



EAST AFR. PROT
20637

C. O.
20637
Recd. 6/11/14

Mr. Selfield 446

East African Estates Commission

1914

7 May

Last previous Paper.

For 12/1/05

Submits draft new lease with explanatory memorandum by Mr. Macmillan. Submits also generally on terms of lease, and legal claims of C. which appear sound. If approved asks that agreement be executed in England & a copy sent for registration in Prot.

W. Ferguson Dr. G. Fiddes
W. Reid

We have discussed this on Friday & today and I have a note giving our results in outline. In most cases, then we have had doubts either as to the question of ^{the} drafting, that is not satisfactory, & Mr. Ferguson has agreed to go further into these points.

In particular, Schedule, Part 1, is vague.

(1) The western boundary, which is to include include 250.000 acres plus the excised area, may be like this or like this / or like this

We suggest (a) that it should be straight

(b) that it should be parallel to the coast

30 Col. It can be seen to be 8 1/2
At: Thomas of 13 July 14
Ansd. by 1 cons 15 July 14
Copy of two letters of 15 July 14
15 July 14

Next subsequent Paper.

T 24448

or, for definiteness, that it should run
21° East
~~20°~~ (lat of true north. [This bearing
is approximately parallel to the Shearwater
boundary line & avoids the necessity
for observing the bearing of that line
precisely.]

(2) The provision about area shall
be excepted does not read: is incorrect
in respects land at any time (see § 7)
for Govt. or Adm. purposes & should
be correlated with § 11

—
An important point is that of the
£50 rent (§ 3) until the whole is
surveyed. It appears from Mr. Trenchard's
memo. that Col. Thomas is obstinate on
this point. But if, under § 11, the
Co. employ their own surveyors, there
is no warrant for them to ask him
survey the whole & when he has
surveyed the parts they want to
develop they can go ahead, to the
£50 rent base, until the Govt. can
find time to complete the survey.
We are rather in their hands, on this
question, but it might be possible
to effect a compromise on the basis
of an intermediate rent (say £)
after one half has been surveyed.

—
On the question of dropping the "effort
duty"

181
duties or royalties, we agreed to
recommence this. There may be a
considerable loss while the £50 rent
is in operation, but afterwards, the
higher rent should prove sufficient
compensation, & as the same points
out, the Co would never be liable
for any export duties, or their produce
which may hereafter be imposed.

The cabotage on whale ships
in Part III of Schedule I appears
to be satisfactorily dealt with. It is
to be developed (§ 5 which however
needs touching up), & the Ex^{ts} Co
take land for public purposes without
compensation for the land (§ 7)

We have had some discussion & search
over the question of our power to give
a 99 years lease within the Corporation.
I am not clear what Mr. Lane & Co
refer when he says that this has now
been settled; but it seems certain
that the Supply agreement between
Z'bar & the B.S.A. Co of 5 March
1871, extending in perpetuity the
original 50 years lease in 1838, & 1852

P. 9 appeared in
Hobsonian clause

History Vol. I
p. 365

12
p. 358
at VIII

has all the power in extent. It is
to be presumed that this Supplement
Agreement was concluded when the
Comm. note was despatched of 8 June
1906 (25842/06. find below) which
appears to have been the origin of
the special Memorandum in the
1910 lease.

[The whole thing is rather confused
- according to the 1888 agreement
was dated 9.10.88 according to
25842/06 the date was 20.4.88, which
does not appear in the 1888
the date of the number German
agreement - see the loose papers (copies)
which I have taken from some books
(I give to the book)]

We suggest that if one or three
is approved the C^o, with Col. Thomas
should be asked to come & discuss
I think that the agreement should be
referred back ^{to the Governor} again for re draft
& execution

W.C.B. 30.6.14

§ 20 - Taken direct from the old lease
does not specify oil among the minerals
for which the Gov. may give concessions
as it is now usual to refer to mineral

oil specifically in any list of
minerals in such cases we had
letter put in? W.C.B. 30/6/14

182

I agree generally. (I have added
a few notes in pencil to the
memo. There are a number
of drafting points which I shall
have to ~~make~~ eventually (the
S^o. seems to have been drawn
up in the Land Office, I think,
without legal assistance). But I
fear I shall not be able to do
this satisfactorily till the New Hel-
confer is over, although I will
manage it somehow if it is
desired to settle with Col. O.
I am ^{meanwhile} I am the
pp on that the questions of
principle may be decided.
C.G. 2/7/14.

H. J. R.
2/7/14

As proposed by W. Botting

W.C.B. 2.7.14
atoned
Chr. 7.14

W. Botting

Mr. Head will you please say when
you wish that Col. Thomas & the

Col. has been invited to call +
discuss this

all
3/7/14

Transcript
Any time Wednesday morning
would suit me after
that I may be full up
for the rest of the day

CB 4-7-14

at rec
H. J. R.

4/7/14

Mr. Johnson
Sr. J. F. Feller

See annexed minutes of
discussion between Col. Thomas W.
Johnson + myself, on the 8th + 9th July.
We require a Sft. to the fort as
to the breakfast, necessitates hands +
the question of obtaining water
from outside for their consumption +
the Tarn desert - + an ad interim
Sft. to the Co^y, surmounting with
a view to obtaining agreement on the
other points. Mr. Johnson + I had
better submit Sfts. for review?

H. J. R.
9/10/14

We should also
ask Gov. about claims
3, 7 + 16 - CB 10771 a

First Schedule. }
cl. 11 & cl. 21 }

183

Col Thomas explained
that "land on wh. natives
have rights" cl. 11 means
land owned by natives whether
individually or communally,
in contradistinction to cl. 11 wh.
refers only to lands on wh. they
have rights in several. all
the species of land referred
to in para 11 (a) should be
excepted from the grant.

Dicapper-Macalister land

Col. Thomas said that the for
originally intended this land
to be thrown into the C. G.'s
concession if the D. M. negotiators
fell through. He thought
the alteration (which excludes
all the D. M. land) was a
mistake. He said we
could revert this to the
for the point requires
course in connexion with
the D. M. papers.

The point in connection with the Western
Boundary could also be considered in connection with this
point. Colonel Thomas agrees that it will be desirable
to

to fix some direction for this boundary, if possible more or less parallel to the coast line.

Colonel Thomas also agreed that the words "and as at any time may be required" in the middle of the last paragraph of the first part of the first Schedule, should be deleted.

Clause 7.

Colonel Thomas expressed the opinion that the wording of Clause 7 might require some modification to ensure that the Company was only asked to surrender lands which were actually required to meet some existing need of the Government. It was agreed that he should consider this question when he received our amended draft of the Lease.

1st Schedule, 2nd part.

Colonel Thomas said that he understood that it had been agreed that the Company were to have rights to go outside the land eventually selected in the Desert in order to find water for irrigation purposes. He suggested the following form of words as a possible definition of these rights:

"To prospect bore and sink wells on any land outside the demised premises and to use and carry water from such wells or from any streams outside the concession for the purpose of irrigation or for domestic purposes".

He said the Company would be prepared to allow any other grantees of lands in the desert the same rights to prospect etc. on the Company's Concession if necessary. (It was agreed that this

point

point should be referred to the Governor for his consideration.

Colonel Thomas explained that the words "being of a generally waterless condition" in the second part of the Schedule were intended to show that the Company would not select their land along, for instance, the river banks, and that this made the question of an external water supply additionally important. We suggested that the words mentioned would perhaps require a little precise definition,

Colonel Thomas pointed out that Clause 13 (III) of the old lease had been omitted. We referred him to the statement in Mr. Tannahill's memorandum that the provisions of this sub-section are already provided for under the Irrigation Rules in force.

