court for Zanzibar as constituted under the Zanzibar Order in Council, 1897. The transfer was



effected as from the 8th July, 1905, vide the notes of the 5th and 9th July, 1905, exchanged respectively between the British Embassy at Rome and the Italian Foreign Minister. The fact that His Britannic Majesty's Court constituted under the Zanzibar Order in Council, 1897, is referred to in the notes makes it clear that the East Africa Protectorate and its Courts did not enter into the contemplation of the Foreign Office at the time the agreement was made. Whether or not this obvious omission was subsequently rectified I have no knowledge but so far as I am at present advised the position appears to be that the Courts in the Protectorate have no jurisdiction over Italian subjects in that part of the Protectorate which comprises the mainland dominions of His Highness the Sultan of Zanzibar save in the cases in which under the Treaty of 1885 the Sultan's Courts would have had jurisdiction. The provisions of Article 5 of the Treaty are enough to cover and have always been construed as covering all classes of cases both civil and criminal. It would thus appear that any proceedings however trivial arising in the mainland dominions of His Highness the Sultan of Zanzibar against an Italian are not subject to the jurisdiction of the Protectorate Courts but should be taken in His Britannic Majesty's Court at Zanzibar. This result is doubtless the consequence of an oversight and should in my opinion be remedied as speedily and possible. But so far as I am aware the point that Italian subjects in His Highness's mainland dominions are not under the jurisdiction of the Protectorate Courts has never been advanced in a case in which the Protectorate Courts

have

have in fact purported to exercise jurisdiction over an Italian subject in His Highness's mainland dominions and I would direct your attention to the notice published under the Commissioner's hand on page 273 of the Official Gazette, 1905, to the effect that Italian jurisdiction in the East Africa Protectorate had been transferred to the British Court. It seems, however, possible if the facts are as I have stated that such point may be advanced at any time.

8. In the case under discussion as the jurisdiction purported to be exercised was that of His Britannic Majesty's Court at Zanzibar by virtue of the Ordinance which extends that jurisdiction for certain purposes to this Protectorate I am of opinion that no very strong argument against the arrest of Bino Puglia could be maintained on the ground that the only Court having jurisdiction was His Britannic Majesty's Court at Zanzibar.

9. Assuming that the High Court of East Africa properly exercised jurisdiction in the case then I am of opinion that the Italian Consul's contention, which is apparently based on the ground that the arrest was in a civil case vide Mr. Tyssen's letter of the 5th ultimo to the Chief Justice that there was no power to arrest has no foundation. Further so far as I am at present advised I am of opinion that there is no obligation either by law or by treaty to obtain the consent of the Consul to an arrest of an Italian subject on a warrant properly issued by or under the authority of a Court to which the Italian extraterritorial jurisdiction has been surrendered. The surrender of jurisdiction being unqualified the British Court has in my opinion precisely the same power of issuing

process

process whether in a criminal or a civil case against an Italian as it has against a British subject.

10. I am somewhat at a loss fully to understand from his letter of the 8th ultimo to His Excellency the grounds on which the Consul bases the attitude he has assumed. There were apparently three reasons for his intervention i.e.:-

- (1) the police officers did not conform to the Consul's standard of good manners.
- (2) the warrant was in the Consul's opinion irregular and
- (3) the Consul's dignity was offended because application was not first made to him.

The first reason is too puerile for further consideration. With regard to the second reason in cases of urgency the practice adopted by the Chief Justice is that usually followed. The telegram was received by the Chief Justice at his house and not at the Court and was forthwith endorsed for execution. It would perhaps have been better to have waited until a formal provisional warrant could have been issued but as the order to the Police for execution was under the hand of the Chief Justice I do not consider that the Consul's contention on this ground has much weight. With regard to the third ground I am of opinion that the treaty of 1885 between Italy and Zanzibar affords no reason in support of the Consul's contention. Article 2 of the treaty provides that "no one may under any pretext enter the houses, magazines or other property of Italians or of persons in their service without the consent of the owner unless this should be done with the intervention of the Consul of His Majesty the King of Italy." The treaty as I have stated above also provides for the exercise of

