Sec'd

Encl

62 (1)

Lowe Bay & Conf. Bowring 152

1916

Last previous paper

2/482-8

SUBJECT: Submits observations and reports appt of Commission of Enquiry. Penultimate report of Commission abstains from giving personal opinion on matters "sub judice". Refers to the deep and the alleged burning of native huts.

(a). [illegible]

(d). [illegible] also surveyed line [illegible] line, which appears to have been adopted as a dividing line between Govt. and private land as a result of an agreement arranged by Ali bin Salim, the Asst. Liwali of Mombasa. It is apparently suggested that Ali's great influence was improperly used, first, in arriving at this settlement without proper consider

Not subsequent paper

Ref 30037/17

[illegible] [illegible]ing given to the people affected, and, secondly, in inducing them to withdraw the applications which they had made to the Land Court for the confirmation of their titles. Mr. de Lacy allowed them to withdraw, relying, as he says, on the good faith of the Govt. to remedy cases of hardship by a Crown Grant. In these cases also he says that huts were burnt to compel the people to go away.

(e). In the case of the Tissia Thaifa, a confederation of Swahilis ~~or Arabs~~ who hold under a grant from the Sultan in 1825, the applications in the Land Court were withdrawn because the T.T. would not fight the ~~Govt~~ Govt. They asked Mr. de Lacy to make an agreement similar to that* with the Mazrui. He put this proposal to the ~~Govt.~~ Govr.; it was ignored; he advised the T.T. to petition and the petition was refused.

*See that referred to in Gov/40709/12 + Gov/[illegible] Ali was concerned [illegible] that settlement

It was apparently the fate of this petition, decided as he considered without proper consideration, that led Mr. de Lacy to write his unofficial letter to Mr. Hobley which we already have in 32700/16; and it was the wide circulation given to this letter that decided the Govr. to appoint a Committee of Enquiry. Mr. de Lacy was invited to frame charges against Mr. Hobley, but refused to do so unless the Commission was constituted according to his wishes. The Govr. (very properly) would not be dictated to on this point, and hastened the appointment of the Commission, giving Mr. de Lacy (whose appointment under the Govt. was to expire in September) until the end of September to frame his charges. The Governor suggested, fairly plainly, that Mr. de Lacy was playing out time so that he could make an "affaire" of the matter when he ceased to be an official.

Mr. de Lacy preferred to approach the S. of S. (Memorial A); the Commission was appointed; and [illegible] suggested to Mr. de Lacy that his memorial could wait until the report had been received. He declined to accept the suggestion and prepared Memorial B, in which he objects to the terms of reference to the Commission. His objection is merely verbal;

[illegible] last [illegible]

verbal, [illegible] the Governor [illegible] terms of reference will serve to settle the question of the action of the provincial administration. That is the main point, though I hope that the report will also indicate how the Govt. can establish a title to land which it can rely on being valid.

Mr. de Lacy is a rather irritable person [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] title to the land [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] to the [illegible] under [illegible].

[illegible] that the hut burning in the [illegible] of [illegible] was [illegible] landowners [illegible] the huts were [illegible] military reasons [illegible]; the people have returned and have been [illegible] by the Govt. to rebuild.

Gov/57631.

The Governor suspends judgment till he gets the report of the Commission, which was to [illegible] early in December, and I think we can only follow his example.

W.C.B.
2/1/17.

~~Mr Read~~ Sir G. Fiddes

I agree. The only point immediately at issue is whether the terms of reference of the Commission are wide enough to cover the ground of Mr. de

[illegible] observations the Commission
consider [illegible] the Chief Justice of the Sta[illegible]
[illegible] of Justices, the Senior
Magistrate, able & experienced officers
in whom even Mr de Lacy has
"complete absolute confidence" The
Commissioners are of opinion that
the scope of the reference is sufficiently
wide to cover the matters in issue & that
should it be found necessary to do so they think
we should notify at once that we
S.of S. accepts the opinion of the Ch
of the Commissioners on this point.

For the rest we can only await the
findings of the Commission

Yours

Sgd
H. Bell
4/1/17

Sgd
8/1

Mr Bell

[illegible] of exts received. Cd I
[illegible] to you for a meeting [illegible]
Oct 9.17

Sgd

EAST AFRICA PROTECTORATE.
No. 348
CONFIDENTIAL.

GOVERNMENT HOUSE,
NAIROBI
BRITISH EAST AFRICA.

18th November 1910.

Sir,

At the request of Mr W.E.F. de Lacy, Deputy Recorder of Titles, Mombasa, I have the honour to transmit to you two communications which he has thought fit to address to you regarding native administration and policy in the province of Seyidie to which he finds reason to take exception. For convenience of reference I shall refer to these communications as "A" and "B" respectively and have caused them to be so marked.

"A"

"B"

Chairman of Commission 13.11.16

2. The matters in respect of which he seeks your intervention are not in my opinion such as you would be prepared to adjudicate upon until you are in possession of a full report on facts which are not at present available, but, as it is nevertheless incumbent upon me to place his communications before you, it is necessary that I furnish you with an explanation showing how matters stand at the present time.

3. Mr de Lacy is an elderly gentleman who after spending some years in Fiji, Ceylon, and possibly other Eastern countries, came to Mombasa in the year 1906 and commenced to practice his profession as a barrister. In November, 1910, he was appointed Deputy Recorder of Titles for the Malindi District of the Seyidie Province on

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

on an agreement for three years. This agreement was renewed for another three years, terminating in December next, and it is not my intention to recommend his further employment. He has admittedly taken considerable interest in the traditions of the native tribes inhabiting the Coast area, and holds and expresses very decided views on the rights of the tribes to unoccupied areas of land. I am not at present in a position to offer opinion upon the value or accuracy of these views.

4. He has recently found cause to adversely criticise the action of the Provincial Commissioner, Mr C.W. Hobley, C.M.G., in administering native areas, and that criticism culminated in the composition of a letter addressed to the Provincial Commissioner which is attached as enclosure III to Memorial "A". This letter was marked by Mr de Lacy as "unofficial", but copies of it were at the same time distributed by him to the Chief Secretary, the Attorney General, myself, and other senior members of the Government service.

5. Seeing that this letter made serious imputations against the administration of the Provincial Commissioner, and that these imputations had been gratuitously and unnecessarily circulated among his brother officers, I caused Mr de Lacy to be informed that I could not regard his letter as "unofficial" and that I considered it necessary that full inquiry be held into the accuracy of his allegations. I therefore directed him to reduce his imputations to a series of specific charges into which I proposed to direct that inquiry be made. This communication to Mr de Lacy appears as enclosure XII to Memorial "A".

6. Mr de Lacy, in reply, attempted to impose conditions as to the constitution of the Commission and the scope of its inquiry, vide enclosures XIII and XV to Memorial "A", to which I responded in the terms of enclosure XVI. Mr de Lacy's action in answer to this communication was to address to you his Memorial "A".

7. It was of course apparent to me that it would be impossible for you to assess the value of Mr de Lacy's observations until the facts had been elicited by full local enquiry. I therefore came to the conclusion that no good object would be served by postponing such enquiry until the Memorial had been before you, and after consulting the Chief Justice and the Chief Secretary I appointed a Commission under the Commissions of Inquiry Ordinance, 1912. The constitution of that Commission and the terms of reference thereto are set forth in enclosure I to Memorial "B".

8. When informing Mr de Lacy of the appointment of the Commission I caused inquiry to be made of him whether in view of that appointment he would prefer that the presentation of his Memorial "A" to you should be deferred pending the conclusion of the inquiry, but he elected that it should go forward at once and at the same time supplemented it with his Memorial "B".

9. The gist of this supplementary Memorial is to the effect that you will instruct me that the scope of the terms of reference be enlarged. I have no desire to restrict Mr de Lacy's opportunities for disclosing matters which may bear upon the questions

into

into which inquiry is being made, but it appears to me that the terms of reference, which were settled by His Honour the Chief Justice and the Honourable Attorney General in consultation and approved by myself, are sufficiently wide to enable the Commission to extract all the information necessary regarding the propriety or otherwise of the provincial administration which Mr de Lacy has impugned. I have however taken the views of the Commissioners upon the point, and their opinion, with which I concur, is embodied in the attached letter signed by the Chairman and dated November 13th, 1916. I do not therefore recommend that Mr de Lacy's request be acceded to.

10. The Commission is now sitting and will probably conclude its inquiry early in December. The findings will then be forthwith submitted to you with such comments as I may find it desirable to offer.

11. Pending the conclusion of the inquiry I am careful to abstain from any expression of personal opinion upon matters which are now "sub judice", but, as Mr de Lacy has seen fit in paragraph 4 of his Memorial "B" to make a specific allusion with innuendo to the burning of certain native huts at Gazi, I have the honour to inform you that the action to which this allusion refers is that reported to you in my despatch No. 655 of October 17th last.

I have the honour to be,

Sir,

Your humble obedient servant,

C. Bowring

Draft by the Governor.

Memorial "A."

MOMBASA

BRITISH EAST AFRICA

September 20th, 1913

The Right Hon'ble the Secretary of State for the Colonies

under cover to

His Excellency the Governor of British East Africa

C/O The Hon'ble the Chief Secretary,

N A I R O B I .