This point should be verified.

Clause 3.

We informed Colonel Thomas that we should very much prefer that the rent of £50 should rise gradually to £1500 in proportion with the advance of the survey and should not jump suddenly as is at present provided in this Clause. We suggested that the rent might rise from £50 to £375 when one quarter of the 250,000 acres was surveyed and so on with possibly a proviso that the whole survey should be completed within some specified time. Colonel Thomas suggested 10 years as a reasonable time. He stated, however, that he attached very great importance to the retention of the Clause as drafted in this respect, inasmuch as it constituted a strong inducement to the Government to complete the survey at once. There were also certain respects in

which

which partial survey, although it would, as we indicated, be quite sufficient to enable the Company to keep pace with the demands of cultivation and sub-letting might not be sufficient to enable the Company to carry out the necessary operations in the way of road and railway making, for example, to ensure the general development of their concession.

He stated, however, that he was quite ready to accept any modification which would make it plain that the increased rent was not to be withheld merely on the ground of some technical failure of the Government to complete the survey, as for instance, the inability to define the Western Boundary.

Clause 9.

Colonel Thomas agreed to the proposed amendments.

Clause 10.

Colonel Thomas agreed to favourably consider the question of expressly excluding oil under Clause 10.

Clause 12.

Colonel Thomas agreed.

Clause 16.

Colonel Thomas agreed that the drafting of this clause was unsatisfactory and it was arranged that we should both try and find some suitable form of amendment.

Minute of discussions, 26th and 30th June 1914.
 between Mr. Tannhill, Mr. Butterley,
 & Mr. Read

Clause 1. Agreed

Schedule I.

Part 1 ~~agreed~~ redrafting in conjunction
 with clause II. 1.

The method in which the Western Boundary
 is to be defined should be more fully described.

Part 2 agreed.

" 3 agreed.

Clause 2 - agreed, subject to verification as to exten-
 sion of Zanzibar lease.

Clause 3 - The continuance of the £50 rent till all the
 area is defined goes very far. We should
 however first find out how long the work of
 definition is likely to take before proposing
 an alteration.

"Export Duties" - (Mr. Tannhill's note). We must
 accept this, but we may lose while the £50
 rent is in force.

Clause 4 (1) Agreed - it is understood that the £4,000
 &c include money already spent on development
 under the old lease.

II. Agreed

III. Agreed.

(6) Clause 5. Requires redrafting.

Clause 6. Agreed

Clause 7

Clause 7. To be considered with Schedule I Part I.

Clause 8. Agreed.

Clause 9. (a) read

"Any residences and any buildings
wharves &c."

Omission (c)

(b) "clay (other than china clay)" X

Clause 10. agreed

Clause 11. needs redrafting.

Last part. This may be accepted:

Clause 12. Transpose buildings and residences.

Clause 13. What conditions are there to be on sub-
leases?

Clause 14. Agreed.

Clause 15. Agreed.

Clause 16. needs redrafting. "Totally" must come out
in any case.

(Old Clause 27 - agree to omission).

Clause 17. Agreed. *Some left over.*

Clause 18. Agreed subject to examination.

Clause 21. Agreed.

Clause 22. Agreed.

Clause 23. Agreed.

Clause 24. Agreed.

Schedules 2 and 3 agreed.

The Schedule to the Green Land Bill only says "clay",
but we have insisted on the distinction in
the case of Uganda & might well do so in
E.A.P., both in this case & generally. There is
however little chance of these clay being found in
the coast strip.

0637
AFRICA PROTECTORATE.

No. 446.



1675
20637
GOVERNMENT HOUSE,
NAIROBI,
RECEIVED 6 BRITISH EAST AFRICA.

May 7th, 1914.

Sir,

With reference to previous correspondence on the subject of the East African Estates, Coastal Concession, I have the honour to enclose herewith the draft of a lease which I recommend be substituted for that originally executed, together with a memorandum by Mr. Tammhill setting out the differences between this draft and the lease of 20th April 1910, with the reasons for instituting the differences.

Draft Lease
Memorandum

2. I think it right to say at the outset that the knowledge I have gained of the conditions appertaining to the Coast and especially in regard to the difficulties of title, have caused me very materially to modify the views I expressed at the Colonial Office, which were formed before I had been able by personal investigation

THE RIGHT HONOURABLE
LEWIS HARCOURT, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

Enclosure

investigation on the spot to appreciate to the full the peculiar and complicated local conditions.

3. Since my arrival in this country I have given most careful consideration to the questions in dispute between the Government and the Company, and during Colonel D. Thomas's last visit to the Coast I availed myself of his presence to discuss with him in detail the provisions of the old lease and the remedies required. I also accompanied him to Gazi and examined the development already effected.

4. With the knowledge of local conditions thus acquired, I realised it would be out of the question to endeavour to enforce any of the penalties for non-fulfilment or breach of the Covenants in the lease, as the Government had not been able to give and have not given any facilities to the Company, which would enable them to carry out their Covenants. I was confirmed in this belief by the late Attorney General, Mr. Combe, who expressed the opinion that, if the Company were to take steps in court to compel the Government to fulfil their obligations in regard to survey and the grant of a title free of claims, the Government would be unable to defend with any prospect of success and might expect

expect to be mulcted in damages to a very serious extent.

5. These reasons compelled me to commence negotiations on an entirely new basis, and the results of these negotiations are embodied in the draft agreement submitted herewith. I may say that this agreement has only been arrived at after a long period of very anxious care and thought, especially anxious as it was apparent that the Company were rather more desirous of taking legal proceedings than of negotiating new terms, and I believe that a perusal of its clauses in the light of the explanations afforded by Mr. Fannahill's memorandum will make it evident that the document has been properly divested of certain clauses which were unsatisfactory or inconvenient, and has been re-arranged in such a way as to give practical effect to the views of both parties. Also that it secures to the Government a continuity of proper development conditions by the Company and the payment to the Government of adequate consideration for the privileges conceded.

6. With special reference to the elimination of the export duties, I would mention that the lease now comes into line with all other Crown leases of agricultural land, and I wish
emphatically.

emphatically to endorse Mr. Tannahill's statement on page 7 of the memorandum, that the composition arrived at "is extremely favourable to the Government".

7. In reference to the one mile strip fronting Kilindini Harbour and Port Reitz (3rd part of 1st schedule) failure to come to terms on this point would have entailed a breakdown of the whole negotiations, and I therefore agreed to accept the arrangement recorded on the distinct understanding that Government could take possession at any time of any land, not only in this part but over the whole Concession, required for Government purposes without compensation for the land (vide Clause 7).

8. All the negotiations between Colonel Thomas and myself were conducted on the clear understanding that the agreement arrived at was to be the subject of confirmation by the Colonial Office and his Directors. A copy of the draft agreement has been forwarded by this mail direct to Colonel Owen Thomas.

9. On the acceptance by the Company of the terms of the draft, I recommend that a formal lease be engrossed in England, signed

and

and sealed by the Company in London and for-
warded to me for completion and registration
in this Protectorate.

I have the honour to be,

Sir,

Your humble, obedient servant,

Alway Bepford

GOVERNOR.

X all that piece or parcel of land situate south of
Mombasa in the Province of Seyidie in the Protect-
orate more particularly described in the Third Part
of the First Schedule hereto.

