

1911

EAST AFR. PROT.

27352

24362



LENGHAT AND GORGAN'S OBJECTION

... and discuss on the 30th instant.

at previous Paper.

27359

Return to me on Aug. 28

HAB

Aug. 22

at once

Mr. Todor.

Mr. Head.

See also <sup>R</sup> 27359

I have seen Mr. Combe, and I attach a minute by him on the five points raised by Captain Grogan in his letter of the 14th of March. For the comprehension of the questions at issue, it is necessary to read -

The provisional agreement which forms enclosure 4 in G. 38479/10. <sup>pp. 20 & 21 of minute</sup>

Our letter to Captain Grogan of the 10th of February on G. 3540

Captain Grogan's letter of the 14th of March. G. 3540

Our despatch to the Governor of the 28th of March on the same paper.

Copy to all members of the 627. 2604 22/1

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 10/11/2001 BY SP-6/BJA/STP

The Governor's despatch of the 11th of July (25692)  
attached  
The minute by Mr. Combe.

To take the points in order:-

(1) The case will, I think, be met by the insertion in the provisional agreement of the clause proposed by Mr. Combe at (A) in his minute. It will be for the Government, in giving consent to divert any stream, to impose conditions as to there being no reduction of the volume of water, etc., etc.

? Suggest the insertion of this clause to Captain Grogan.

(2) ? Inform Captain Grogan as in the paragraph of Mr. Combe's minute dealing with this point.

(3) ? Suggest to Captain Grogan the insertion in the provisional agreement of a clause as suggested by Mr. Combe at (B) in his minute.

With reference to the last sentence of his remarks on this point, Mr. Combe informed me, after looking at the Mining Ordinance in my room, that he was satisfied that the necessary rules could be made under the Ordinance as it at present stands.

(4) Captain Grogan has always maintained that, under the original ~~licences~~, he was entitled to deduct rent paid from the amount of royalties payable at any time during the currency of the ~~licence~~. Under clause 2 (4) of the provisional agreement, he accepts the stipulation that the licence fees to be paid in any year may only be deducted from the royalties payable in respect of that year, and not from royalties payable at any time during the currency of the licences. By this stipulation the Government of course gains substantially during the early years of the concession, when the royalties payable will not equal the amount of the licence fees.

7/10  
Feb. Captain Grogan now says, "But how about the rents 'already paid prior to the conclusion of the provisional agreement' I ought at any rate to be allowed to deduct them from any royalties thereafter payable." It will be seen that the amount involved is pretty substantial, namely, <sup>Rs. 38,000</sup> ~~Rs. 20,000~~, less (as Mr. Combe rightly points out) anything included in this sum by way of rent for the 100 acres at Kilindini. The rental of this plot is Rs. 1500 a year; i.e., in the seven years which have elapsed since the ~~licence was granted~~ <sup>arrangement for the plot was made</sup>, Rs. 10,500. We

must in any case make ~~the arrangement~~ clear to Captain Grogan that this amount cannot be deducted from royalties. As to the balance, Captain Grogan wishes his interpretation of the old agreements on this point to prevail up to the date on which he comes under the new agreement. The Government, it seems to me, are equally entitled to desire that their view of the old agreements, namely, that he could only deduct rent from royalties in each individual year, should prevail, though personally I think that Captain Grogan's interpretation, and not the Government's, is the right one. (See clause (2) in the agreements marked A. and C. in Govr./38479/10) I think we might tell Captain Grogan that the Government is prepared to allow half the rents previously paid to be deducted from future royalties, and that this arrangement ~~is~~ considered fair in view of the difference of opinion as to the interpretation of the original agreements on this point. *(But I would not recommend the Government to do so unless it is only possible to do so)*

(5) This is, perhaps, the most important and most difficult point of all. It is also precisely the one on which the local authorities fail to give us any light or leading. All that Mr. Currie can contribute

in his despatch of the 11th of July is that the wording desired by Captain Grogan would allow him to go practically anywhere on the Kilindini Harbour, and that he is not at all certain that the land is actually on the Main Harbour. These are surprising statements. The plot in question is one of 100 acres defined in the agreement marked B. in Govr. 38473, as bounded by Mbaraki Creek and Kilindini Harbour on one side so that the land shall have a frontage on Kilindini Harbour of one thousand five hundred feet. Moreover, the plot must have been delineated on a sketch plan attached to the agreement.