extraterritorial

extraterritorial jurisdiction by Italy vide Article 5. In view of the transfer of that jurisdiction to His Britannic Majesty's Court it is in my opinion obvious that an entry can be effected under the authority of the Court without the intervention of the Consul or the consent of the owner. Italians are now in no better position than British subjects and provided that the process is issued by a Court having jurisdiction the Consul has no *locus standi*. The principle would apply equally to Italian Merchant ships in ports in the Sultan's dominions.

11. There is, therefore, nothing in my opinion to support the Consul's contention that he should be approached when it is desired to arrest an Italian subject on an Italian ship although owing to the exaggerated position acquired in His Highness the Sultan's dominions by Consul's owing to the history and existence of the treaties it might be tactful for the present to follow the course of conduct the Consul suggests.

12. In the present case I believe that in fact the interests of the plaintiff in the action have been safeguarded but on the general statements made by the Italian Consul I am of opinion that he should be informed that His Excellency is advised that the instructions signed by the Chief Justice on the back of the telegram were enough to convert that document into a sufficient warrant on which the Police could act, that the surrender of Italian extraterritorial jurisdiction in His Highness the Sultan's dominions to the British Court places Italian subjects in the same position as British subjects in so far as the execution of Court processes is concerned and that therefore there is no reason either

legal

What  
should be  
done

legal or based on the Treaty of 1885 to obtain any instructions or permission from the Italian Consular Representative before taking action even if such action involves an entry into premises in the occupation of an Italian subject or on an Italian ship in a Protectorate port. Further that the urgency which often accompanies the execution of a warrant prohibits any undertaking being given that the Consul shall be informed before action is taken in every case. If my opinion regarding the jurisdiction of the Protectorate Courts be correct it will be as well to deal with the Consul with circumspection.

13. If the Consul maintains the position he has assumed in his letter to His Excellency then I suppose he will represent the facts to his Government to be the subject of settlement by diplomatic means.

14. I may in conclusion say that Germany has interpreted Article 7 of the Anglo German Convention of 14th November, 1899, if that is the only agreement relating to the matter, as applying to the Sultan's mainland dominions as well as to the Island of Zanzibar. Similarly the French jurisdiction in the mainland has been treated as surrendered to the Protectorate Courts vide the notes of the 13th and 18th May, 1904, exchanged between the French Ambassador at London and Lord Lansdowne. The convention between Great Britain and the United States of America ratified on the 12th June, 1905, explicitly provides for the surrender of American jurisdiction in the Sultan's mainland dominions to the competent British Courts established in the mainland.

Sd/- J. H. Barth.

ATTORNEY GENERAL.

No. M. 713/16.

September 19th, 1916.

The Hon. Chief Secretary,

Reference Nos. S. 14820 and 957

re Jurisdiction of Protectorate Courts  
in His Highness the Sultan's Dominions.

90/18/19

With reference to the above the text of the French note of 18th May 1904, as Lord Crewe observes in his despatch of the 15th July, 1909, can be construed as a surrender of the French extra-territorial jurisdiction on the mainland to the Protectorate Courts. That such was the intention appears clear although the reference in the note is to the amending Order in Council of 1899 and not to the principal Order in Council constituting the Courts i.e., the East Africa Order in Council, 1897, or to the East Africa Order in Council 1902, which repealed the preceding Orders in Council.

2. The Foreign Jurisdiction Act, 1890, Section 4, provides that if in any proceeding civil or criminal in a Court held under the authority of the King any question arises as to the existence or extent of any jurisdiction of His Majesty in a foreign country the Secretary of State shall send on the application of the Court his decision on the question and that such decision shall be final. Such a provision is useful and enables the Secretary of State to determine the effect of any treaty on the jurisdiction of the Court but with reference to the questions raised in No. S. 14820 in view of the specific provisions of the arrangement by which Italy surrendered her extra-territorial jurisdiction in His Highness the Sultan of Zanzibar's Dominions including the

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the mainland dominions to His Britannic Majesty's Court at Zanzibar there would appear to be only one answer which the Secretary of State could give if the question of the Protectorate Courts' jurisdiction in the Sultan's mainland dominions over Italian subjects were referred to him.