Encl in No

INCLOSURE 201

20037
Despatch No 446 of May 7th 1911 1911

THIS INDENTURE made this day of 1911 BETWEEN
HIS MOST GRACIOUS MAJESTY KING GEORGE THE FIFTH of the one
Part and the EAST AFRICAN ESTATES LIMITED a Company incor-
porated pursuant to the law of England and having its regis-
tered office at Carlton House Regent Street in the County of
London (hereinafter referred to as the Lessees) of the other
part. WITNESSETH that in consideration of the rent and
reservations hereinafter reserved and of the Covenants by the
Lessees hereinafter contained or implied by virtue of the
provisions of the Crown Lands Ordinance 1902 His Majesty doth
hereby demise unto the Lessees FIRST all that piece or parcel
of land situate south of Mombasa in the Seyidie Province in
the East Africa Protectorate more particularly described in
the First Part of the First Schedule hereto SECONDLY all that
piece or parcel of land situate in the Taru Desert in the
Province of Seyidie in the Protectorate more particularly de-
scribed in the Second Part of the First Schedule hereto AND
THIRDLY PROVIDED that the premises hereby demised shall be
subject to delimitation by survey in accordance with the pro-
vision in that behalf hereinafter contained.

2. Except and reserving the waters of any river or lake
AND Except and Reserving unto His Majesty full liberty and
right to use the said excepted waters or any of them or any
other waters which may be or be found in or about the demised
premises for the supply of water or power for any Government
purpose whatsoever and for such purpose or purposes to dig
or sink such wells or bore holes and to divert stop or dam
such streams or watercourses and to make and maintain such
watercourses culverts lines of pipes drains or reservoirs
in or through the demised premises as the Governor shall
think desirable. AND also reserving liberty as aforesaid
from time to time with workmen and others to enter on the
demised premises and to repair renew cleanse and enlarge the

said wells boreholes watercourses culverts pipes drains and reservoirs AND it is hereby agreed that no compensation shall be payable to the Lessees in respect of the liberties and priveleges hereby excepted and reserved or in respect of any damage arising from the exercise ^{thereof} of the said liberties and priveleges to any irrigation works ^{save that the Lessees shall be entitled to such compensation for damage caused by the} actually constructed by the Lessees and to any part of the demised premises irrigated by means of such works as in case of difference shall be fixed by Arbitration as hereinafter provided. TO HOLD the said lands (except as aforesaid) unto the Lessee for the term of 99 years from the 1st day of January 1914 subject save where expressly herein otherwise provided to the provisions of the Crown Lands Ordinance 1902 and to the Rules for the time being in force under the said Ordinance.

3. **YIELDING** and paying therefor in advance payable on the first day of January in every year and in proportion for any less time than one year where such arises the Rents in the manner and of the amounts here following in respect of the premises demised in the 1st and 2nd parts of the 1st Schedule hereto namely £50 per annum until such time as the premises demised in the First Part of the First Schedule shall be delimited by Survey as hereinafter provided and thereafter for a period of five years commencing from the date of the approval of the Plan by the Director of Surveys of the premises demised in the 1st part of the 1st Schedule as hereinafter provided £1500 per annum and thereafter for the remainder of the period of the lease £2000 per annum and in respect of the premises demised in the 3rd part of the 1st Schedule a sum calculated at the rate of six cents per acre per annum commencing from the date of the approval of the Plan by the Director of Surveys of such premises as

hereinafter provided and further in reference to the premises demised in the 3rd. part of the 1st. Schedule a further Rent calculated at the rate of Rs. 15 per acre per annum for all land subleased or sublet or otherwise parted with by the Company for Residential or Business Sites and it is further Provided that if at any time the Lessees surrender to His Majesty any of the land hereby demised that they shall not be entitled to nor shall they receive any abatement in the Rents hereby reserved nor any compensation ~~whichever~~ for the land so surrendered.

4.(I) AND the Lessees do hereby covenant with His Majesty his heirs and successors that they the Lessees together with their sublessees and Assigns will improve and develop the demised premises up to and by the expenditure of the sums ~~set~~ ^{set} out in the ^{2nd} Schedule hereto and within the periods stated in that Schedule. The said expenditure shall be to the satisfaction of the Governor or such Official as he shall appoint and shall be confined to those matters and things set out in the ^{3rd} Schedule hereto. In ascertaining the value of such development the following expenditure may not be included viz: (a) the General Manager's Salary except when such General Manager is permanently resident in the Protectorate and (b) the expenses and Salaries in connection with any Board of Directors and a London Office but all expenditure incurred (subject as hereinbefore provided in subsections (a) and (b) of this section) on the premises hereinbefore demised up to and including the date of commencement of these presents shall be included in ascertaining the value of such development.

(II) PROVIDED that if at any time during the periods comprised in the 2nd. Schedule hereto there shall occur a shortage of labour or some Act of God likely to act detrimentally to the Lessees in the fulfilment of their obligations in respect

Hereinafter provided and further in reference to the premises demised in the 3rd. part of the 1st. Schedule a further Rent calculated at the rate of Rs. 15 per acre per annum for all land subleased or sublet or otherwise parted with by the Company for Residential or Business Sites and it is further Provided that if at any time the Lessees surrender to His Majesty any of the land hereby demised that they shall not be entitled to nor shall they receive any abatement in the Rents hereby reserved nor any compensation whatsoever for the land so surrendered.

4.(I) AND the Lessees do hereby covenant with His Majesty his heirs and successors that they the Lessees together with their Sublessees and Assigns will improve and develop the demised premises up to and by the expenditure of the sum ~~set~~ ^X out in the 2nd. Schedule hereto and within the periods stated in that Schedule. The said expenditure shall be to the satisfaction of the Governor or such Official as he shall appoint and shall be confined to those matters and things set out in the 3rd. Schedule hereto. In ascertaining the value of such development the following expenditure may not be included viz:

(a) the General Manager's Salary except when such General Manager is permanently resident in the Protectorate and (b) the expenses and Salaries in connection with any Board of Directors and a London Office but all expenditure incurred (subject as hereinbefore provided in subsections (a) and (b) of this section) on the premises hereinbefore demised up to and including the date of commencement of these presents shall be included in ascertaining the value of such development.

(II) PROVIDED that if at any time during the periods comprised in the 2nd. Schedule hereto there shall occur a shortage of labour or some Act of God likely to act detrimentally to the Lessees in the fulfilment of their obligations in respect

of improvement and development they the Lessees shall immediately notify the Governor in writing and the Governor may if after due enquiry he is satisfied that such shortage of labour or Act of God arises from circumstances beyond the control of the Lessees grant a Certificate of Exemption for such period as he shall deem just and the period granted in such Certificate shall be added to the periods specified in the 2nd. Schedule hereto.

(III) The Lessees will keep proper books and accounts for the purpose of showing all expenditure by them pursuant to this Clause and will at all times permit the Governor or such person as may be appointed by him to inspect the same and to take copies thereof or to make extracts therefrom as he shall think fit and further on receipt of three month's notice in writing from the Governor so to do shall supply all vouchers certifying such expenditure.