Sir,

I have the honor to address you under S.23 S.S.212 and 213 of the Regulations for His Majesty's Colonial Service, in order to draw your attention to the manner in which certain lands, - the right to administer which is rented from the Sultanate of Zanzibar, - are being acquired by an officer of the Government of this Protectorate, for the Government; from the people who own them by Mahommedan Law; without proper consideration being given to the owners: I regret exceedingly that it has become my duty to do so, on an occasion when events of so much greater importance must occupy your time; but I am convinced, when you have verified the facts of which I inform you, that you will consider me morally; if not officially justified, in the unusual course I am impelled to take. I consider there is no likelihood of the evils I am about to complain of being remedied locally, unless an enquiry into them be held by a Judge, versed in Mahommedan Law, and the result of such enquiry laid before the Government. I attach hereto extracts relating to my contentions from various documents and note them in the margin.

1. I hold an appointment as Deputy Recorder of Titles under this Government; my duties include presiding over the Land Registration Court, North Branch, with full powers of a Judge; such Court receives and hears applications for Certificates of Ownership to land, and decides questions as to the ownership of immovable property, on the coast area of land so rented from the Sultan: Any applicant has a legal right to a hearing in my Court , and, being in a judicial position; it is my duty to protest should such rights be interfered with unduly or should applicants be intimidated or prevented from appearing before me to substantiate their claims.

Exhibit I - and- Exhibit II.

2. By the Law of Islam any free-born Mahomedan who first cultivates waste, unowned land, becomes entitled to it and can sell and dispose of it; the land remains his property even if he goes away and leaves it without a definite act of abandonment.

3. The " Land Titles Ordinance 1908" was passed " to make provision for the removal of doubts that " have risen in regard to Titles to Land and to " establish a Land Registration Court in the East " Africa Protectorate ". Although in one respect a Jurist might successfully contend that this Ordinance is ultra vires; it has worked with excellent results; the land-owners have freely applied for Certificates of Ownership for their land, great progress has been made, and had it not been for the difficulty of obtaining sufficient surveyors the work of the Department would be approaching completion; an enormous area of most fertile land would thereby have become the property of the Crown without any dissatisfaction being felt by the people.

4. The Malindi District is under the provisions of the Lands Titles Ordinance 1908.

That portion of it which lies North of the Sabaki River has not been surveyed or declared to be Crown Lands.

A considerable number of people have applied for Certificates of Ownership in that neighbourhood.

The Government have a right, however, to some previously acquired land in that locality.

Towards the end of 1914 and in the early part of 1915 the Provincial Commissioner determined to remove a considerable portion of the population, from their holdings on the north side of the Sabaki River, and gave instructions accordingly; there was no possibility of removing them except by burning down their huts, they were accordingly burnt down, the people were left shelterless and had no-where to go; their land was thrown out of cultivation and the greatest distress ensued; the people had a right to occupy and cultivate the lands until such were declared Crown Lands and the action was an act of intimidation to applicants. I wish to put my contention in this respect very clearly before you. It is this: Even if the population were in illegal occupation of Government land, the Provincial Commissioner had no right to evict them in the same manner as from the Sultanate, without judicial proceedings.

Exhibit III.

5. A surveyed line was made through a portion of this Malindi District to the Sabaki River on the south side; a considerable number of people on the west of such surveyed line, had applied for Certificates of Ownership to their lands;

A Baraza or public meeting was held by an arab Shiekh or Chieftain in the service of the Government, to induce the people owning their lands to forgo their rights, and the Shiekh reported upon the matter that they consented to forgo them: The Government was not at that time entitled to any land in that region, but had the right to acquire unoccupied lands, it is not contended that all the lands applied for were represented, or that all the landowners were present, at such meeting; no property in land passed from any landowner to the Government, no freehold property could legally pass without being properly conveyed by document and, if so conveyed, without valuable consideration; it would have been a void transaction as against creditors; notwithstanding these facts the Provincial Commissioner gave instructions that many of these people were to be removed from the West side of the said surveyed line to the East side thereof; in order to remove them it was necessary to burn down their houses or they would have returned and kept on returning; consequently a number of their houses were burnt down, they were half arab-swahili people, they are thriftless and not industrious and of little economic value; sworn evidence was given in my Court at Malindi on the 19th February 1915 and the 19th March 1915 as to the burning and I met many seeming poor people who stated their houses had been burnt by the Government.

Exhibit IV.

Further north considerable areas of land were occupied and cultivated, still on the west side of the so-called Baratuma line by ex-slaves and Wanyika people, they were ordered to remove to the east side where there was insufficient and unsuitable land for their cultivation, as they would not leave the only place where they could grow their food, they were

ejected without any legal proceedings being taken, and their huts were burnt, [illegible] these people had no rights of cultivating except that of custom and of possession and were merely squatters, but the Provincial Commissioner had not even the right of custom or possession, he had only the right to acquire unoccupied land.

The Hill and village of Gaji sometimes called Gadji or Goshi Hill or Gasi Hill is a particular instance exemplifying such rights as the Government possessed; it is described in the Report of the Secretary for Native Affairs thus, " this land having been abandoned " is now looked upon as Government property ". It did not become so until Government acquired it on the 21st April 1915 and it certainly was not unoccupied, which is the only description of land the Government have the right to acquire. When the Provincial Commissioner gave instructions that the people were to be removed, they were removed as mercifully as possible and were allowed to take out their doors and window frames, but it was necessary to burn down their houses or they would have immediately returned when the askaris (or native police) had departed, I received information of the burning of this village known as Baki Halimas village on the 7th April 1915 and subsequently verified it, there were European witnesses to the burning.

Exhibit II. Paragraph 7.

The applicants for Certificates of Ownership for land on the west side of Baratumu line withdrew their applications and I cancelled them; circumstances that have since come to my knowledge have caused me to suspect that I did so.

[illegible] were [illegible] by the Official Gazette of 21st April 1915 and this was partly my fault for cancelling applications,

but Sir Percy Girouard had previously assured me, when he was Governor, that if I knew of an injustice being committed he would enable me to remedy it by Crown Grant to the person injured; an enormous area of land in this locality would have been acquired by Government in any event, it was mostly unoccupied land by Mahommedan Law.

The services of the same arab Shiekh who held the Baraza above alluded to were utilized to induce the applicants to withdraw their applications, he is an arab gentleman with profound knowledge of native affairs, I had myself pointed out how useful he could be in this direction, for it was within my knowledge that some of the applicants would be unlikely to substantiate their claims, few had means to cultivate and he promised compensation to some; by such people withdrawing their applications expenses of survey were saved; but with regard to those rightly entitled to their land, I had long previously written to the Hon. the Chief Secretary, through the Provincial Commissioner, as quoted in this exhibit, the only way, not unbecoming, in which I could intimate; with the knowledge I then possessed, that such utilization of his services would be contrary to sound principles of native administration, they the natives would afterwards regret having given away their lands for nothing, but they could not refuse the hereditary influence of such a Chieftain, such influence not having been superseded by that of Government, this letter was ignored.

Exhibit V.

8. On the 28th April 1913 I wrote to the Recorder, who forwarded a copy of my letter to His Excellency, on the possible defeasance of the tithe of the Crown to these lands; In that letter I clearly stated

Exhibit [illegible]

the applicants for Certificates were in legal occupation of their lands, that their houses were burnt down and they were forcibly evicted; this letter was ignored.

7. Amongst the applicants to the Land Registration Court for Certificates of Ownership were the Tissia Thaifa or nine tribes, concerning whose rights careful enquiries were made by Colonel Montgomery, when Commissioner of Lands, and further concerning which an able Memorandum was prepared for the Government by Major O. Watkins D.S.O when in the Civil Service, he states that the Shiekhs of the Tissia Thaifa were confirmed in their appointments by Royal Warrant under the hand of the Sultan in or about the year 1825.

Exhibit VII.

These people on appearing in my Court to support their applications found the Government was opposing them; they stated they would contend with anyone for their land except the Government, they procured an adjournment and subsequently an appointment in chambers, they then requested me to make an arrangement between them and the Government similar to that which I formerly effected between the Government and the Mahrui tribe of arabs; I carefully wrote down what they said and forwarded it to His Excellency on 4th September 1919 but my communication was not favored with His Excellency's attention.

Exhibit VIII.

Land Titles Amendment Ordinance 1919 S.3.

Exhibit VIII.

8. The Elders of the Tissia Thaifa, at the Hearing of their applications came before me and withdrew their applications. If this tribe of nine families possess any hereditary rights, such rights belong to their children after them, and it is possible that difficulties and litigation may be caused in the future.

Exhibit IX.

I recommended them to petition His Excellency which they did.

Exhibit X. 9. His Excellency refused their petition and they brought me his refusal which I read and copied.

10. I then wrote that it was a regrettable circumstance that His Excellency should have refused their Petition without a full enquiry.

Exhibit XI. 11. His Excellency sent for me and told me that I could not have known that he had held a full enquiry when I wrote that letter, exhibit XI; I replied that I was not aware of it or I should not have written such letter: I received an impression at this interview that the words " full enquiry " as interpreted by His Excellency, meant a conversation with some of his executive officers, whereas I know that the facts could only be elicited, in their entirety, by the evidence of the Sieh -ul-Islam (the religious head of part of the mahommedan community) and by the evidence of the heads of these arab families who have lived for many generations in the district.

12. The above circumstances; the ignoring of my official communications and the refusal of a petition on the strength of superficial information only, brought me reluctantly to the conclusion that His Excellency was more misinformed as to the circumstances than I had considered possible; I then wrote an unofficial letter to Mr. Mobley setting forth the facts and pointing out from the Customs returns, one of the evil effects of his impolicy, I forwarded a copy of this letter to the officials interested in coast lands titles; this unofficial letter fortunately attracted an attention that my official communications had failed in doing.

Exhibit III.

13. I received a letter from the Hon. the Chief Secretary requiring me to formulate complaints and a Board of Enquiry would be appointed.

Exhibit XII.