Sd/- J. W. Barth.

ATTORNEY GENERAL.

the mainland dominions to His Britannic Majesty's Court at Zanzibar there would appear to be only one answer which the Secretary of State could give if the question of the Protectorate Courts' jurisdiction in the Sultan's mainland dominions over Italian subjects were referred to him.

Sd/- J. W. Barth.

ATTORNEY GENERAL.



Gov S.A.P.  
6208

173

27

30 January/17

Ans'd 10/29

Sir,

I am directed by his  
Highness to transmit to  
you, to be laid before the  
Hon. Mr. Balfour, the  
accompanying copy of a  
debate, with its enclosure,  
~~which has been used for~~  
the Govt of the S.A.P. on  
the subject of the attempted  
arrest on an Italian  
ship at Mombasa of  
an Italian subject on  
account of a civil debt  
incurred in Zanzibar.  
It will be observed  
that the Attorney General  
of the S.A.P. has expressed  
the opinion that no  
strong argument against  
the arrest could be

DRAFT.

Foreign Office

MINUTE

- Mr. ~~Sturges~~ 25/1/17
- Mr. ~~Risley~~ 25/1/17
- Mr. ~~Burton~~ 26/1/17
- Mr. Grindley
- Mr. Lambert
- Mr. Read
- Sir G. Fiddes
- Mr. Steel-Maitland
- Mr. Bonar Law

Copy sent by Smarchoy 20/1/17

Cor. Conf 127. 30 Oct (62088)  
(collected & sent: 2/1)

as the action taken in  
the E.A.P. was merely in  
the exercise of the  
jurisdiction of H. B. M.  
Court for Lanzarote, to  
what the Italian  
extra-territorial jurisdiction  
was surrendered under  
the Exchange of Notes of  
1905. <sup>3</sup> Mr. Smith, however,  
raises the further question  
whether, in their own capacity,  
the Courts of the E.A.P. have  
any jurisdiction over  
Italian subjects in  
proceedings arising in that  
part of the Port of which  
is within the mainland  
dominions of the Sultan  
of Lanzarote, since the  
Exchange of Notes transfers  
the jurisdiction in that the  
Hispanian Sultan's dominions  
generally to the H. B. M.  
Court for Lanzarote. <sup>4</sup>  
In both points, <sup>5</sup>  
I think was published by

new form

dated Aug. 22<sup>nd</sup> 1905, 180  
stating that the Portuguese  
and Italian Consular  
jurisdiction in the E.A.P.  
have been transferred to  
the British Court, but  
he says has not been  
able to trace the instruction  
on which Mr. J. Stewart  
issued this notice.  
4. He will be glad <sup>to receive</sup> if  
helping, with views on the  
question whether the effect  
of the exchange of Notes is  
to first to leave the  
jurisdiction over Italian  
subjects in the Courtship  
of the E.A.P. in the hands  
of H. B. M. Court for 2<sup>nd</sup> Bar,  
and whether, in that case,  
it would be possible by a  
further exchange of Notes  
to transfer the jurisdiction  
to the Courts of the E.A.P.  
I am also to ask whether  
a similar provision could  
with regard to the 2<sup>nd</sup> points  
of any other Powers, and if  
so, whether

Public Record Office, London

can be taken in those  
cases.

5. At the same time, Mr. Long will be glad to be favoured with Mr. Balfour's observations on the merits of the particular case, and on the question of service of local legal process on Italian merchant vessels in the Aegean and E.A.P. waters. The last question, although not referred to in the papers enclosed with this letter, appears to have a direct bearing on the circumstances to which they relate.

{  
(Signed) E. J. HEAD