5. AND the Lessees hereby covenant in respect of the premises demised in the 3rd. part of the 1st. Schedule hereto that they the Lessees on receipt of a notice in writing from the Governor so to do shall cause to be surveyed to the approval of the Governor suitable plots for residential purposes on the ^{in the section} aforesaid demised premises and shall offer same for sale by auction within a reasonable time of receipt of such notice at an upset price and upon conditions to be mutually agreed PROVIDED that (a) the Governor shall be satisfied there exists a reasonable demand for such plots (b) the Lessees are able to prove to the satisfaction of the Governor that such land is not required for the purposes of any harbour railway or wharf scheme in connection with the premises demised in these presents or for the housing of their Employees and (c) it shall not be competent for the Governor so to call upon the Lessees to perform the obligations hereinbefore in this

section specified after the expiration of 15 years from the 1st. January 1914.

196

6. AND the Lessees hereby covenant in respect of the premises demised in the 2nd. part of the 1st. Schedule hereto that they the Lessees will on or before the expiration of 5 years from the date of these presents notify the Governor in writing the ^{locality} location and position as near as may be possible of the area to be granted under this part in default of which notification all rights and privileges conceded to the Lessees by virtue of this part shall absolutely cease and determine AND it is hereby further agreed that the Lessees shall not be entitled to nor shall they receive any abatement in the Rents hereby reserved nor any compensation whatsoever either for the rights and privileges so determined or for any delay in the execution of the Survey of the premises demised under this part.

7. AND the Lessees hereby covenant in respect of the whole of the premises hereinbefore demised that they will upon receipt of a notice in writing from the Government so to do surrender at any time all and any lands which may be required for Government or Admiralty purposes without any abatements in the Rents hereby demised and without any compensation for the land so surrendered except that such compensation shall be paid for all works buildings and developments upon the land so surrendered as in the event of a difference shall be settled by Arbitration as hereinafter provided.

8. If the Lessees shall make default in the performance of any of the obligations imposed on them by these presents for the development and improvement of the demised premises they shall pay to His Majesty as liquidated and ascertained damages and not as a penalty the sum of Rs15 for every day they are in default.

9. The Lessees shall use the said land for the purposes of grazing and agriculture only and for no other purpose whatsoever. Provided that the Lessees shall subject to the provisions of these presents and for the purpose and in the course of such user have power to do any or all of the following acts of things namely:-

(a) To make erect alter and maintain any residences wharfs railways tramways ~~roads paths~~ dams waterways irrigation works machinery plants and appliances upon the demised premises which may be necessary or expedient for the purpose of any operations authorised under or by virtue of these presents.

(b) To get from the demised land clay country rock gravel lime sand shell shingle slate and surface salt and to use or dispose of the same whether in the raw or manufactured state.

(c) To erect alter and maintain on the demised premises buildings for any purpose whatsoever.

10. The Lessees will not at any time during the said term use the demised premises for any purposes not authorised by virtue of or under these presents and will not at any time get or remove from the demised premises any precious stones or any ores or minerals except such minerals as are hereinbefore mentioned.

11. A Survey of the said land shall be made by the Government and the costs thereof paid by the Lessees and until the completion of such survey any question as to whether any land forms part of the land hereby leased shall be referred to the Recorder of Titles whose decision shall be final.

The Boundaries of the said land shall be beaconed and mapped in such manner as the Director of Surveys may deem necessary and all privately owned land and land on which natives have rights and all true forest areas exceeding one square mile

shall be demarcated upon the ground and shall not be included in the Survey Plans of the premises hereby demised.

Provided that the Lessees may employ Surveyors to be approved by the Director of Surveys and the Lessees at their own cost shall furnish the Director of Surveys with the original or true copies of all plans prepared by such Surveyors in duplicate one on stout drawing paper and one on tracing linen together with the original field notes calculations and computations and no Survey carried out by such Surveyor shall be accepted or passed before it has been approved by the Director of Surveys.

12. The Lessees will during the last 10 years of the said term keep in good and substantial repair and condition all buildings residences wharves railways tramways roads paths dams waterways irrigation works machinery plant and appliances which shall be in existence upon the demised premises at any time within such period of 10 years and will on the determination by any means of the said term deliver up in good order and condition to His Majesty the demised premises and all buildings and all such works and buildings as hereinbefore mentioned with the exception of plant and machinery.

13. The Lessees will not assign transfer or otherwise part with the possession of the demised premises otherwise than by sublease without the consent in writing of the Governor previously obtained provided that the Lessees shall notify the Governor forthwith of any sublease or subletting of any portion of the premises demised under the 3rd. part of the 1st. Schedule hereto.

14. The Lessees will provide at their own expense a competent and suitable Agent or Representative upon the demised premises to whom all notices and directions under these presents may be given.

15. The Lessees will always be and remain a British Company

PUBLIC RECORD OFFICE					
1	2	3	4	5	6
Reference					
C.O. 533					
136					
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and shall have their principal office in Great Britain and (except with the express permission of the Governor in any particular case) the Lessees Principal Representative in the Colony and all the Directors of the Lessees Company shall always be either natural born British Subjects or persons who shall have been naturalised as British Subjects by or under an Imperial Act of Parliament or some Statute or Ordinance of some British Colony or Dependency.

16. If the Lessees shall at any time during the term of the lease abandon the demised premises and totally cease to occupy improve or maintain the improvements existing ~~on~~ the demised premises for any period of three consecutive years the Governor shall be at liberty (without prejudice to any other rights or powers under these presents to which he may be entitled) to re-enter upon the said demised premises or portions thereof and thereupon all rights and privileges conceded to the Lessees by virtue of these presents shall cease and determine.

17. The Lessees having paid the several Rents and monies payable by them under these presents and observed and performed the covenants and conditions on the part of the Lessees herein contained shall be at liberty at the expiration ~~and~~ or sooner determination of the said term or within two calendar months thereafter to remove from the demised premises their fixed and movable machinery plant and appliances other than permanent buildings and the permanent way of railways and tramways (including in the expression permanent way the rails sleepers and signals thereof) or any of them which the Governor shall not have elected to purchase under the provisions of these presents making reasonable compensation for all damage done to the demised premises by such removal.

18. If at the expiration or sooner determination of the said term the Governor shall desire to purchase all or any of the fixed machinery plant or appliances of the Lessees in or about the demised premises and shall give to the Lessees notice in writing of such desire at or before the expiration or sooner determination of the said term or within one calendar month after the expiration or determination of the same then the machinery plant or appliances specified in such notice shall not be removed by the Lessees from the demised premises but the Lessees shall sell and the Governor or his nominees shall purchase the machinery plant and appliances so specified at a price to be fixed in case the parties differ by Arbitration under the provisions herein contained.

200

19. The Lessees shall render all such information documentary or otherwise facilities and assistance as may from time to time be required by the Governor for carrying into effect the provisions of these presents.

20. Notwithstanding anything herein or in the said Ordinances contained the Governor may from time to time authorise any person or persons or Corporation to prospect search for work smelt and take away any mines minerals or precious stones in under or upon the demised premises or any part thereof and to construct sink and maintain in or upon the same or any part thereof all such shafts pits buildings plant machinery works and other conveniences and to carry on in or upon the demised premises or any part thereof all such mining smelting and other operations as may be necessary or expedient for any such purposes as aforesaid but only upon the terms that the said person or persons or Corporation shall pay to the Lessees such compensation for any injuries caused to the Lessees or their property by any such acts and operations as aforesaid as in case of

difference shall be fixed by Arbitration under the provisions hereinafter contained.