In order to understand the exact point at issue, a sketch of the situation <sup>of the plot</sup> is practically indispensable. See attached sketch, which is accurate so far as the position of the creek and harbour are concerned, but is necessarily <sup>in the absence of info from the Govt</sup> purely hypothetical ~~as to~~ as <sup>to</sup> the internal boundaries of the land and the exact points to which it stretches on the creek and the harbour. ~~are concerned~~. The wording already included in paragraph 3 of the provisional agreement would give Captain Grogan roughly that portion of the land lying to the west of the red dotted line A. B. The adoption of the wording which he himself recommends would give him that portion lying to the west of the blue dotted line B. F. It will be seen at once what a substantial <sup>is for as water frontage is concerned</sup> difference in his favour, the adoption of his wording <sup>with</sup> ~~might~~ make, <sup>of the situation and how to be resolved</sup> (I do not see how it is possible for us here to decide between the two alternatives, or to suggest some compromise without being absolutely certain as to the title of the land, and as to the possible effect of the proposed division on Government projects for the construction of piers, wharves, etc., in Kilindini harbour. On

This



*assumed portion of concession*

is proposed, but under the agreement  
in 38479/10 Capt Grogan cannot claim any  
allow in respect of what already paid. The  
Govt locked up the land for Capt G. and  
Captain G. can't have it both ways.

Off at once

14. 11. 9

Rev. Lingdon & Grogan's  
 Commission in the S.A.P.



30

type written  
 copy here with

with regard to the points raised by  
 Capt Grogan in his letter of March 14<sup>th</sup> to  
 the Co.

(1) The existing agreement with Mr. Lingdon  
 & Grogan contains the following clause  
 with regard to water rights: -

"The tenant shall have the right to use  
 all water running in any stream  
 on the said land for any purpose  
 whatsoever provided that the flow  
 of water in any such stream shall  
 not be diminished by such use &  
 provided that the course of any such  
 stream shall not be diverted  
 (except by agreement)"

The words in brackets are in Mr. Lingdon's  
 agreement but not in Capt Grogan's.  
 Capt Grogan remarks that he shall  
 possess an unrestricted right to draw  
 any stream within the area within which  
 he is to be granted timber rights.

The point was discussed between  
 Capt Grogan & myself & I thought  
 that I had made it clear to him that  
 I could not advise that such a course

right should be granted. I drafted  
a charter for Capt. Gray's claim  
which I was prepared to insert in  
the license to be granted to him,

The license was to the following effect:

The license shall not pollute the water  
in any stream or, except with the  
consent of the Governor first obtained  
& subject to such conditions as the State  
the payment of a license fee as may  
be imposed by the Governor over  
any stream.

Such a clause should satisfy Capt. Gray  
since it would show that it was submitted  
by both parties but it might be necessary  
to divert a stream for power purposes.

(2) The second point raised by Capt. Gray  
was concerned between us & I informed  
Capt. Gray that the forest would  
preclude "fire & area" under the  
Forestry Ordinance & that the rules  
prohibiting the use of forest  
produce would apply to such area.  
I further informed him that the Governor  
might be willing to confer a deed of  
Capt. Gray's employees or might be  
approved the power of forest officers  
to enable them to prevent trespass  
except the forest regulations with  
the forest in which he was interested.

right should be granted. I drafted  
& showed Capt Grayson a claim  
which I was prepared to insert in  
the license to be granted to him.  
The claim was to the following effect:

"The licensee shall not pollute the water  
in any stream or, except with the  
consent of the Governor first obtained  
& subject to such conditions & other than  
the payment of a license fee a fine  
be imposed by the Governor, divert  
any stream."

Had a claim should satisfy Capt Grayson  
but it would show that it was anticipated  
by both parties that it might be necessary  
to divert a stream for power purposes.

(2) The same point raised by Capt Grayson  
was discussed between us & I informed  
Capt Grayson that the fact would  
proclaim "fact area" under the  
Forestry Ordinance & that the anti-  
prohibitory trespass & theft of forest  
provisions would apply to such area.  
I further informed him that the Governor  
might be willing to confer a right of  
Capt Grayson's employees or might be  
appeared the power of forest officers  
to enable them to prevent trespass &  
injure the forest vegetation within  
the fact in which was situated

The mining Ordinances passed by the  
Legislature have not taken effect but what  
had not become Law when I left  
the Protectorate provided that no mining  
laws should confer any special right within  
a forest area beyond such as may be  
absolutely necessary for the working of  
the mine. The Ordinances have not  
contemplated that a person who may  
have found a mine and on account of  
ill health or other cause shall be compensated  
for a disturbance of his enjoyment of  
the forest right.