14. I replied that I would delay putting my complaints into official form until I knew whether the precedent of the Siyu Enquiry would be followed and the enquiry be held by a Judge of the High Court, versed in Mahommedan Law; and that sworn evidence be taken on the spot.

Exhibit XIII.

15. I received a reply from the Secretariat stating that my letter would be laid before His Excellency and requesting me meanwhile to put my complaints in official form.

Exhibit XIV.

16. I replied that I had no disinclination to put my complaints into official form, in so far as they related to the proper performance of my official duties, but I awaited an assurance that the precedent would be followed.

Exhibit XV.

17. His Excellency made a Minute in which he views the position I have taken with grave suspicion and requires me to put my complaints into official form by the end of September.

Exhibit XVI.

18. I have replied that I should lay the matter before you and I greatly regret that I should have been forced into the position of having to do so when matters of so much greater importance are occupying your concentrated attention.

Exhibit XVII.

A Commission of enquiry, not held according to the precedent of the Siyu enquiry of April 1907, would probably obscure the issue, such enquiry should be held by a Judge of the High Court versed in the laws of Islam, any other would be ineffective; I am a lawyer, and it is against the professional instincts of any Counsel to bring a case before a tribunal not competent to deal with it.

At the conclusion of His Minute His Excellency holds out hope that a " full report " will be laid before you; I sincerely trust that it will and that

the words " full report " will bear a more extended signification than the words " full enquiry " as used in Exhibit X.

I have a peculiar responsibility with respect to the Settlement of land questions between this Government and arab and native tribes: In 1911 the matter of settlement between the Government and an arab tribe named the Mazrui - with whom negotiations had been pending some years - was placed in my hands by the Departments of the Crown Advocate and Commissioner for Lands, with instructions to draw an Agreement, I advised that an Agreement as a form of settlement did not meet with my professional approval, and why it did not: I pointed out the legal way of achieving the adjustment and was congratulated by the then Governor on so doing; I brought the matter to a Settlement that was valid and legal and to the satisfaction of both Government and Mazrui people and was congratulated by the then acting Governor on having done so. I call your attention to the difficulty experienced by the Governments of Fiji and Samoa with regard to the Settlement of the native land question in those countries and I am certain great difficulties will occur in this country if my legal knowledge and wide experience in many countries on native ownership in, or rights to, land; are repeatedly ignored; as a case in point I give you an instance:-

A native tribe known as the Wadigo have ancestral rights to occupy and cultivate certain lands, acknowledged by their Sovereign and recognised by this Government; the Government [illegible] this tribe to make application to a [illegible] firm for some of the land they so cultivate, Mr. Bailey induced them to [illegible] these applications and imagines he is

making an Agreement with them, any agreement he makes with them is voidable and could be declared void on the application of myself or any other competent lawyer on behalf of an interested party.

So many mistakes have already been made in the handling of the native land question on this coast belt of rented country, and they will probably cause so much difficulty and expense to this Government in the future; that I am quite certain it is my duty to lay the matter before you and to protest against such attempts at settlement being made by an officer who is not competent to bring them to a legal and binding consummation.

I am sufficiently acquainted with colonial office routine to know that this communication may not reach you personally.

I have the honor to be

Sir,

Your obedient servant,

W E Pole Lacy

Barrister-at-Law.

----Exhibit I. ---

Extracts from a Memorandum on Waste Lands in Zanzibar Dominions of Mombasa District dated 11th November 1909. by the then Assistant District Commissioner Mr. G.P. Watkins now Major, Officer Commanding Carrier Corps.

Para 9. Under the Sheriat any Mohammedan male subject can occupy any unoccupied piece of Ground. To advertise or make out the boundaries is sufficient for occupation. Occupation carries with it the right of alienation. It lapses only by expressed intention to abandon. The suzerain has a right of vote though not of ejection, except by legal process on payment of compensation.

Para 13. It was probably to meet these assertions that Ordinance No. 13 of 1908 was framed. Under it the legal assertion of claims to land depends on proof of active occupation within 12 years. This Ordinance is however rejected by strict Mohammedan lawyers. On this point it may be of interest to quote Lord Cromer :-

" The Sacred law of Islam, is as immutable as the " " laws of the Medes and Persians. Kadis Muftis and " " Ulmas would regard Decrees and Conventions which " " infringed the fundamental law of Islam much as " " devout French Catholics must have regarded the " " attempts of Anarchards Cloots and other maniacs " " of the French Revolution to effect the legal " " abolition of the Christian Religion. They would " " altogether decline to recognise the validity of a " " law which, inasmuch as it altered the Sheriat, would " " in their eyes be considered as an attempt to " " justify sacrilege". (Modern Egypt [illegible] LVII, Page [illegible]).

Exhibit II.

Extracts from a Report by the then Secretary for Native Affairs Mr. R. C. Hollis dated 20th September, 1907.

Para. 1. The main question which I have had to consider is what constitutes privately owned land within the Sultan of Zanzibar's mainland territories. The following definition has been supplied me by the Honourable the Crown Advocate:-

I am of opinion that if any person or persons were ever granted by the Sultan of Zanzibar the right to occupy any area of lands and that right was not taken away by the Sultan, the land in respect of which that right was granted must be deemed to be occupied land although the land was never in fact cultivated or otherwise actually occupied.

I have further consulted the Sheikh-ul-Islam and various Liwalis and I am informed that according the Mahommedan law, which is in force at the Coast, a man may occupy any waste land, and if he clears it of bush and cultivates it, the land belongs to him. Even though he may leave it for a time and it reverts to bush he may always return and recultivate it, or he may sell it, whilst nobody else may take possession of it or live on it without his permission. The land only passes out of his possession when he has definitely abandoned it, i.e. when he leaves the country or district without leaving an agent or slaves to look after his property

or when he gives up a plot after trying it for a season and finding the soil barren or unsuitable.

In article I of the concession granted by the Sultan of Zanzibar to the British East Africa Association in 1887 the Sultan stated that no person but himself could sell public lands in his mainland dominions, and by virtue of this concession the Government have the right to dispose of land which was not occupied prior to the date of concession. Only such land therefore as was not occupied prior to 1887 belongs to the Government unless it has been otherwise acquired e.g. by purchase, or unless it has been definitely abandoned by its former owner. In this connection it is interesting to note what Fitzgerald writes in his "Travels in East Africa" published in 1898, regarding the ownership of land at the Coast (p.34):- "Land once cleared", he says, "becomes the property of the man who clears it, remaining his even when abandoned, and such land can now be bought very cheaply owing to the scarcity of Slaves".

Para. 4. It is incorrect to suppose, as is generally the case with Europeans, that land which is covered with bush is necessarily waste or abandoned land and consequently Government property, or that because there are no cocoa-nuts or mangoes on an uncultivated plot that plot cannot be privately owned. Some areas were formerly under rice, millet, maize, millet etc.; the soil is placed being unsuited to the cultivation of cocoanuts, and there is now frequently nothing to show that the land was ever anything but scrub; yet of this land many

plots have been sold over and over again. Some have been purchased by Indians, others belong to Kabe and Kambiliu, whilst a good deal of so-called waste land is Kaka property. Many estates too have been sold by order of the Courts. Notwithstanding all these facts the Government, without properly enquiring into the matter, had entertained applications for privately owned land and in spite of the protests of the owners has actually in certain instances leased or sold land which is neither waste nor abandoned.

Para. 7. I am informed that all the hills west of Lake Bartum (or Baratum) and the surrounding country as far as the Dabaki were at one time under cultivation (Gazi Hill is named after one of the first settlers), but this land having been abandoned, is now looked upon as Government property.

Para. 15. There is a certain feeling of dissatisfaction amongst the Coast population owing to the misappropriation by the Government of private lands, and if this action on the part of the Government is continued, it will eventually involve the Government in much litigation and expense. I reported in my No.10 that a Mombasa pleader had already nibbled at this tempting bait, and a retaining fee of £100 will be forthcoming if the people are [illegible] much further. "The Government has cheated me out of my land", is a common expression in Malindi.

--Exhibit III.--

MOMBASA

MAY 1916.

Sir,

The following letter is partly the outcome of an interview I had with His Excellency the Governor on the 4th February last; I did not obtain an opportunity of acquainting him with certain matters of a distressing nature that had taken place under your auspices in the past, in the north of Seyidie Province; but I did take occasion to mention that illegalities had been committed and I was told that in the future, should such matters recur, I was to communicate with him at once, direct: I suggested that I might write an unofficial letter to the Officer responsible and he replied "You can do that if you like", the interview only lasted about a quarter of an hour and your name was never mentioned.

I understand that your method of endeavouring to acquire property in the land for the Government of this Protectorate will have sufficient attention called to it, in another place, when the stress of circumstances permits matters of minor importance to obtain a possibility of rectification; private enquiries have been made from me as to your responsibility for the rebellion of the Wagiriama and the necessity for the punative expedition against them and I absolutely declined to make any reply to them while I am in the Service, in which my appointment has yet some months to run: With this matter I have nothing to do and my only reasons for addressing you are two:-

The Hon. C. W. Hobley,

MOMBASA.

- One, to dissociate myself from the illegalities you have caused to be committed, in so far as they have adversely affected the proper performance of my official duties and the beneficial effect of the Land Titles Ordinance 1908 and its amendments, thereby impeding the Land Registration Court, North Branch, presided over by me.

- Two- To set down the facts, for it could not but transpire, even in a short interview with the Governor, in addition to certain communications; that he had been very grossly misinformed in respect of the rights of property appertaining to the Government within the ten mile zone rented from the Sultanate of Zanzibar

The facts are.-

1. 1880. The international convention recognised the right of the Sultan to dispose of land on the coast so far as the Government of it was concerned.