21. Notwithstanding anything herein contained all natives shall be entitled to exercise on or over any part of the demised premises which in the opinion of the Governor shall for the time being not be actually under cultivation by the Lessees all such rights of collecting firewood hunting taking and snaring fish and game for their own use and not for sale and such other customary rights as in the opinion of the Governor may have been heretofore exercised by natives on or over the demised premises or any part thereof and the demise made by these presents and the interests of the Lessees thereunder shall be subject to all such rights.

22. The receipt of any Rent or other monies by or on the part of the Governor shall not be or be construed as a waiver of any antecedent or then subsisting breach of any of the covenants or agreements on the part of the Lessees herein contained or implied or of any rights or remedies of the Governor by virtue of or in connection with any such breach.

23. Any notice to be given under these presents or relating to the demised premises may in addition to any other notice for the time being authorised for serving the same be given to the Lessees by leaving the same at their registered offices for the time being in England or with their Agent or Representative for the time being on the demised premises or by leaving the same for the Lessees at any office on the demised premises and any notice so left shall be deemed to have been given at the time when it was so left.

24. Any and every dispute difference or question which may at any time arise between the Governor and the Lessees or any

person persons or Corporation claiming through or under the Lessees touching the construction meaning and effect of these presents or of any award made in pursuance hereof or any Clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of the Governor or the Lessees or any such person or Corporation as aforesaid shall (except in any case where the same is under provision herein contained to be otherwise settled) be referred to Arbitration as provided for in the Arbitration Ordinance 1913.

IN WITNESS &c.

THE FIRST PART.

203

Land situate South of Mombasa in the East Africa Protectorate containing an area not exceeding 250,000 acres within the following boundaries namely:-

ON THE NORTH by a line one mile South of and parallel to the high water mark commencing at Ras Luake Senge and continuing in a generally westerly direction ^{along} Port Ritz and the Right Bank of the Nwachi River.

ON THE EAST by the Coast high water mark.

ON THE SOUTH by the Anglo-German Boundary.

ON THE WEST by a line joining the North and South boundaries sufficiently far west of the eastern boundary for the completed boundaries to embrace an area not exceeding 250,000 acres excluding from such area Mangrove forests and sufficient land at Gazi Chimoni Vanga ^{and} such other places as may be deemed necessary by the Governor ^{as} at any time may be required for Government or Admiralty purposes and also excluding all land already leased or granted by the Government all land the subject of what is known as the Diespecker and Macallister Concessions and all land privately owned to be more particularly delineated and described in a plan to be annexed to these presents and thereon coloured pink subject as herein-before provided.

THE SECOND PART.

Land situate between Simba and Samburu in the East Africa Protectorate being of a generally waterless condition containin

an area not exceeding 100,000 acres to be surveyed so far as may be possible in one rectangular block of which greatest length shall not exceed twice the greatest breadth to be more particularly delineated and described in a plan intended to be annexed to these presents and thereon coloured blue subject as hereinbefore provided.

THE THIRD PART.

Land South of Mombasa in the East Africa Protectorate being a strip one mile in depth measured inland from the high water mark extending between Ras Muake Senge and the upper end of Port Ritz excluding therefrom all land at present in Government occupation all land required for Admiralty purposes all land already leased or granted by the Government and all land privately owned to be more particularly delineated and described in a plan to be annexed to these presents and thereon coloured green subject as hereinbefore provided.

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THE SECOND SCHEDULE HEREINAFTER REFERRED TO.

Amount of expenditure and period by which such development shall be completed.

A total of £				
40,000	by 31st December	1916.		
60,000	" " "	1919.		
80,000	" " "	1922.		
1,00,000	" " "	1925.		

THE THIRD SCHEDULE HEREINAFTER REFERRED TO.

Farm buildings and dwelling houses of all descriptions.
 Fencing.
 Water furrows.
 Planting trees or live hedges.
 Walls.
 Walls.
 Draining land or reclamation of swamp.
 Road making.
 Bridges.
 Clearance of land for agricultural purposes.
 Laying out and cultivating gardens and nurseries.
 Water boring.
 Water races.
 Sheep or cattle dips.
 Embankments or protective works of any kind.
 Planting of long lived crops.
 Water tanks.
 Irrigation works.
 Fixed machinery.
 Reservoirs.
 Dams of a permanent nature.
 Railroads, tramlines and trolleylines.
 Motor tractors and any form of mechanical traction in permanent use on the demised premises.

THE SECOND SCHEDULE HERELINEFORE REFERRED TO.

Amount of expenditure and period by which such development shall be completed.

A total
of
£

40,000 by 31st December 1916.

60,000 " " " 1919.

80,000 " " " 1922.

100,000 " " " 1925.

THE THIRD SCHEDULE HERELINEFORE REFERRED TO.

Farm buildings and dwelling houses of all descriptions.
Fencing.
Water furrows.
Planting trees or live hedges.
Walls.
Wells.
Draining land or reclamation of swamp.
Road making.
Bridges.
Clearing of land for agricultural purposes.
Laying out and cultivating gardens and nurseries.
Water boring.
Water races.
Sheep or cattle dips.
Embankments or protective works of any kind.
Planting of long lived crops.
Water tanks.
Irrigation works.
Fixed machinery.
Reservoirs.
Dams of a permanent nature.
Railroads, Tramlines and Trolleylines.
Motor Tractors and any form of mechanical traction in permanent use on the demised premises.

Encl. 2 in No

INCLOSURE No 2

EAST AFRICAN ESTATES, LIMITED (with No 446 of *Mary 1911*)

Comparative Statement showing the differences between the Lease of 20th. April 1910 and the draft lease attached hereto, with the reasons for such differences.

Clause Numbers.	
Lease of 20th. April 1910.	Draft Lease (new)
(old)	(new)
1.	1.

The form of Preamble substituting "His Majesty" for the "Crown Agents" is in conformity with all Crown leases in the Protectorate. It reduces the length of the lease, and, as the lease has to do purely with Protectorate matters, it simplifies the procedure.

Schedule	1st. Schedule
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In the old lease as in the new Draft, the schedule is divided into three parts.

Old lease. The 1st. and 2nd. parts refer to the same locality, viz. the land between Mombasa and the Anglo-German border. Under these parts the Lessees claim that they are entitled to 350,000 acres. It will be noted that for some reason the definition of the western boundary is omitted, although, in the correspondence between the Protectorate and the original Concessionaires, it was always understood that the Concession should be limited to a strip 11 miles inland from the Coast. If this had been inserted, the reason for specifying a gross and minimum area is clear, viz. that the Lessees were not to get the whole of the 11 mile strip if it exceeded 350,000 acres, and it safeguarded the Lessees to the extent to the extent of 350,000 acres; but it is obvious the Lessees were to get 350,000 acres if that area was there. As however no mention of a western boundary is made, and it would be possible to extend the land westward for several hundred miles the insertion of a gross and minimum area has practically no meaning, because, where it would be possible to grant 350,000 acres, it would be absurd to suppose that any Lessee would

Sch. 1st.Sch. The better definition of boundaries and the specific exclusion of certain areas desired by the Government is an improvement in the Lease the value of which in my opinion cannot be over estimated.

The Third Part of the New Schedule deals with land between the High Water Mark of Porta Reitz & Kilindini and the northern boundary of the first part of the Schedule. This undoubtedly is a Concession to the Lessees and may be taken as a quid pro quo for the Concessions obtained by Government in the 1st part of the Schedule. It should be noted that this area is governed by a separate rent under Clause 3 and certain provisos under clause 5.