I do not consider that Capt. Grogan  
is qualified in asking that he should  
be placed in the position of a bona  
fide mine owner in the event  
of any person acquiring mineral  
rights within the forest to which he  
has a claim. If however  
he wishes to claim to be compensated  
for timber cut by a mining lease  
I think his claim would be reasonable.  
As such compensation should be paid  
by the owner of the mineral rights &  
not by the Government provision for  
the payment of compensation would  
have to be found made by Ordinances  
& not in an agreement to which  
the Government & Capt. Grogan are  
limited parties.

I would suggest that the heading  
to paragraph 10 of the proposed report



the following proviso

68

provided however that in every  
general lease granted in any part  
of the subject of a lease under this  
agreement the shall be inserted a  
covenant by the lessee to pay to the  
Government for & on behalf of the lessee  
the value of any timber cut by the lessee  
within such fixed term, or the event  
of the lease & lease failing, the  
value of the value of any timber  
cut, the value to be determined by  
the then placement of the timber when  
the same shall be found to be of  
any value.

(15)  
If the proviso is added it would be  
necessary to make provision for the  
leasing of the land under the lease  
for the insertion of such a covenant  
in a binding lease.

141 If part payment is to be deducted  
from royalties payable under the lease  
however it should be made clear to  
Capt Gunga that such a payment  
applies only to payment made under  
the first lease & does not extend to  
payment made under the lease of  
the land at Kulin dam.

It is not clear from Lt Col Carnie's  
letter whether the land paid in respect  
of the Kulin dam land to be leased  
included in the total sum of the 18,000  
paid or not by the Government's Gunga

15) The price after an actual I purchased when  
 the coming time of settlement with  
 regard to the better done land was that  
 the land to be surveyed by Capt. Grogan  
 should be equal both a square both  
 area & value to the land to be returned  
 I throughly informed Capt. Grogan  
 that I did not consider that he should  
 be allowed to retain land with water  
 frontage & surround the land without  
 any water frontage & I told him  
 that if he wished to settle in  
 the town he must approach the  
 Governor direct & I was not prepared  
 to put it forward as a reasonable  
 settlement

J. D. C. L.  
 27. 8. 11

BACHELORS' CLUB

PICCADILLY W

Sept 5 1911

i I have the honour  
to bring to your  
notice certain facts  
about the case of  
my brother in law

to been acquitted

and there is nothing

Gallbraith Cole whose to be done by  
shot a sheepstealer whatever may

native in British said.

from the point of  
Africa and was  
acquitted by a jury of the country

you will understand as all that the

that I am not with circumstances should

or a my brother in law any thing but

be half because he perfectly clear.

In the files of the  
which have probably  
been forwarded to  
there is no evidence  
given on behalf of  
Cole owing to the  
peculiar line of defence  
adopted by his lawyer  
I asked his lawyer  
after the case was  
why this particular  
line had been taken

71A

BACHELORS CLUB  
PICCADILLY W

and he gave me to  
understand that the  
jury knew all the  
facts of the case as  
well as we did. This  
was impossible to avoid  
in a country like B.E.  
Several things  
might have been  
done differently:

Evidence could have  
been brought to show  
That in the years  
has been in the court  
he has always gone  
well with his native

Servants. This was  
done because everyone  
knew it.

Evidence could have  
brought to show  
the deceased native

<sup>72</sup> mixed up ~~in~~ before of  
stealing. Mr. Hill  
the E. A. Syndicate  
who sat near me during  
trial was willing  
evidence to this  
fact.

fact that the skins  
sheep found at the  
where the men  
were making  
was not sufficient  
The fact

That it was absurd  
to suppose that  
travelling from one  
to another could  
stop for the day at  
that time in the morning  
they said they did  
not bring it out  
sufficiently.  
The defence should  
have been that the  
man had been shot

by Cole but that  
it was not murder  
because he was  
defending his property  
when Government  
had failed to do so.  
That the man was  
running away when  
shot at and that

seem him knew is the legal side.  
 was impossible if this defence had  
 judge at a woman given the judge  
 notice that he would have summed  
 not running away differently.  
 some of Cole's people jury acquitted  
 If Cole had wished cause they knew  
 All the men for stone facts and had  
 he could equally expected this defence

at the other man  
 who ~~to~~ was caught.  
 If this defence had  
 given the judge  
 notice that he would have summed  
 differently.  
 jury acquitted  
 knew  
 facts and had  
 expected this defence



