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previous Paper.

for
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mainland properties of Gallan, Georgia

Sends with short copy, has addressed by
H.M. Council at Georgia 6 20

Dr. F. Hopwood

I was of previous enquiry
I do not think that any action is
required on this

Pat by

H. J. R

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J.R.
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1910

subsequent Paper.

for
21324

GOVERNMENT HOUSE,

Nairobi,

August 3rd 1910.

EAST AFRICA PROTECTORATE.

Confidential (77).

(Incl.1.)

My Lord,

I have the honour to report that I have received from the British Agent and Consul General at Zanzibar a copy of a despatch addressed by him to the Secretary of State for Foreign Affairs. I attach a copy for Your Lordship's information in case you have not yet received one from the Foreign Office.

2. I have tried as far as possible in the matter of the Zanzibar Treaty and this particular claim to look upon the question from the point of view of Imperial interests and with the ideal of removing restrictions which have weighed very heavily upon this Protectorate in the past. I would not fail to be struck with the fact that the British Consul General failed to suggest

the

THE RIGHT HONOURABLE,

THE EARL OF CREVE, K.O.,

Secretary of State for the Colonies,

DONNING STREET, LONDON, S.W.

*Clarks to F.O.
1910 - July 18th.*

the propriety of making any reference to this Administration, vitally interested as it is, when the subject of the extension of the treaties, which have proved so obnoxious, came upon the tapis.

3. With regard to the agreement of December 18th 1895, which provided that all Government lands in Zanzibar mainland territory should be handed over to this administration, as I have stated before, I am quite prepared to surrender to the Sultan of Zanzibar those lands which really belong to him in his private capacity. I cannot however agree that any Imperial interest is being served by allowing the Government of Zanzibar to read the agreements of 1888 and 1895 in such a manner as to allow of its holding lands within this Protectorate. Mr. Clarke speaks of this possession as a matter of luck; to my mind it is one of policy, and as the terms of the agreement are such as will permit of the handing over of these lands to the Government of this Protectorate I think it is advisable and necessary to do so.

4. I have previously intimated to Your Lordship my opinion that in the interests of this British Colony

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the treaties which hampered it should be abrogated. If His Majesty's Government has any such intention at present or in the future I think negotiations to this end would be considerably hampered by the possession in the East Africa Protectorate of lands said to be owned by the Zanzibar Government.

5. Mr. Clarke inadvertently states that I refer to the ten mile zone in 'contemptuous' terms as being 'the poorest and least lucrative portion of British East Africa'. My actual words were that it was 'the poorest and least lucrative portion of the Zanzibar Dominions' - a contention which I think cannot be controverted.

6. I would not propose to add anything further to this correspondence, unless I receive instructions from Your Lordship, and beg to assure you that the communications which I have made were with the intention of securing the better government of the Protectorate. I have at the same time no doubt whatever that Mr. Clarke's communications were forwarded within his opinion with the same intention and that none of our representations were

were meant to disturb or have as a fact in any way
disturbed the very cordial relations which exist between
us.

I have the honour to be,

Your Lordship's humble,

obedient servant,


GOVERNOR.

ZANZIBAR,

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July 16th, 1910.

No. 175.

Sir,

I have the honour to enclose a copy of a further despatch which I have received from the Governor of British East Africa covering one which he has addressed to His Majesty's Secretary of State for the Colonies on the subject of the mainland estates claimed by the Zanzibar Government.

Sir Percy Girouard begins by remarking that he regards as 'immaterial' the fact that our 'claims' have not been contested for many years.

It is, in the first place, I venture to think, hardly correct to speak here of 'claims' since as a matter of fact the various estates the title to which the British East Africa Administration now disputes have actually been occupied by us without question for a long period of years. But however this may be I cannot but believe His Excellency to be in error when he says that such a long occupation is immaterial.

I have on the contrary always understood that undisputed possession far from being immaterial was on the contrary an extremely important factor in determining a claim to a disputed property. Sir Percy Girouard speaks as if no such thing as title by prescription existed.

His Excellency next observes that 'the payment made by the German Government for alleged similar rights in German East Africa is in no way analogous. That Government had purchased its territory outright and naturally did not desire to leave any pretext for interference on the

part

part of a neighbouring British Protectorate in regard to land lying within its boundaries".

Sir Percy Girouard thus appears to admit that if we had retained the possession of the Sultan's private property in German East Africa - properties it may be remarked which were of a precisely similar nature to those now held by us in British East Africa - we should have had at any rate a "pretext for interference". This 'pretext' was so far as German East Africa was concerned was at any rate considered by the German Government sufficiently inconvenient to induce them to extinguish it at the cost of a very considerable sum of money and if the administration of British East Africa so much dislikes our having any 'pretext' for interference in their territories I can see no reason why they should not get rid of it in the same way as was done by the German Government.

Sir Percy Girouard next states that he considers that it is "the neglect of the Zanzibar Government to draw up and obtain the assent of the British East Africa administration to a schedule of the properties claimed" which has rendered clause 11 of the 1888 concession nugatory.

It seems to me however if I may use a vulgar expression that "the boot is on the other leg".

If now for the first time we had woken to the existence of the fact that there was an agreement under which we could claim certain properties and had then proceeded to ask that they should be handed over to us in spite of the fact that no schedule of them had ever been drawn up, it would be quite fair for the British

East Africa Administration to say "No - You have neglected during all these years to have a schedule drawn up of the properties you claim - you cannot now say that certain properties should have been included in it". But as a matter of fact we have been in undisputed occupation of these properties for many years and blessed in their possession and wanting nothing more, did not bother ourselves about drawing up a list.

In any case I can see no reason why the Zanzibar Government is to pay for 'neglecting' to draw up a schedule any more than the British East Africa Administration.

Sir Percy Girouard then dismissing all claim based on prescription and analogy as 'academic' passes on to argue his case on "broader and more reasonable principles".

These 'broader and more reasonable principles' are, as I understand them two.

1. that it is absurd that one British Protectorate should claim to receive the rents of property situated within the territory of another.
2. that it is equally absurd that British East Africa should pay rent and interest to the Zanzibar Government for administering the ten milea strip.

I regret that I am entirely unable to appreciate the force of His Excellency's first argument. I can see no reason why if one British Protectorate is lucky enough to own property within the limits of another, it should not receive the rents of such property. In such cases it appears to me that a Government has exactly the same rights

rights as a private individual and the property it owns in the territories of another must be considered as equally secure from confiscation.

But Sir Percy Girouard would not only like to see the properties on the mainland of which we have held undisputed possession confiscated without the smallest compensation to the use of his administration; he seeks further to deprive of the income which the Sultanate derives from the sale to H.M. Government of certain of its rights on the Mainland.

I do not feel at all sure whether speaking from the point of view of international law H.M. Government would have the right to do - as desired by His Excellency - the Sultan of Zanzibar of the day made over certain rights to H.M. Government in consideration of an annuity of £11,000. That Sultan had a successor, the reigning Sultan, who is a factor of which account is still taken by other nations besides our own though as a matter of fact his State is administered to all intents and purposes as a British Colony - and it seems to me more than doubtful whether H.M. Government would be legally justified at its mere will and pleasure in cancelling the bargain which the British Government of the day made for all time with the Sultan then on the throne. But be this as it may it is obvious that from the purely practical point of view anything of the kind suggested by Sir P. Girouard is quite out of the question.

Zanzibar cannot afford to lose £11,000 a year and as its welfare is equally a matter of care to H.M. Government

with