2. 1887. "His Highness agrees to cede the Association" "the rights which he himself possesses over " "the land in the whole of his territory on the" "mainland of Africa within the limits of his " "concession, only excepting the private lands" "or shambas. Further he authorises them to " "acquire and regulate the occupation of all " "lands not yet occupied etc. etc."

3. The Sultan however never possessed any freehold right or property in the waste land, he only gave the right to acquire such land if unoccupied.

4. Sir Arthur Hardinge asserted it was obligatory upon the Government to maintain the status quo in 1908.

5. 1897. The waste land Regulations of 1897 did not acquire any land for the Government waste or otherwise.

6. 1898. Ordinance No.13 did not acquire any land for the Government.

7. 1908. The Land Titles Ordinance was passed to enable the Government to legally acquire the freehold of the waste land unoccupied and unclaimed and settle the native claims.

8. 1910. The Land Titles Amendment Ordinance 1910 S.3 provides for the Government acquiring land in a manner which has already been successfully brought to a legal consummation and which can be utilised for the same purpose in other instances.

You must have been perfectly well aware from the exhaustive Report of the late Secretary for Native Affairs that the Government have no right of property in land occupied or unoccupied in the ten mile zone north of the Sabaki River, except the rights they have legally acquired as, for instance, The Magarini Estate acquired by Mr. Fitzgerald, possibly some portions of land in the neighbourhood of Pumwani, settled by him with ex slaves and Wanyika as squatters, some shambas of the late Sultan Bargash and possibly a few other holdings, nevertheless you gave instructions that a large portion of the native population should be removed from their holdings to the north side of the Sabaki River to some unspecified place on the South side of such River; neither the fact that you had possession of no land on the South side to remove them to, nor the fact that you could not legally remove them - whether the Government was in possession of the land or not - without judicial proceedings, had any consideration from you. Some of the

people were squatters and had a right of possession only, others were cultivating by the express or implied permission of the Arab owners, who had made proper applications to my Court for their Certificates; and all of them had a better legal right to occupation than the Provincial Commissioner had in any capacity until the Land Registration Court had determined the claims and the boundaries thereof, as owned by various parties, even if these people were squatting on the Government land your manner of evicting them was unlawful.

The safari of the Police at the end of 1914 and beginning of 1915, with their fire sticks, was made in accordance with your orders that the native population was to be removed, there was no possibility of carrying out your orders but by burning down the huts, for the people only returned immediately to the one place they had, where they could grow their food, and the Police are blameless; you only have the responsibility of laying waste a large portion of the land and reducing a number of people who were in your care from extreme poverty to absolute destitution; an exceedingly large number of huts were burnt down.

You gave instructions that the native people on the west side of a surveyed line known as the Baratumu line were to be removed to the east of such line, you had, at the time, no legal right whatever to interfere with the occupation of any land in that locality; a number of the people had rights of an exceptional nature, by Mohammedan law, to the land their forefathers had first cultivated; You caused Jamaas to be held for the alleged purpose of dividing the region where the Government held land from that where the people held it, such meetings

or Barazas are ineffectual for such a purpose, inasmuch as you cannot transfer freehold land from one party to another by public meeting, the Baratumu line has no legal force or signification. Again the only possible way of removing the people was by burning down their huts and houses, you caused an exceedingly large number to be burnt down and the officers carrying out your instructions were innocent of any wrong doing, they had no other possible means of carrying them out, but in the manner they were forced to use.

Many of the people had made application to my Court for certificates of ownership, some of them were burnt out and they withdrew their applications lest worse things than being burnt out might happen to them; The lands have been proclaimed Crown lands but the title of the Crown is a defeasible title having been obtained by unlawful means.

I subjoin a list of the people whose houses were burnt down in one locality alone, I know of very many more further south.

List of people whose huts have been burnt by the Government at PAZIANI.

1. Mteto wa Chebe
2. Juma Mabruki
3. Mbaraka wa Kwana Fumo
4. Kamgri wa Chebe
5. Turuka wa Chebe
6. Lolanga wa Chebe
7. Sadala wa Mohamed Hussein
8. Ali wa Sadala
9. Swedi wa Maglum
10. Yakuti wa Saidi bin Shinani
11. Kilego wa Abdrhamani

Exhibit III.

12. Amani Muhaji
13. Mrengi wa Mohamed bin Sud
14. Abdulla wa Mapesusi
15. Kiwai wa Sulemani
16. Kapemuka wa Sulemani
17. Mka Mamini wa Salim Yakub
18. Majewara wa Shehe
19. Musa wa Sulemani
20. Ibrahim wa Sulemani
21. Musa wa Taisiri
22. Hamisi wa Hussein
23. Said wa Mohamed bin Ali
24. Farahani wa Mohamed bin Ali
25. Nairo Muhaji
26. Ramathani Muhaji
27. Said wa Sulemani
28. Mizigo wa Saleh bin Shimani
29. Bake Msee wa Salim
30. Kiheri wa Bibi Salima
31. Khamisi wa Shehe Abdrhman
32. Mgurumo wa Bwana Maka
33. Saburi wa Farasi
34. Farasi
35. Mabumaki wa Abdulla Kambe
36. Omari Muhaji
37. Mdamungu wa Mohamed bin Ali
38. Ali Kithimba
39. Simba wa Shehe
40. Abman Mishamwezi
41. Bake Shabani wa Bwana Fumo
42. Farasi
43. Wakati
44. Karanja wa Bwana Bakari
45. Msee Baruti
46. Simba

47. Makatubu
48. Bake Salama
49. Kigoma
50. Muguikwe
51. Kwathabi
52. Pinga
53. Makadamu
54. Majawara Udogo
55. Baruti
56. Athmani
57. Salima
58. Bake Mandara
59. Masakati
60. Damungu
61. Aburuki
62. Hirimu
63. Saidi
64. Maguruso
65. Khamisi wa Salehe bin Ahmani
66. Bake Saya wa Ulemani
67. Omari
68. Idi
69. Mohamed
70. Bake Asma
71. Mazahani
72. Kanghago
73. Masai
74. Khamisi
75. Bake Omari
76. Ibrahim Alnasi
77. Kisambo
78. Mgke Magira
79. Almasi Mgalla
80. Amina
81. Farasi

82. Hamadi Muhaji

83. Jabu

84. Mali ya Bwana

85. Kabudulla wa Sulemani

86. Bake Msamu

87. Ismail wa Sulemani

88. Ismail wa Chocha

89. Katembo wa Abdulla Said

90. Nusura

91. Songoro

92. Bake Jabu

93. Perusi wa Salimani

This is an unofficial letter of complaint to you that you have caused illegal actions to be committed that have interfered with my official duties as presiding over the Land Registration Court, North Branch: Applicants to my Court have been intimidated from bringing their applications forward, you would question the word intimidated; but I myself saw some three hundred men women and children in the open jungle, in the greatest destitution, without shelter, who stated they had been burnt out by the Government, and you were responsible for their condition; there are plenty of other witnesses and the sight of any of these people was sufficient to deter any applicant from endeavouring to hold land that he knew you wished to obtain, it was quite evidently intimidation enough.

I have pointed out that the Government has no property in any land that is occupied on the coast belt and you will understand that every person you have dispossessed had a right of action against your Government for compensation; I have waited a long time in the hope that either policy, or some higher motive, would have induced you to remedy the evils; so far from that being

the case however you persist in your course of endeavouring to acquire other peoples property without paying for it, and you seem to have a fixed idea that because the people themselves have little or no economic value as producers, you are justified in using any means whatever to deprive them of such small rights of property as they possess.

Your efforts will, I believe, be futile and will bring unfortunate criticism upon the Government even if they do not cause them to have to incur great expense; I can assure you that the Wadigo, Wagirima, Thalatha Taifa, Tissia Thaifa, together with many village communities, possess communal and other hereditary rights of property in land which your Administrative Orders are powerless to interfere with legally, and concerning which any agreements you may make on behalf of the Government will most probably be void or at any rate voidable: Your Government rents the right of governing and taxing the Country from the Sultanate of Zanzibar under an arrangement with, or Concession by, the Sultanate which may be terminated by six months notice by either party - unless the terms and conditions have been secretly modified - The Mohammedan freehold proprietors are glad to get their titles strengthened and the Land Titles Ordinance of 1908 was gradually effecting a legal, and final settlement of the questions of the Coast Lands Titles; also the provisions of the Ordinance were being and are being wisely and sympathetically carried out by my able colleague Mr. Recorder Maclean.

I will give you one instance - I could give you more - of the possible disadvantage of your clashing with the scheme of land settlement, this, only to endeavour to show you how disastrously you may

produce complications by your interference: You have engineered the withdrawal of applications by Wadigo people; the Wadigo people possess communal rights of property in land; how can you imagine that the withdrawal of an application by an individual for a piece of land he may or may not be entitled to, can affect such communal rights?

I could close this letter here, but I have formed a conception of the unofficial methods of insinuation you make use of, that induces me to take the opportunity of making certain statements of fact, which I am in position to amply prove.

Before I entered the Service I was professionally engaged in 1906 and 1907 as Counsel representing certain native people, and obtained a proper enquiry, held by a Judge of the High Court into certain illegalities, permitted by a Provincial Commissioner in another Province. After establishing my rights of action, I gave the necessary notices of action against the Secretary of State: As in your case there was no possible defence to the actions, which would have been very many and separate ones: So far from exploiting the Government to my manifest advantage and profit, I permitted the Provincial Commissioner the privilege of paying a sum of £800 to the people in compensation, and I returned the whole of the fees and travelling expenses I had been paid in order to enable this sum to be sufficient. The Arabic and Kiswahili letters of my clients appreciating my service, are filed in the Secretariat. By my self-denial I saved the Government enormous expense and annoyance and a scandal which, at the time - the time of the Congo atrocities - would have become a European scandal.