BACHELORS' CLUB,

PICCADILLY, W

which was true, and  
 they acquitted because  
 they did not consider  
 the accused guilty, (new country) has  
 murder because he was  
 had shot a sheep, (I believe there are very  
 whom he could call new people who would  
 in no other way. They think twice about  
 is no question of cold shooting at a burglar  
 about it. A stockman running away if they  
 (who can seldom be caught) believed he might  
 never be caught in a (are some of their

but I must believe  
 that an exception  
 property or if a should have been  
 continual complaints were in this case  
 to the police then which would have  
 went on being enabled the judge to  
 I am the last person up differently.  
 to wish to say that far as the native  
 people should take population is concerned  
 the law into their own hands without being  
 called to account is quite certain that  
 is not looked upon as a racial matter

A thief always takes  
his life in his hand  
Africa. Cole was at work with armed  
upon to show why raiders, who shoot  
had shot the man on the slightest  
the jury did not attempt to run away.  
what he had done a native does not  
murder.

I would like to point out  
that natives locked  
up for absurdly trivial  
crimes are sent out

discriminate between  
Government and the  
of us much and  
would say the best  
Raiders are the best  
thief if he

away, but the  
man is not.

I must apologize  
sent, such a  
letter.  
that I have  
with the case  
not on the  
I do not agree  
the present  
had one I think

ries understand the  
ses they try very well.  
two  
cases  
settles Relling  
to  
brought before  
in my recollection  
the case of  
Wines  
who has  
by a jury  
to the  
I think

My brother in law has  
done as much as any  
man to help to create  
a fair minded public  
opinion on the treatment  
of blacks by whites.  
A runaway thief is  
neither black nor  
white.

Thank you

for your letter

and

for the enclosed



27362

*Handwritten signature*

MESSRS LINGHAM & GROGAN'S FOREST CONCESSION  
IN THE EAST AFRICA PROTECTORATE.

With regard to the points raised by Captain Grogan in his letter of March 14th to the Colonial Office

(1) The existing agreements with Messrs Lingham & Grogan contain the following clause with regard to Water rights:-

"The Tenant shall have the right to use all water running in any stream on the said land for any purpose whatsoever provided that the flow of water in any such stream shall not be diminished by such use and provided that the course of any such stream shall not be diverted. (except by agreement)

The words in brackets are in Mr. Lingham's agreement but not in Captain Grogan's. Captain Grogan now asks that he shall be given an unrestricted right to divert any stream within the area within which he is to be granted timber rights.

The point was discussed between Captain Grogan and myself and I thought that I had made it clear to him that I could not advise that such unrestricted right should be granted. I drafted and showed Captain Grogan a clause which I was prepared to insert in the licence to be granted to him.

The

N<sup>o</sup> 8586

9494-20

*Vertical handwritten note:* copy for 627 sent 26 Oct 32/26

The clause was to the following effect:

"The licensee shall not pollute the water in any stream or, except with the consent of the Governor first obtained and subject to such conditions other than the payment of a licence fee as may be imposed by the Governor, divert any stream".

Such a clause should satisfy Captain Grogan since it would show that it was contemplated by both parties that it might be necessary to divert a stream for power purposes.

(2) The second point raised by Captain Grogan was discussed between us and I informed Captain Grogan that the forest would be proclaimed "forest areas" under the Forestry Ordinance and that the rules prohibiting trespass and theft of forest produce would apply to such areas. I further informed him that the Governor might be willing to confer on such of Captain Grogan's employees as might be approved the powers of forest officers to enable them to prevent trespass and enforce the forest regulations within the forest, in which he was interested.

(3) The Mining Ordinance passed by the Legislative Council in 1922 but which had not become law when left the Protectorate provided that no mining lease should confer surface right within a forest area beyond such as may be absolutely necessary for the working of the minerals. The Ordinance does not contemplate

value of any timber cut, the value to be determined by the Chief Conservator of Forests whose decision shall be final and binding on all parties.

If this proviso is added it will be necessary to make provision in the Mining Ordinance and the Rules thereunder for the insertion of such a covenant in a mining lease.

(A) If past payments are to be deducted from royalties payable under the new licences it should be made clear to Captain Grogan that such arrangement applies only to payment made under the forest leases and does not extend to payments made under the lease of the land at Kilindini.