The whole of the recent lengthy negotiations in the Protectorate very nearly fell through over this area. The Lessees contended that an outlet into Kilindini Harbour and land for a terminus to a Railway were absolutely essential for the making of an Estate complete in itself. The Government recognising the force of this argument offered to give the necessary amount of land for Railway and Harbour purposes on the Lessees showing proof of their requirements. This elicited the fact that the Lessees contemplated utilising a certain amount of the land for subdivision into a residential estate, which the Government also had under consideration. The Government felt that this land, which has a high potential value, could not be disposed of for a mere song without a struggle and finally a compromise was arrived at by which the Lessees
(have the)

Sch. 1st.Sch.

have the use of this land (which, owing to extensive Native Rights, only amounts to a few hundred acres) at the same rental per acre as the rest of the Concession (viz. 6 cents per acre) for so long as it used for purely Concession purposes (eg. Railway, Wharf, and Residences for ~~European~~ Employees, and Agricultural purposes) but directly it is let off as Residences or business premises a very much enhanced rental becomes due, viz: Rs.15/- per acre per annum for all land so used (vide last part of Clause 3). And in order that this land should not be unduly held up for speculative purposes, the Government, with some difficulty obtained the proviso in Cl.5, whereby for 15 yrs. under certain circumstances the Governor can compel the Lessees to put portions of this land upon the market.

As I said before this is undoubtedly a very valuable concession to the Lessees but there is not the slightest doubt that a refusal on Government's part to consider this would have brought the negotiations to a standstill, and it was only by the exercise of the greatest tact on behalf of His Excellency that the Government were able to obtain the insertion of the special provisos: It should further be remembered that Clause 7 gives the Govt. power at any time to acquire any land necessary for Government purposes free of compensation for the land.

The Second Part of the 1st. Schedule introduced a new locality (the Taru Desert) and was first tentatively breached at the Conferences in the Colonial Office in 1918. This almost waterless district may or may not prove suitable for
(Agriculture)

Old Sch. New
Sch. 1st. Sch.

Agriculture. If the Lessees' experiments result in failure the Government loses nothing; if they prove a success then the Government reaps the benefit of the Lessees' experiments in the subsequent sale of adjoining lands.

In any event it is to the advantage of Govt. that the Lessees should take this 100,000 acres in this at present absolutely valueless district rather than that they should insist on making up their 350,000 acres in one block of coastland.

2. 2.

In the new lease the reservation to enter and get Minerals is omitted because Govt. has already very full powers under the C.L.O. 1902, ~~as was said~~ and the Mining Ordinance, but it has been deemed advisable to retain the old wording in regard to Water rights as it is very much fuller than the reservations in the C.L.O. 1902. It has been thought advisable to retain old Clause 31 embodied in Cl. 19 hereof.

The Habendum is entirely altered. It was necessary under the old lease to make provision for the possible non-extension of the lease of the 10 mile strip from the Sultan of Zanzibar. As this has now been settled and the Crown are in a position to say definitely that a 99 years lease can be granted it is not now necessary to make this provision.

The alteration in the date of commencement from 9th. Octo. 1908 to 1st Jan. 1914 although in the nature of a concession is only equitable in view of the fact that the Government so far has not given the Lessees a clear title to a single acre of land.

Old.
Sch.
3.

New.
Sch.
3.

This clause has been entirely remodelled and Colonel Owen Thomas attaches the greatest importance to its present form. Under the old lease the Lessees should now be paying a rent of £1000 per annum, but such a rent is not equitable as the Government are not in a position to give any land. Col. Owen Thomas therefore demands that only a nominal rent shall be paid until such time as the whole of the first part of the first Schedule is surveyed and Native Claims adjudicated upon. A strong endeavour was made to get Col. Thomas to agree to pay a further £50 per annum in respect of any blocks of 12,500 acres (12,500 acres @ 4 cents equals Rs. 750/- equals £50.) surveyed and declared free of native claims, but he took a very firm line on this point on the grounds that it was an inducement to the Government to survey and settle native claims at the earliest possible moment over the whole area, and he would not compromise in any way on this point. For notes on the special rental in regard to Part 3 in the 1st. Schedule, vide notes on that head supra.

- 4
to
9.
3. Export Duties. It will be noted that the new lease contains no mention of Export Duties, and it is suggested that the increased rentals of £1500 and £2000 per annum should be by way of compensation for such Export Duties. From the Lessees' point of view the imposition of Export Duties very seriously affects the lettable value of their land, in fact in a much greater proportion than the actual value of the Export Duties because Tenants and Sublessees, instead of being able to ship their produce straight
- (out of)

Old
Sch.
4
to
9

New
Sch.
5.

out of the country, have to pass it all through the Customs, entailing certain delays and extra Agent's fees, and extra clerking on the Estate, and the unavoidable annoyance of a Government examination of the Estate books from time to time.

From the Government point of view it would mean some extra expense for Inspectors, and probably extra Customs' Clerks. &c. &c.

The Measure of the Composition is £500 per annum for the first five years and £1000 per annum for the balance of the term.

£500 per annum made up of 2½ % on value is equivalent to an export of goods to the value of at least £20,000 per annum. I say "at least" because it costs nothing to collect it as rent, whereas to collect it as Export Duty would cost possibly £250 per annum (the salary of an extra Inspector) which would mean a total export of £20,000 value of goods in order to get £500 per annum net. There is not the slightest chance of this amount of goods being exported for a great many years to come, and in my opinion the composition is extremely favourable to the Government, especially when it is stated in conjunction with Cl. 7 of the old lease which provides for credit being given to the Lessees in respect of any Export duties that may be put into force in the Protectorate. Further, if in later years an Export Duty is put on Copra for example, the Lessees will pay such duty, in common with all other exporters from the Protectorate.

The rise from £1500 to £2000 after five years is
(to give)

- | | | |
|------------------------------|--------------------------|---|
| Old
Sch.
4
to
9. | New
Sch.
3. | to give effect to the fact that for at least five years there will be practically no export at all. |
| 10. | 4
and
End.
Sch. | This Development clause is entirely redrafted, but the period for the expenditure (11 years) and the amount of the development (\$100,000) remain the same. |
| | 5. | Vide notes (supra) on the third part of the first Schedule. |
| | 6. | A new clause arising out of the second part of the 1st. Schedule, limiting the period in which the Lessees must select the area in the Taru Desert, and further compelling the surrender if it is not worked. |
| | 7. | A new clause giving the Government power at any time to take and make use of any land required for Government purposes.

The value of this concession to the Government cannot be overestimated, although it may be held to be covered under Sections 25 to 28 of the C. L. O. 1902. |
| 11. | 8. | The old clause is not a particularly happy method of enforcing a penalty, and the method adopted in building leases in the Protectorate has been substituted. |
| 12. | Omitted. | |
| 12. | Omitted. | Already provided for in Clause 1 of the new lease. |
| 13 (1)
(II)
(VI) | 9. | This is agreed between the parties to be an Agricultural lease, and it is an unnecessary waste of time that the Lessees should be forced to apply to the Governor for consent every time they wish to experiment in some new species of Agriculture as in the old subsections (1) and (2).