Subsequently - still in private professional practice - I held vakalas for a large number of people whose money had got into Government hands and had been retained for several years in an unfortunate manner, the circumstances were such that they would have put a very large number of actions-at-law against the Government into the hands of any lawyer, who desired to acquire money in that way, in a manner most exceedingly profitable to himself and disadvantageous to the Government; instead of utilising these circumstances to my own financial and professional advantage, I would receive no fee whatever from the prospective litigants, but I wrote a letter to the then Governor Sir Percy Girouard, detailing the facts and asking him to effect settlement and avoid public knowledge, brought out in the Law Courts, that such things could happen. His Excellency immediately sent his Secretary for the Native Affairs and his most able Magistrate to investigate and pay the money due and he further wrote me a personal letter of appreciation and thanks for endeavouring to help the Government and for my self-sacrifice in so doing. I hold this letter here.

I now find myself for the third time, and again to my own detriment, forced into connection with a matter in which the Government, through one of its officers, yourself, has become placed in an untenable position, and again for the third time I would do my utmost to assist the Government; but it is seemingly out of my power to do so in my position, as matters, referred to in connection with your revince in London, as "incredibly discreditable" are apparently unknown in Nairobi.

It is not in accordance with my professional record in any of the countries I have practised in, to allow any client or the Government I am serving or have served, to commit illegal actions; whether such actions are committed on account of information being laid before such client or Government at variance with the facts; or for any other reason, without availing myself of any possible means of remedying the effects of such actions. I esteem it a fortunate circumstance that S.212 of the Regulations for His Majesty's Colonial Service enables me to cause the facts I have partly placed before you to be communicated officially and fully to the Secretary of State for the Colonies. I recognise the inconvenience of the course indicated by that Section at the present juncture, but it is my duty to do all in my power to make it absolutely certain that the Government obtain an indefeasible title to the lands they acquire possession of, otherwise they may lease out land for a long period of time to which their title might be successfully attacked, when the lands became of sufficient value to tempt the speculator, and the result might be financially disadvantageous.

There is no difficulty in the Settlement of the title to the Coast Lands under the scheme of settlement initiated by the Land Titles Act of 1908 and its amendments, except a technical obstacle arising from the faulty draftsmanship of an Ordinance, which can be surmounted, and furthermore excepting those obstacles which you yourself have created, which affect the permanence of the title

of the Crown to the land even after it has been proclaimed Crown land. It should not certainly be necessary for me to inform the Secretary of State through His Excellency either of your disadvantageous course of proceeding in the northern portion of your Province, or of the real facts concerning the rights of the property held by certain people in land on the Coast belt, but the local authorities have been misinformed and I see no other possibility of getting matters remedied. You have yourself left no other course open to me.

This Province of Seyidie, which has been subjected to such great misfortune since November 1912, was at one time the granary of East Africa, the principal product of the northern portion of it being maize or mahindi, of which the people grew enough for food and a considerable surplus for export, the seasons since your arrival have been excellent, the rainfall abundant, the war would not have had any effect upon production except to stimulate it, for the locality is too far away from the scene of operations and though many young men have joined the Carrier Corps, it is the women who weed and cultivate the grain fields and not the men; the reason of the great decrease in production therefore can be attributed to nothing but the forcible ejectment of the cultivators, men women and children from the lands they were cultivating, which ejectment was illegal, the consequence is as follows:-

A. You took charge of the Province the end of 1912, during the year ending 31st March 1913 the export of maize to Foreign Ports from Kilifi

including Takaungu was Rs.10,832/-; for the year ending 31st March 1916 to export to such Ports was nil.

B. The amount of maize exported from Malindi including Mambrui to Foreign Ports for the year ending 31st March 1913 was Rs.87,475/- for the year ending 31st March 1916 the amount of such export was Rs.75/-.

C. The export of maize to Protectorate Ports from Malindi including Mambrui, Kilifi and Takaungu for the year ending 31st March 1913 was Rs.57,502/-; for the year ending 31st March 1916 such export was Rs.29,350.

D. Thus, you will observe, the total export of maize from Malindi, Mambrui, Kilifi and Takaungu for the year ending 31st March 1913 was Rs.125,807/-; for the year ending 31st March 1916 after three full years under your auspices, all good seasons, the total export of these unfortunate villages is Rs.29,425/-.

You have caused a people that for generations have produced a large surplus of food to be unable in many instances to feed themselves by forcibly removing them from their little plots of ground and preventing them from cultivating, they are now in the extreme of want and distress.

And now in consequence of your illegal and unjustifiable methods of preventing the people from growing their food you are obliged to cause grain, of which they, previously to your advent, grew a large surplus; to be forwarded to them to keep them alive; it is obvious, should the people die in any

quantity the light of publicity will be thrown upon your actions.

Yours etc.

Sd. W.E.F. de Lacy

Barrister-at-Law.

Exhibit IV.

Memorandum of what had transpired at a Baraza held by me in Malindi in 1908.

1. In obedience with instructions received from His Excellency the Governor, I accompanied the Secretary for Native Affairs and went to Malindi where I held, a Baraza of the great majority of the Malindi and Mambrui landowners. At this Baraza the question of land settlement was discussed. I proposed that a line be cut dividing the Malindi shambas from Crown Lands. The Malindi people unanimously agreed to a line being cut and left the position of the said line with me to decide upon.

2. On my return to Mombasa, I reported the matter to the Provincial Commissioner, who took one of Mr. Hollis maps and with my own assistance drew a line in red ink on it separating the Malindi shambas from the Crown Lands. The plan was laid before His Excellency Sir Percy Girouard who approved of the arrangement and signed the same.

3. A copy of this plan was given to the Chairman of the Arbitration Board, who took it as the base for his instructions. The line was cut and duly surveyed 3 years ago.

4. Nothing has transpired which will in any way alter or change the pledge given by the Malindi and Mambrui landowners at the Baraza held by me at Malindi, with reference to the dividing line above referred to.

Sd/ Ali bin Salim

Exhibit V.

Extract from a letter No.9/9/14 of 2nd. December 1914 from the Ag. Recorder of Titles Mr. W.E.F. de Lacy to the Hon. the Chief Secretary to the Government, W.F.J. the Provincial Commissioner, Kombasa.

para. G.

I have received a letter from the Chairman of the Arbitration Board A.B. No.25 of 21st November 1914 of which I quote para 3.

" The Liwali Ali bin Salim informed me with reference " to the applications relative to land west of the " dividing line, that he addressed a letter to his " brother Liwali Seif bin Salim in which he had " fully explained the position and requested him " to call upon the applicants to withdraw their " applications to the said land." The Liwali has enormous influence over the people of this district and I am not certain of what the effect of such a request by him would be, if made, but I doubt if His Excellency would approve of utilizing the hereditary influence of an arab Shiekh of the highest class to acquire for the Crown gratuitously lands some of which the Crown might not otherwise become possessed of.

(Copy)

Exhibit VI.

No.28/1/15.

Land Registration Office,

Malindi,

8th April, 1915.

Sir,

Re the possible defeasance or rendering null of the Title of the Crown to certain Lands.

1. I have the honor to report to you that notwithstanding the Notice in the Official Gazette declaring certain areas in this District to be Crown Lands, the Title of the Crown to some of the lands in respect of which such Notice is published is defeasible at any time .

2. Previous to 23rd.February last on which date the Liwali Ali bin Salim held a Baraza here for a certain purpose some claimants had appeared in my Court and given evidence, the cases were adjourned.

3. They were in occupation of lands they applied for under the Ordinance, such were not at the time proclaimed Crown Lands, the claimants were in perfectly legal occupation of their lands.

4. Their houses were burnt down and they were forcibly evicted by Order of the Hon.the Provincial Commissioner who thereby committed a Tort.

5. Advised by the Liwali Ali bin Salim who was earnestly doing his best for them and for the Government they withdrew their applications and on such withdrawal I cancelled the same, their lands thus becoming Crown Lands.

6. Nevertheless and notwithstanding the Proclamation the High Court would, if moved, thereto and on account of the Torts committed cancel the withdrawal of the applications and qualify the Proclamation of the Crown Lands in so far as it referred to the lands concerning which Torts were committed.

The Recorder of Titles,

MOMBASA.

7. I have been unofficially told that the Aboriginal Protection Society are likely to be informed of these Torts, I have acted as Counsel for them in another country and I know their methods, they cannot justify their reception of the large subscriptions they yearly receive, except by taking drastic action.

8. I therefore report on the possible defeasance of the Crown Title.

I have etc,

Sd/ W.H.F. de Lacy,

Dy. Recorder of Titles.

Exhibit VII.

Extracts from
Memorandum on Coast Federations
of 31st December 1909 by Major
O.F. Watkins R.E.O.

1. There exist on the Coast 3 Federations known as the Thelatha Tayifa (Three Tribes), the Tissia Tayifa (Nine Tribes) also known as the Miji Tissa, and the Wa-Arabu. These claim to represent respectively the indigenous tribes, the earlier Arab immigration, and the more modern Arab conquest. A list of the tribes and their Headmen, so far my knowledge goes, is appended.

Origin.