It is not clear from Mr. Currie's letter whether the rent paid in respect of the Kilindini land has been included in the total sum of Rs.38,000 paid as rent by Messrs Lingham & Grogan.

(B) The principle on which I insisted when discussing terms of settlement with regard to the Kilindini land was that the land to be surrendered by Captain Grogan should be equal as regards both area and value to the land to be retained. I throughout informed Captain Grogan that I did not consider that he should be allowed to retain land with water frontage and surrender land without any water frontage and I told him that if he wished a settlement on these terms he must approach the Governor direct as I was not prepared to put it forward as a reasonable settlement.

(Signed) R.M. COMBS.

27.8.11.

August 2/11



*J*

C/27362/E.A.P.



Downing Street,

16 September, 1911.

DRAFT.

CAPTAIN E. E. GROGAN.

*Ans 32726*

Sir,

MINUTE.

- Mr. Butler. 14th Sept.
- Mr. Read 14 (8586)
- Mr. Fiddes
- Sir H. Just.
- Sir C. Lucas
- X Sir J. Anderson. 15/9
- Lord Lucas
- Mr. Harcourt.

With reference to the letter

from this Office of the 28th of March last, I am directed by Mr. Secretary Harcourt to inform you that he has now received the observations of the Governor of the East Africa Protectorate on the points raised in your (8586) letter of the 13th of March in connection with the draft of the new agreement relating to the concessions granted to you and Mr. Bingham in the Protectorate.

Draft on 27369

*Nº 8286  
T11º 8286*

9495-2

*copy for 67 no 26 Oct 307*

2. The various points are numbered below as in your letter of the 14th of March.

(1) Mr. Harcourt is prepared to approve of a clause in the following terms being added to the provisional agreement arranged between you and Mr. Combe in the Protectorate:-

"The licensee shall not pollute the water in any stream or, except with the consent of the Governor first obtained and subject to such condition other than the payment of a licence fee as may be imposed by the Governor, divert any stream".

(2) Mr. Combe states that in discussing the matter with you he informed you that the forest which was the subject of the new agreement would be proclaimed "forest areas" under the Forestry Ordinance, and that the rules prohibiting trespass and the theft of forest produce would apply to such areas. He states

that

that he further informed you that the Governor might be willing to confer on such of your employees as might be approved the powers of forest officers to enable them to prevent trespass and enforce the forest regulations within the forests which are the subject of the agreement.

(3) Mr. Harcourt is prepared to approve of a proviso in the following terms being added to paragraph 6 of the provisional agreement arranged with you by Mr. Combe:-

"provided however, that in every mineral lease granted in any proclaimed forest area the subject of a licence under this agreement there shall be inserted a covenant by the lessee to pay to the Government for and on behalf of the licensee the value of any timber cut by the lessee within such forest area less the amount which would have been due and payable to the Government as royalty in respect of such timber. In the event of the licensee

*Value*

and

2

and lessee failing to agree as to the value of any timber cut, the value to be determined by the Chief Conservator of Forests whose decision shall be final and binding on all parties".

(4) Mr. Harcourt is unable to admit <sup>that</sup> under the agreements originally made with you and Mr. Lingham you were entitled to deduct the amounts paid as rent from the amounts payable in respect of royalties at any time during the currency of the agreements. He regrets, therefore, that he is unable to accept your proposal that the amounts already paid as rent shall be credited as paid on any royalty which may at any time hereafter be payable in excess of the amount ~~recovered~~ <sup>allowed</sup> by the <sup>lease</sup> ~~minimum~~ annual payments of Rs. 6,000.

(5) With regard to the plot of land on Membasa Island, Mr. Harcourt regrets

that

DRAFT

that the information furnished by the Governor does not enable him to arrive at a definite conclusion and that he finds it necessary to refer again to the Governor on the subject. I am to enquire whether you can assist in the matter by producing the sketch plan attached to the agreement dated the 14th of July, 1904, under which you hold the plot of land in question.

3. Messrs. Ashurst, Morris, Crisp and Co. have been requested to forward the <sup>copy</sup> ~~the~~ agreement between yourself and Mr. Goldman, and Mr. Lingham to this Office for inspection when it has been executed and also to ~~send~~ <sup>grant</sup> your authority to act for Mr. Goldman, in order that Mr. Harcourt may be in a position to satisfy himself that you <sup>fully</sup> <sup>are</sup> empowered to make a binding agreement in respect of all the concessions involved.

I am, etc.

*Handwritten signature*