Subsection (III) is already provided for under Irrigation rules in force. |
| (III) | | |

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|------------------|---------------|--|
| Old Sch. 18, IV) | New Sch. 9(a) | Stands, except that Residences are inserted by special request, and to which there is no objection. |
| (V) | (b) | The minerals specified in the new Crown Lands Bill 1913 have been adopted, and there appears no necessity for obtaining the consent of the Governor in each case. |
| (VII) | | Is provided for under C.L.O. 1902, and various Forest regulations in force. |
| (VIII) | (c) | Again, the Government is prepared to allow development in the shape of buildings to count, and it is merely vexatious to apply for consent in each case. |
| 14. | 10. | Stands. |
| 15. | 11. | In the first part the Recorder of Titles is substituted for the Governor, as he only is in the position of being able to say which lands are privately owned.
The second part gives the Lessees power to employ their own Licensed Surveyors, and should have the effect of hastening the survey. |
| 16. | | Omitted. No land will be included in the Concession unless it is certified by the Recorder of Titles as free from Native claims. It is further covered under Section 31 of the Crown Lands Ordinance 1902. |
| 17. | | Omitted. The cultivation conditions under this clause have been fulfilled many times over, and the Crown is now interested only in seeing that the provisions contained in new clause 4 are carried out. |
| 18 and 19. | | Omitted. Provided for in Irrigation rules, and the fouling of streams prohibited under Section 11 of the rules under C.L.O. 1902, dated 21st. December 1902. |

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|--------------------|--------------------|---|
| Old
Sch.
20. | New
Sch.
12. | Practically the same, using the list of improvements in 9(a). |
| 21. | 13. | <p>This clause was not redrafted until after the very fullest discussion, during which His Excellency laid down the policy he proposed to adopt in regard to transfers in the Coastal area, namely, that in all Crown grants for <u>Agricultural purposes</u> there would be no distinction in regard to transferees, whether they were European or non-European. That being so, there is no necessity to enforce application for consent in the cases of subleases, but only in the cases of assignment or transfer where the Crown would be called upon to collect the rent direct from the transferees. Col. Thomas pressed very hard for this point, and as it was not detrimental to the Crown there is no reason why he should not get it.</p> <p>The compulsory notification of subleases in the area embraced in the third part of the first schedule is essential for the purposes of collecting the revised rent.</p> |
| 22. | 14. | Stands. |
| 23
and
24. | | Omitted. A criminal offence under common law, and not necessary to be inserted. |
| 25. | 15. | Stands. |
| 26. | | <p>Omitted. This is vexatious to both parties, and might entail the examination of a large number of circulars and leaflets. If the Lessees make false statements they render themselves liable to prosecution in the Civil Courts.</p> |
| 27. | | <p>Omitted. This appears to be an extraordinary injustice to the Creditors.</p> <p>Practically the whole of the realisable assets would be confiscated by the Government, who could</p> <p style="text-align: right;">(only be)</p> |

- | | | |
|--------------|----------|---|
| Old Sch. 27. | New Sch. | only be creditors for rent, and in such a case would reap a most substantial benefit at the expense of the other creditors. |
| 28. | 16. | Slightly improves the condition for the Lessees. It may be necessary for certain cultivated lands to lie fallow for two or even three years. |
| 29. | 17. | Stands. |
| 30. | 18. | Stands. |
| 31. | 19. | Considerably shortened, but gives all the facilities required. |
| 32. | 20. | Stands. |
| 33. | 21. | "For their own use and not for sale" has been inserted at the request of the Lessees, as certain Indians have been persuading Natives to collect and sell firewood, and the irresponsible deforestation of this area may seriously prejudice the Lessees. |
| 34. | 22. | Stands. |
| 35. | | Omitted. His Excellency took very great exception to his powers being delegated to some person or persons unknown without his having any say in the matter. |
| 36. | 23. | The words "or building" have been deleted, Col. Thomas pointing out that this might mean any native hut in some remote corner of the estate. |
| 37. | | Omitted. Unnecessary. |
| 38. | | Omitted. Does not now apply. |
| 39. | 24. | Altered in regard to the last part so as to make the Arbitration Ordinance 1913 apply. |

Arthur C. Lamahall

Land Assistant.

3rd. May 1914.

3160

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14

Ans'd 42 of 15



S2

Downing Street,

15 July, 1914.

DRAFT.

EAST AFRICA PROTECTORATE . No. 671.

Governor

SIR H.C. BELFIELD, K.C.M.G.

MINUTE.

Mr. Read. 113 July 14
+ Mr. Thompson

Mr. Sir G. Fiddes. 13/14
Sir H. Just.
Sir J. Anderson.
Lord Emmott.
Mr. Harcourt.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 446 of the 7th May on the subject of the East African Estates Coastal Concession.

2. The draft appears to me to have been somewhat hastily prepared and it will be necessary to amend it in various particulars some of which are indicated in the memorandum enclosed herewith, and it may be necessary to have the draft finally

settled

Concl'd 22.6.14 M 671

settled in the Protectorate before endorsement.)

3. I shall be glad of your observations on this point after you have considered the suggestions contained in ~~the~~ memorandum.

3. With regard to what has been stated in the memorandum under Clause 3 of the draft Lease as to the £50 rent, I request that you will inform me what time will be occupied in making the survey as ^a this has material bearing on the question.

4. I concur in your proposal to abolish the export duties, and also the ⁱⁿ proposed omission of Clause 27 of the old Lease.

I have &c.

(Signed) L. S. B. W.

First Paragraph.

The draughtsman appears to have omitted the words "which expression shall include, were the context so admits their successors and permitted as if" after the words "hereinafter referred to as the lessees" in line 5. The result of this appears to be that the covenants of the lessees do not extend to their successors and assigns. I should propose to add the words above mentioned should be added.

First schedule, First Part, Last paragraph.

as
The words "at any time may be required" in lines 3 and 6 seem to be improper, very and ambiguous since it will be impossible to rule out of the concession, at the date of the lease, lands which may subsequently be required for the purposes mentioned. It should further be observed that the draft contains in clause 7 a covenant by the lessees to surrender any lands which may be required for this purpose at any time on receipt of notice.

With regard to the lands subject to the Diespecker and Macallister concessions these have already been dealt with in the Colonial Office despatch of the
It was pointed out in that despatch that the effect of this paragraph of the draft would be to exclude permanently from the East African States concession all lands within
the

the boundaries of the Diespecker and Macallister leases even though the leases with regard to these lands or any part of them may never become effective.

It is understood from Colonel Owen Thomas that he regards this as being the proper interpretation of this paragraph. He says however that it was originally the intention of the Government and himself that this land should be thrown into the East African Estates Concession if the negotiations with regard to the Diespecker and Macallister concessions fell through. In connection with this point it may be further mentioned that the definition of the Western boundary in this part of the Schedule will require alteration since there is nothing in the draft, as now drawn, to show what the direction of the line mentioned in the first line of the last paragraph should be and whether it should be straight or not. It would seem, *prima facie*, to be desirable that the line should be as far as possible parallel to the coast line, and this view is shared by Colonel Owen Thomas. One possible definition would be to make the line run straight 21° east of ~~the~~ true north ^{it might be made} or parallel to a line connecting Chimoni and Bombasa. It does not appear that it will be possible to have a straight line unless some of the Diespecker and Macallister lands are to be included.

There appears to be some confusion between this paragraph of the Schedule and clauses 11 and 21 of the draft lease. The schedule excludes from the area granted, ~~manor~~ forests, land required for government and Admiralty purposes, lands already leased or granted, lands subject to the Diespecker and Macallister Concessions and all lands privately owned, and directs that these lands are to be particularly

the boundaries of the Diespecker and Macallister leases even though the leases with regard to these lands or any part of them may never become effective.