2. The origin of the first two of these federations is lost in obscurity. They are alleged to have been formed in the days of Mwana Mkisi the mythical Swahili Queen whose kingdom stretched far along the Coast 800 or 900 years ago. It is more probable that they grew by a process of unconscious imitation or assimilation of the Nyika communal and patriarchal organization. However that may be we find them existing in chaste form in or about the year 1888, when as corporate bodies under one or more Sheikhs they sent representatives to Seyid Said bin Sultan for help in rebellion against the Mazrui.

The story goes that Mohamed bin Khamis the Tissia Tayifa Sheikh in those days and the Uncle of the famous Hamis Kombo was imprisoned by the Mazrui, with 4 of his brothers, one of whom died in confinement. His followers sent one Mohamed bin Abdallah to Muscat, with a representative of the Thelatha Tayifa. It is certain that the Sheikhs, were confirmed in their appointments after the conquest by Royal Warrant under the hand of Seyid Said. These Warrants are in existence though I have not seen them.

Land - Claims.

Para. 5. The land belonging to the 2 federations (and to individuals) of the 3rd by inheritance "Kwa Kukeni" is fairly clearly defined, but I have been unable to hear of any document in which the boundary is described. I believe that one document dealing with the land is in existence, which is signed by Seyid Majid, but I have never seen it, and do not know its terms. Its holder appears to be aprticularly anxious that the Government should not get hold of it, and his name and whereabouts were only confided to me on a promise that I would make no attempt to force him to produce the document.

- Exhibit VIII. -

No.4/38/15.

North Branch

Land Registration Court Office,

Mombasa

4th, September 1915.

Sir,

- re Tissa Thaifa -

I have the honor to refer you to your letter to me M.P. No.523/1/10 of December 18th 1911 especially paragraphs first and last, to your telegram of 22/3/12 to me at Takaungu and to my report No.14/43/12 of 23rd, March 1912. These documents are in connection with the Masurui Settlement.

2. A similar condition of affairs has now arisen with regard to the applications of the above tribe of Tissia Thaifa.

3. Yesterday Sheikh Ali bin Mohamed the paramount Chieftain, accompanied by Sheikh Abdulla bin Mathuwani and Sheikh Said bin Abdulrehman, having secured an appointment, waited upon me.

4. They stated as follows : That Government having published a Notice requiring people claiming land to make application for the same they made their application for the land they own, that they have owned it for more than 300 years with other areas they are not applying for, when they have come before the Court to prove their case they find the Government is against them and they are not prepared to fight the Government; before the abolition of slavery they were large exporters of grain, their

The Hon'ble the Chief Secretary,

NAIROBI.

country was cultivated and prosperous and all their people well fed and happy, the Government know they cannot cultivate to any extent now as the Government have taken away their labour but now the Government further wish to take away all their land and their children will have nothing on which to grow food, their number in men women and children are 8000. Before if people would not pay their rent they went to the Government to help them and Government did so, now Government claims their land and they have been taking counsel together what to do, for many of their children could cultivate and will have no land, many of their people are very poor they cannot raise money and they will not fight the Government, therefore they come before me to ask me if I would make an arrangement between the Government and themselves similar to the one I made between the Government and the Lozurui and they would be satisfied with any arrangement that I might make and grateful to the Government.

5. I have received an impression that the lawyers these people have been employing have been endeavouring to exploit them in a big speculative action and that the people have come to that conclusion, certainly they now desire to throw themselves unreservedly upon the mercy of the Government.

6. The facts are these: The Government have a right to acquire the lands in question which they have not exercised, these people had a right to occupy and cultivate a very large portion of such land, through their contact and intermarriage with arabs, Mahomedan rights of alienation have sprung up and been largely exercised, previously they could certainly sell landbut only to members of the tribe with the consent of the chiefs, of recent years numbers of irregular sales have taken place.

7. The application cause in connection with this land comes for final hearing on the 7th instant, the Government opposes it, as it affects 800 other applications I cannot delay it in justice to the others, there is a strong foundation of truth in what the people have stated; if any officer is instructed to make an arrangement similar to that I formerly effected with the Mamurui I think it would be advisable that the freehold of the land be vested in the Government but the tribe might in consideration of abandoning and renouncing all such rights as they possess in favour of the Government to the whole area be given what they formerly had to a part of it, viz the right to occupy and cultivate such land and lease it but not to alienate the freehold.

8. I prospected the area of land claimed in 1906 and 1907 for an association of Ceylon and Travancore tropical agriculturalists and am well acquainted with it, parts of the land are very valuable but expensive to clear.

9. I am in charge of the work of my Department for the area of land under discussion and this communication is outside my departmental duties, I am induced to write this letter by reperusing the letter above quoted showing that the Government did not at that time desire to use their power to acquire lands to which others had moral or perhaps equitable claims.

10. No inconvenience would result to the Government from discontent on the part of the Tissa Thaifa, I do not think they will be able to establish their claim or to place it before the Court in a competent way. I have no recommendation to make but I think it proper to plead the request of these people before you. I should have recommended them to petition His Excellency but there is no time.

I have etc.,

Ed. H. E. F. M Lady,

DEPUTY RECORDER OF TITLES.

---Exhibit IX.--

To His Excellency Sir Henry Conway Belfield
Governor of British East Africa etc. etc. etc.

The humble Petition of the Wanee or Chieftains of the tribe Tissia Thaifa - Miji Tissia - sheweth:

1. Your Petitioners owned by hereditary right a large tract of land in Sayidie Province upon the Coast rented from the Sultanate of Zanzibar by the British Government; they have owned the said land for more than 300 years, they have never had an opportunity of having it surveyed, they owned it under the Sultanate before the Sultan granted rights on the Coast to the Imperial British East Africa Company, during the administration of the said Company, during the administration of the British Government under the Foreign Office and during the administration under the Colonial Office; they sold portions of it, leased portions of it, cultivated portions of it and never at any time were subjected to any interference from any of the above Authorities until this year of 1918.

2. On the 24th December 1914 they made proper application for an area of land which included the lands appertaining to them, as the Masurui people did in the Tahmagu sub-district, believing that by this means they would obtain survey of their lands and that these portions they could prove to be their property would be allotted to them and that the remaining portions would be taken by the Government.

3. The lands office however objected to the whole of their claim and your petitioners were not in a position to enter into litigation against Your Government.

4. Your Petitioners accordingly obtained an interview with the Officer in charge of the North Branch of the Land Registration Court and requested him to make an arrangement between Your Government and themselves similar to that effected between Your Government and the Masurui people, the officer however informed them that he could make no such an arrangement without Your Excellency's sanction but that he would communicate full particulars of our interview to Your Excellency, we understand that he did so on the 4th, September last but we have received no reply.

5. Your Petitioners withdrew their Applications for land and threw themselves on the mercy of Your Excellency; their applications were then cancelled.

6. The numbers of the tribe Your petitioners represent are two thousand men, women and children.

7. Your Petitioners inherited these lands from their forefathers in order that they might leave them to their children.

8. Under present circumstances the whole of the lands of the Tissia Thaifa will be acquired by Your Excellency's Government without any compensation to the tribe and their children will be left with no land to cultivate and no means of livelihood.

Your petitioners therefore approach Your Excellency praying that you may be graciously pleased to make Order that a sufficient reserve may be placed apart out of the lands of the Tissia Thaifa to be acquired by Your Government for the maintainance of the Tissia Thaifa and their children.

3.

And Your Petitioners will ever pray, etc -

Written by direction of the Chiefs of the Tissia Thaifa

by Swana Ziso of Siyu Island

Signed by the Chiefs of the Tissia Thaifa this

day of November 1915.

--Exhibit X.--

Copy.

In reply please quote

No. S 12700/23. & date

The Secretariat,

Nairobi,

East Africa Protectorate.

30th September 1915.

Gentlemen,

I have the honour to acknowledge the receipt of your petition of the 15th ultimo addressed to His Excellency the Governor and to inform you in reply that after full enquiry into the matter at Mombasa he finds no evidence to satisfy him that the Tibaia Thaifa are entitled to a grant of tribal land and he is not therefore prepared to place such an area at their disposal.

2. His Excellency desires that native who are bona fide agriculturists shall be allowed to occupy sufficient land for the support of themselves and their families but certain areas have been already reserved on the coast for this purpose and when the boundaries of Government property are clearly defined the local authorities will consider to what extent it may be necessary to allocate additional plots to individual cultivators.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/ W. J. Monson

For Chief Secretary to the Gov.

SHEIKH,

Abdulla Bin Mkuwani &

other Masee of the Tibaia Thaifa,

Through

The Hon. the Provincial Commissioner,

Mombasa.

Exhibit XI -

MOMBASA.

14th. January, 1916.

Sir,

1. I have the honour to inform you that on the 9th January instant Abdulla bin Athmani, one of the Wazee of the Tissa Taifa, brought for my perusal Your No.S.12700/23 of 30th December 1915 declining to grant their petition; a matter which I could not discuss with him in any manner whatever.

2 Your letter contained the following sentence "Your petition of the 15th ulto addressed to His Excellency the Governor and to inform you in reply that after full enquiry into the matter at Mombasa he finds no evidence to satisfy him that the Tissa Taifa are entitled" etc. etc.

3 This presummably is a mere form of words for no such full enquiry has been made, neither has any enquiry been made at all from any person competent to give information upon the matter since the delivery of the Judgment in Application Cause No.26 N. of 1915 on the 20th September 1915 in the Land Registration Court, North Branch.

4. A full enquiry was held by the Commissioner for Lands, the Secretary for Native Affairs, the Crown Advocate and the Provincial Commissioner at which I was present at the Provincial Commissioner's Office in 1906(my diary is not with me but it was either that year or the end of 1907.) The Deed of Matumpa River Estates could not be signed until the Tissa Taifa withdrew their claim; on hearing that Rs.45,000 had already been spent upon the property, which they would have to return, they

5. In view of the fact that the Government of this country only inherits from the Imperial British East African Company the right to acquire the waste land of the coast belt and that the lands claimed by the Tissa Taifa were not waste lands from the point of view of Mohammedan Law and Native custom and that sworn evidence has been given in a Court of Law that they did own a large area of land which has not been disproved. I feel it my duty to point out that it is a regrettable circumstance that His Excellency should have been advised to refuse this petition without any enquiry and that the very fullest information should not have been laid before him in connection with a matter, not of the greatest importance in itself, but most intimately connected with other circumstances of very great consequence which also may not be within His Excellency's cognizance

I have the honour to be,

Sir,

Your obedient servant,

Sd. [illegible] F. de [illegible]

The Hon. the Chief Secretary,

Secretariat,

Nairobi.

COPY.

Exhibit XII.

S. 11761/26.

CONFIDENTIAL.

THE SECRETARIAT,

NAIROBI,

EAST AFRICA PROTECTORATE.

24th June 1926.

Sir,

I am directed by His Excellency the Governor to refer to a letter marked "unofficial", dated the 14th of June, addressed to the Hon. C. W. Hobley on the subject of certain irregularities alleged by you to have taken place in the northern portion of Seyidie Province.

2. His Excellency is unable to permit this communication to pass unnoticed, notwithstanding its so-called unofficial nature, and he proposes to take cognizance of its representations and, in compliance with the request of the Provincial Commissioner, to arrange for a full enquiry to be held.

3. The contents of your letter referred to amount to little more than a series of indefinite aspersions upon the Provincial Commissioner and, in order that the points at issue may be perfectly clear to the officers who will hold the enquiry, and to Mr Hobley himself, I am therefore to request you to formulate your complaints with the least possible delay into a series of definite and categorical charges, supplying in each instance all particulars relating to dates, places and persons so that each of such charges may be made the subject of separate examination and finding.

4. On receipt of this statement of charge a Commission of Enquiry will be appointed.

I have the honor to be,

Sir,

Your obedient servant,

Sd. J. E. Bowring

CHIEF SECRETARY TO THE GOVERNMENT.

J. A. F. de Lacy Esqr.

Mombasa.

Copy.

Exhibit XIII.

Post Office Box No. 25,
Mombasa,
30th June 1916.

Sir,

Your No. 311/61/26 Confidential.

1. I have the honor to acknowledge the receipt of your communication as above; It will certainly be of great advantage to the Province if full enquiry into the matter be held.

2. It is however my duty to point out that unless the precedence of the enquiry held on Siyu Island in April 1907 be followed, the enquiry must necessarily be ineffectual for the following reasons, such full enquiry would have to decide the following points:-

(a) Whether the Government had any right to remove cultivators from their holdings north of the Sabaki River?

(b) Whether the Government had any right to remove cultivators from their holdings from the West of the so-called Baratumu line?

(c) Whether such lands were or were not occupied lands by the Mohammedan Law?

(d) Whether it is possible to transfer freehold lands by Baraza or public Meeting?

(e) Whether the so-called Baratumu line has any legal status or signification or not?

(f) Whether the people were forcibly ejected or not?

3. I think it will be obvious to you that only a Judge well-versed in Mohammedan Law is competent to effectually hold such a full enquiry and further that as much of the evidence as is taken, must necessarily be native evidence the enquiry could only be efficiently held on the spot.

Hon. the Chief Secretary, Nairobi.

4. I have quoted the precedent of the Siyu enquiry and, for easy reference, I detail you that what took place under similar circumstances on that occasion.

(a) A Judge of the High Court was "lent" to the Administration for the purpose of holding the enquiry.

(b) Sworn evidence was taken at Siyu Island itself.

(c) The Judge made a report.

(d) The officer responsible compensated the people injured.

(e) The people injured expressed their content.

(f) The Judge who held enquiry subsequently informed me that the papers in the matter were "lost"

(g) The matter terminated.

Previous to putting my complaints in an official form I should like to be informed if this precedent will be followed or not.

I have the honor to be,

Sir,

Your obedient servant,

Sd. W. E. F. de Lacy.

BARRISTER -AT- LAW.

Exhibit XIV.

Copy.

G.

In reply please quote

S. 11/61/32 & date.

The Secretariat,

Nairobi,

July, 4th 1916.

CONFIDENTIAL.

Sir,

I have the honor to acknowledge the receipt of your letter [illegible] 4th ultimo [illegible] in reply [illegible] it will be [illegible] before this [illegible] for his consideration.

[illegible] In the meanwhile I should be glad if you would furnish the definite statement of charges asked for in my letter [illegible] Confidential of the [illegible] ultimo.

I have the honor to be,

Sir,

Your obedient servant,

Sd. F. J. Monson

For CHIEF SECRETARY TO THE GOVERNMENT.

[illegible] de Lacy Esqr.

Post Box No. 23,

Mombasa.

Copy.

Exhibit XV.

Mombasa,

1st August 1916.

Sir,

I have the honor to acknowledge your [illegible] of the 4th July last.

I have no disinclination to put my complaints into official form, in so far as they relate to Land Titles Act 1908 my duties thereunder and the [illegible] to prevent the proper performance of [illegible] duties, but I may bring [illegible], awaiting an official assurance [illegible] the precedent of the High Court [illegible], [illegible] that the consideration of [illegible] will [illegible] a [illegible] point of view. I therefore [illegible] attention to paragraphs 4 and [illegible] of my letter [illegible] both [illegible] last.

[illegible]

Sir,

[illegible] servant,

[illegible] Choy.

[illegible]

The Hon. the Chief Secretary,

Secretariat, Nairobi.

No. 21761 Exhibit XVI.

CONFIDENTIAL.

THE SECRETARIAT
NAIROBI,
EAST AFRICA PROTECTORATE.
23rd. August, 1918.

W.E.F. de Lacy Esq.

MOMBASA.

Your letter of the 30th June and 17th August.

The following Minute by His Excellency the Governor is forwarded for your information and action:-

" I regret to have to say that I cannot but view the action taken, and the attitude assumed, by Mr. de Lacy with grave suspicion. I should like to think that his motive is solely a conscientious desire to remedy evils which he believes to exist, and I am anxious to preserve an open mind pending full examination of the questions which he has raised, but I admit that I find it difficult to do so in view of the line he is taking.

2. In the first instance he has distributed among principal Government officers a lengthy document which seriously criticises the conduct and impugns the rectitude of a senior officer of the Protectorate, deliberately making animadversions in general and indefinite terms which cannot be dissected and disproved. He has also sent letters of an unusual nature on the same subject to other Government officers, apparently with the intention of bringing pressure to bear upon them, and he has intimated his intention of giving publicity to his view in England at a later date when his services with this Government will have terminated and he will no longer be amenable to its jurisdiction.

3. I have been unable to view this attitude as other than disingenious, and I directed Mr. de Lacy to put his indefinite accusations into the form of concrete charges,

because I consider it essential that the matter shall be threshed out locally, at all events in the first instance before Mr. de Lacy leaves the country.

4. But I do not admit his right to stipulate as to the constitution of the Commission of Inquiry, nor to make demands regarding its venue or the form of its proceedings. It will be his business to support his allegations as a party to the proceedings, and the questions in respect of which he has attempted to impose conditions are matters for which I am responsible and regarding which I do not propose to consult him.

5. I cannot permit Mr. de Lacy to obstruct the initiation of the enquiry by efforts at temporising, and I require him to formulate definite charges, with full particulars regarding persons, times and places, such charges to be in my hands by the end of September.

6. In default of compliance with this direction, or of tender of a full retractation and a written apology to the officer against whom he has levelled his accusations, it will be my duty to consider whether he should not be interdicted from the performance of the duties of his office, in which case a full report of the whole question together with my comments thereon, will be sent to the Secretary of State."

Sd/ T.S. Thomas

for CHIEF SECRETARY.

Exhibit XVII.

Mombasa 399

20th September 1916.

Sir,

I have the honor to acknowledge the receipt of your No.S.11761 of 23rd August 1916.

1. I should not under any circumstances formulate official complaints concerning an officer of the Government, except on occasions when they interfered with the proper discharge of my official duties.

2. When they did so interfere, I should so complain.

3. Had His Excellency enabled me to do so, I should have complained that certain evictions authorised by Mr. Hobley were illegal and directly intimidated applicants to my Court from coming before me to substantiate their applications.

4. As the legality or illegality of such evictions could only be decided by a Judge of the High Court, I am compelled to withhold my complaints and lay the matter before the Secretary of State.

5. In so doing I know I am acting in the best interests of the Government and I draw attention to the fact that on the two previous occasions when I had to combat certain illegalities committed by an officer of this Government viz: The Biyu Enquiry of 1907 and the detention of sums received for the sale of intestate estates in Tanaland, I saved the Government from incurring enormous liabilities.

6. No Board of Enquiry constituted, unless presided over by a Judge of the High Court, would be competent to decide the questions I should bring before it. I am a lawyer and it is against the professional instincts of Counsel to bring a matter before an incompetent tribunal.

Hon. the Chief Secretary,

Secretariat, N A I R O B I.

7. With great respect and assurances of my absolute loyalty to the Government and of my earnest desire to extricate the Government from any complications that may arise from mistaken actions.

I have the honor to be

Sir,

Your obedient servant,

W. E. F. de Lacy

Barrister - at - Law.

INCLOSURE No. 2

In Despatch No. 152 of 1 November 1916

Confidential

Memorial B

Mombasa,

6th November 1916.