It is understood from Colonel Owen Thomas that he regards this as being the proper interpretation of this paragraph. He says however that it was originally the intention of the Government and himself that this land should be thrown into the East African Estates Concession if the negotiations with regard to the Diespecker and Macallister concessions fell through. In connection with this point it may be further mentioned that the definition of the Western boundary in this part of the Schedule will require alteration since there is nothing in the draft, as now drawn, to show what the direction of the line mentioned in the first line of the last paragraph should be and whether it should be straight or not. It would seem, *prima facie*, to be desirable that the line should be as far as possible parallel to the coast line, and this view is shared by Colonel Owen Thomas. One possible definition would be to make the line run straight 21° east of true north ^{it might be made} or parallel to a line connecting Chimoni and Bombasa. It does not appear that it will be possible to have a straight line unless some of the Diespecker and Macallister lands are to be included.

There appears to be some confusion between this paragraph of the Schedule and clauses 11 and 21 of the draft lease. The schedule excludes from the area granted, mango forests, land required for Government and Admiralty purposes, lands already leased or granted, lands subject to the Diespecker and Macallister Concessions and all lands privately owned, and directs that these lands are to be particularly

particularly delimited on the annexed plan. Clause 11 of the draft directs that all privately owned land and land in which natives have rights and all true forest areas exceeding one square mile are to be demarcated and not included in the survey plans. It would appear to be the intention of clause 11 that not only privately owned land, which is specifically excluded by the last paragraph of the first schedule, but also lands on which natives have rights and forest areas exceeding one square mile should be excluded from the lease; but if this is the intention the native lands and forest areas should be included in the exception contained in the last paragraph of the first schedule and that paragraph and the second paragraph of clause 11 should be brought into agreement. It is further to be observed that the words "land on which natives have rights" are very ambiguous. Clause 21 provides that natives shall be entitled to exercise over any part of the demised premises their customary rights of collecting fire-wood etc., but lands over which they possess such customary rights would appear to be land on which natives have rights within the meaning of clause 11. It is understood from Colonel Thomas that the words referred to in clause 11 are intended to cover all lands owned by natives, whether individually or communally, in contradistinction to clause 21 which refers only to lands on which natives have incorporeal rights. If this is the intention the second paragraph of clause 11 should be more specifically drawn up.

First Schedule. Second Part.

Colonel Thomas states that he understood that it had been agreed that the Company were to have rights to

outside the limits of the land eventually selected in the Desert in order to find water for irrigation purposes. He suggested the following form of words as a possible definition of these rights:

"To prospect bare and sink wells on any land outside the devised premises and to use and carry water from such wells or from any streams outside the concession for the purpose of irrigation or for domestic purposes".

He states the Company would be prepared to allow any other grantee of lands in the desert the same rights to prospect for and use for irrigation water found on the Company's Concession if necessary.

It is understood that the words "being of a generally waterless condition" in the second part of the Schedule are intended to show that the Company would not select their land along, for instance, the river banks, and according to Colonel Thomas' view this made the question of an external water supply additionally important. In any event, the words mentioned require more precise definition if they are intended to have the effect above referred to.

Clause 3 of the draft lease.

It would seem to be preferable that the rate of £50 should rise gradually to £1500 in proportion with the advance of the survey and should not jump suddenly

as is at present provided in this clause. It was suggested to Colonel Owen Thomas that the rate might rise from £50 to £75 when one quarter of the 2,500 acres was surveyed and so on, with possibly a proviso that the whole survey should be completed within some specified time. Colonel Thomas suggested 10 years as a reasonable time. He stated however that he attached very great importance to the retention of the clause as drafted in this respect in so much as it constituted a strong inducement to the government to complete the survey at once. There were also certain respects in which partial survey although it would as we contended, be quite sufficient to enable the company to keep pace with the demands of cultivation and sub-letting might not be sufficient to enable the Company to carry out the necessary operations in the way of road and railway making (for example) to ensure the general development of their concession. He said, however, that he was quite ready to accept any modification which would make it plain that the increased rent should not be withheld merely on the ground of some technical failure of the government to complete the survey, as for instance the inability to ^{determine} the western boundary.

It is further observed that the drafting of this clause is not satisfactory. As the rents are to be paid in advance it will not be possible for all payments to be made on the 1st of January. For instance, the first payment must take place on the execution of the lease and the first payment in respect of the £1000 and £2000 rents will also be payable on some day other than the 1st of January unless the plan referred to in this clause is approved on the 1st January. The clause should be re-drawn to meet these points.

Clause 5.

Line 4. It would seem desirable that the words "and business" should be inserted after "residential". In line 3 the words "the lessees are able to prove to the satisfaction" are wrong. They should be struck out and the words "is satisfied" inserted after "Governor" in line 9.

(A) (E)
Clause 9. A and B

Sub. Clause (C) appears to be too wide and as it stands makes any reference to any kind of buildings in (A) unnecessary.

Clause (C) should be deleted and the words "and any buildings" inserted after "residence" in line 1 of (A)

Clause (B). The words "except (mineral clay)" should be inserted after "clay" in line 1

Clause 10.

The words "in particular and without prejudice to the generality of the preceding provisions" should be inserted at the beginning of line 3. It would appear to be desirable to expressly include oil among the minerals excepted and this point is being discussed with the Company.

Clause 11.

the words "building" and "residence" in line 7 should be transposed.

Clause 12.

The wording of this clause is very unsatisfactory. As it stands it is obviously impossible for the government to accept ^{it} since the lessees would be able to defeat

its operation by continuing to occupy any part, however small of the lands demised. On the other hand the wording of clause 26 of the original lease obviously went too far in the other direction since it was impossible to expect the lessees to continue to use and occupy the whole of the demised premises. It would appear to be sufficient if the lessees were compelled to maintain the standard of development which is imposed on them by clause 4 of the draft but if a provision is to be drafted on these lines a proviso will have to be inserted in order to enable them to let land go out of cultivation in the ordinary course of agriculture, or in order to bring other land into cultivation of a different nature where they desire to do so.

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DRAFT.

Colonel Owen Thomas

*drafted
and read*

4 July 1914

MINUTE.

deal with

- Mr. *Read* 4
- Mr.
- Sir G. Fiddes.
- Sir H. Just.
- Sir J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

in,

from etc. to inf. you that
he has now received from
the Gov. of the East
his recommendation
on the subject of the
East African Estates
Limited.

2. It is understood
~~to be~~ that
you have been negotiating
with the Gov. of the East
on this matter. I am

G

to enquire whether, in
the event of your being
in a position to act
on behalf of the East
African Estates Ltd,
you could be good enough
to call at the C.O. about 12 o'clock
on Tuesday the 7th of July or
Wednesday the 8th of July
to discuss certain points
which appear to require
further consideration.

Lr

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C.P.
R. 13 JUL
D. 13



Hand 26246

Downing Street,

13th July, 1914

DRAFT.

THE GENERAL MANAGER OF

THE EAST AFRICAN ESTATES LTD.

Sir,

MINUTE.

- Mr. Read
- Mr. *Mr. Fenington* 13 July/14
- Mr. *13*
- Sir G. Fiddes. *13*
- Sir H. Just.
- Sir J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

With reference to previous correspondence, I am directed by Mr Secretary Harcourt to inform you that he has now received from the Governor of the East Africa Protectorate a draft of a lease which it is proposed to substitute for the lease of the 20th of April, 1910, in so far as that lease relates to coastal Concession of the East African Estates Limited. It is understood that this draft embodies the result of negotiations between the Company and the Government.

Memo.

Copy to Sir's 6/15/14