401

His Excellency the Governor of British East Africa. Under cover to the Hon. the Chief Secretary, Secretariat, Nairobi.

Your Excellency

I have the honor to forward you a memorandum with three exhibits attached, which I beg you to transmit to the Secretary of State in due course.

I have the honor to be,

Your Excellency !

Your obedient servant,

[illegible signature]

BARRISTER-AT-LAW.

Mombasa,

British East Africa

November 8th 1916.

The Right Honorable The Secretary of State for the Colonies

under cover to

His Excellency the Governor of British East Africa

C/o The Honorable the Chief Secretary

Nairobi.

Sir,

I have the honor to address you a supplementary letter to my communication of 20th September last.

1. Since I wrote to you His Excellency has appointed a Commission of Enquiry, but has so circumscribed the scope thereof, that the Commissioners will be unable to call the necessary evidence, to lay essential facts before them, for their Report.

2. I refer you to paragraph 1 of my previous communication and to paragraph 4 of the Commission, in which His Excellency obscures the issue, in its most vital point; I attach a copy of the Commission hereto as Exhibit I. His Excellency infers that I, as Deputy Recorder of Titles, was conducting an Enquiry into titles to land in the Malindi District; I was not so employed: Under the Land Titles Ordinance 1908 I was adjudicating upon the Application Causes brought before me with full powers of a Judge; as such Judge, and as such Judge only, it became my duty to endeavour to protect the applicants to, and litigants before, my Court.

ibit I.

3. I therefore beg you to use your influence with His Excellency, in order that he may be induced to extend the scope of the Commission, to such an extent as to enable the Commissioners to enquire into and report upon the matters indicated in my letter to the Hon. the Chief Secretary of 30th June 1916 (Exhibit XIII) of my previous letter to you and all such further matters in connection with the Land Registration Court, North Branch as I may require to bring before them.

4. The following matter having been alluded to in a public speech of the president of the Planters Association, reported by the local press; it may be permissable to inform you of it, as an instance that the burnings out of the native peoples are not confined to the Malindi District; a few months a-go Gasi village to the south of Mombasa was burnt down under similar circumstances to the burning of Gaji village in the Malindi District, far to the north; tending to show that these burnings out are systematic administrative devastation of the native peoples and are certainly of an intimidating nature.

Exhibit II. 5. His Excellency has enquired whether I prefer that my communication to you of the 20th September last should go forward at once or await the conclusion of the Enquiry; I have replied that

Exhibit III. I prefer that my Communication should go forward at His Excellency's convenience, the evictions are not the only way in which the Civil Administration have detrimentally affected the legal right of applicants to my Court to a Hearing.

6. I have the most absolute and complete confidence in the Commissioners; they cannot, however enquire into matters beyond the scope of their commission; when they can: I am quite certain the legal rights of Applicants to the Land Registration Court to a hearing of their applications in such Court will be re-established.

I have the honor to be,

Sir,

Your obedient servant,

W. E. F. de Lacy.

BARRISTER-AT-LAW.

Exhibit I.

The Commission of Inquiry Ordinance 1912.

A COMMISSION.

I, HENRY CONWAY BELFIELD, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander in Chief of the East Africa Protectorate, &c, by virtue of the powers conferred upon me by the Commissions of Inquiry Ordinance 1912, by this my Commission under my hand, appoint His Honour ROBERT WILLIAM HAMILTON, Chief Justice of His Majesty's High Court of East Africa, the Honourable FRANCIS WILLIAM MAJOR, C.B.E., and HAROLD DONALD to be Commissioners to enquire into and report on:-

(1) That removals or evictions of natives have been effected by order of the Civil Administration in the Malindi District during the years 1912-1916.

(2) The reasons for such removals or evictions.

(3) The manner in which they were carried out.

(4) Whether, and, if so, to what extent, such removals or evictions and the method of executing them have affected the inquiry conducted by the Deputy Recorder of Titles into titles to land in the Malindi District.

(5) If any persons evicted or removed are entitled to be compensated.

(6) Any matter or matters incidental to the foregoing which the Commissioners may consider necessary for elucidation thereof.

AND I do hereby appoint the said ROBERT WILLIAM HAMILTON to be Chairman of such Commission.

AND I do hereby direct that the aforesaid Inquiry be held at such places in the Seyidie Province or elsewhere as the Chairman may think fit.

AND I do hereby command all persons whom it may concern to take due notice hereof and to give their obedience accordingly.

Given at Mairesi the 27th day of October 1916.

(sgd) H. CONWAY BELFIAD.

GOVERNOR AND COMMANDER-IN-CHIEF.

Exhibit II. **P.E.L.** 407

No. 11761.

THE SECRETARIAT,
NAIROBI,
EAST AFRICA PROTECTORATE,
28th October 1916.

CONFIDENTIAL.

Sir,

With reference to your letter of the 20th of September enclosing a copy of a communication for transmission to the Secretary of State, and to my acknowledgement thereof of the 23rd ultimo, I am directed by His Excellency the Governor to inform you that he has appointed a Commission of Inquiry a copy of which is enclosed herewith for your information.

2. His Excellency desires to know whether under these circumstances you would prefer that your communication to the Secretary of State should go forward at once, or whether you would desire that it await the conclusion of the inquiry.

I have the honour to be,

Sir,

Your obedient servant,

Sgd. C.C. Bowring

Chief Secretary to the Government.

E.J.F. de Lacy Esq.,
Mombasa.

Exhibit III.

COPY.

CANLE CESSOR'S OFFICE,

Mombasa,

31st October 1916.

The Hon. the Chief Secretary,

Secretariat, Amirobi.

Sir,

I have the honor to acknowledge the receipt of your No. S. 11761 of the 28th instant enclosing me a copy of the appointment of a Commission of Enquiry.

1. If I had been able, I would have asked for the appointment of the three high-minded and able gentlemen who have been nominated on the Commission; I have complete, absolute, confidence that any enquiry that may be held by them will be thorough and the conclusions they will come to in their Report will be just.

2. The Scope of the Commission's enquiries is, however, bound and limited by the terms of the Commission.

3. Paragraph 4 of the Commission obscures the issues; I conducted no enquiry into titles to land in the Malindi District and had I been appointed to do so, such enquiry would not have been affected by removals or evictions; which would merely have been matters to allude to in Report.

4. Some of the issues that I hoped would be decided by a Commission of Enquiry are specified in my letter to the Hon. the Chief Secretary of 30th June 1916. there are others, but they do not come within the circumscribed scope of this enquiry.

Exhibit III.

COPY.

CARLE CENSOR'S OFFICE,

Mombasa.

31st October 1916.

The Hon. the Chief Secretary,

Secretariat, Nairobi.

Sir,

I have the honor to acknowledge the receipt of your No. S. 11761 of the 28th instant enclosing me a copy of the appointment of a Commission of Enquiry.

1. If I had been able, I would have asked for the appointment of the three high-minded and able gentlemen who have been nominated on the Commission; I have complete, absolute, confidence that any enquiry that may be held by them will be thorough and the conclusions they will come to in their Report will be just.

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4. Some of the issues that I hoped would be decided by a Commission of Enquiry are specified in my letter to the Hon. the Chief Secretary of 30th June 1916, there are others, but they do not come within the circumscribed scope of this enquiry.

2.

5. Under these circumstances I should prefer that my Communication to the Secretary of State should go forward at His Excellency's convenience.

I have the honor to be,

Sir,

Your obedient servant,

Sgd. J.E.J. de Lacy,

DEPUTY RECORDER OF TITLES.

Reference No.2/3

HIGH COURT BUILDINGS,
Mombasa,
13th November 1916.

410

Your Excellency,

MALINDI COMMISSION OF INQUIRY.

With reference to our conversation of this morning, I have the honour to report that the Commissioners have considered the matter referred to in Mr. de Lacy's supplementary communication to the Secretary of State. The opinion of the Commissioners is as set forth in the following paragraph.

2. Seeing that the gist of Mr. de Lacy's allegations is to the effect that the work of his Court was interfered with owing to the intimidation of the inhabitants of the district caused by illegal evictions and burning of houses, the Commissioners are interpreting inquiry into titles to land in no narrow way and are enquiring into all movements of natives by order of the Civil Administration as specified in the Commission.

The Commissioners also consider that it will be no less their duty specifically to report if any of these movements have in any way affected the work that was being carried on in the Recorder's Court, than to report as to any unjustifiable hardships imposed on the natives by the moves.

Under these circumstances, the Commissioners are of the opinion that the scope of the reference is sufficiently wide to cover the matters in issue.

I have the honour to be
Your Excellency,
Your most obedient humble servant,

Hutchinson

CHAIRMAN.

His Excellency,
Sir H. Conway Belfield K.C.M.G.,
&c. &c. &c.
Governor,
East Africa Protectorate.

Gov./62017/E.A.P.

10

Downing Street,
11 January, 1917.

Sir,

I have the honour to acknowle the receipt of your confidential despat No. 152 of the 18th of November, and to inform you that I accept your opinion as to the adequacy of the terms of reference of the Malindi Commission of Enquiry. I shall await the findings of the Commission.

I have, etc.,

(SD)

DRAFT.

EAST AFRICA PROTECTORATE
CONFIDENTIAL.

GOVERNOR
SIR H. CONWAY BELFIELD, K.C.M.G.
&c., &c., &c.

MINUTE.

Mr. Butler 9/1/17
Mr.
Mr.
Mr. Grindle.
Mr. Lambert.
Mr. Read.
Sir G. Fiddes.
Mr. Steel-Maitland.
Mr. Bonar Law.