

EAST AFR. PROT.
ZANZIBAR

21822

21822

of Individual.

Foreign

1909

30 June

Previous Paper.

1904 > 5

Jurisdiction of E.A.P. Courts

over subjects of Powers having Treaty rights in Zanzibar.
Points out that by arrangement with France in 1902 French
Subjects are under British Court. Explains that it is a mistake
to assume that H.M. Govt. have abandoned their extra-territorial rights
in E. Afr. or that the High Court at Mombasa no longer possesses
extra-territorial jurisdiction. States view & suggests that any question
which may arise be referred to F.O. for decision.

W. Pirley.

Have you any atoms to offer?

H. J. R.

Yours

W. Cox

I cannot follow the arguments of Messrs Combs
Hamilton - but you will remember in a recent
case (question of removing a prisoner from Zanzibar
to Mombasa) the F.O. people in Zanzibar tried to
make out that the court at Mombasa was the
-Sultan's court - he did not absolutely decide
that point because we had no difficulty in
showing that even if the Mombasa court was
one of the Sultan's courts it was not one of
the Sultan's courts to which the British Court
in Zanzibar could send prisoners.

Messrs Combs Hamilton seem to have got hold of
a similar idea that the High Court at Mombasa
is the Sultan's Court - & think both the

Copy off to ... 11 July 1909

Court & the East in HM's. The language was under the treaty in the Sultan's but as legal institutions both exist the East in British. Both we find in the suggestion in the last para of the J.O. it is much to be hoped that the Court will refer the question of its action to the S.P.S. under sec 4 of the For. Jurisd. Act but can we give the instructions suggested by the J.O. ? It seems to me that the Court must act upon its own initiative under that section and that it can be hardly correct for the S.P.S. to issue instructions to the Court through the local Govt to take action under that section.

J.R. 8/7

Library
Can you let me have the treaties referred to?

W.B. 8/7

M. Cox
W.S. 9.7

Do not think the S.P.S. & Chamberlaine (L.R. 1901 at p. 1) really decided what the S.P.S. seem to think it decided. The decision was that Zanzibar law law applied to Zanzibar land when a case concerning land arose in the consular court. We should write as in FO letter omitting last few but

the form above may be amended to appear for the Govt & call the attention of the Court to the J.O. of the Foreign Jurisdiction Act 1890 & request the Court to take action under that section

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Afternoon. Mr. F. J. de B.

see Jft.

Atome

W.B.

9/7

In any further communication on this subject, please quote

No. 20153/09.

and address—

The Under-Secretary of State,
Foreign Office,
London.

21822
JUN 30 1909
FOREIGN OFFICE

June 30, 1909.

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Sir:—

Secretary Sir E. Grey has had under his consideration your letter ⁴⁰⁷ 17405 of the 28th ultimo respecting the jurisdiction of the Courts of the British East Africa Protectorate over the subjects of Powers having Treaty Rights in the dominions of the Sultan of Zanzibar.

I am directed by Sir E. Grey to state, for the information of the Earl of Crewe, that His Majesty's Principal Judge for East Africa and the Crown Advocate would appear to have misconceived the true intent and meaning of the arrangement between His Majesty's Government and the French Government for the closing of the French Courts in Zanzibar. The intention of Monsieur Cambon's note of May 13th, 1904, seems clearly to have been that French citizens, subjects and protégés should be placed under the jurisdiction of

the

Under-Secretary of State,
Colonial Office.

(20153/09)

the same court as British subjects. If the French Government had merely abandoned their jurisdiction, French citizens would have been subjected to the disadvantage of being under the same courts as the natives of Zanzibar, while British subjects continued to enjoy extra-territorial rights, and France consequently would have been at a disadvantage. By stipulating that French citizens should be under the British Court, the French Government obtained equivalent treatment.

Sir E. Grey is advised that it is a mistake to assume, as Judge Hamilton does in his memorandum, that His Majesty's Government have abandoned their extra-territorial rights in East Africa or that the High Court at Mombasa no longer possesses extra-territorial jurisdiction.

All the jurisdiction possessed by His Majesty's Government in East Africa is extra-territorial, the whole country is administered under the provisions of the Foreign Jurisdiction Act, and the jurisdiction is
extra-territorial

(20153/09)

extra-territorial whether derived from the Agreement with the Sultan of Zanzibar of 1895 or the abrogated Treaty of 1886. In fact the rights acquired by Her Majesty's Government in 1895 included those acquired in 1886. The idea that the jurisdiction which His Majesty's Government exercise in East Africa is exercised on behalf of the Sultan is erroneous: it is exercised on behalf of His Majesty The King under the extra-territorial grant of the entire administration.

I am in conclusion to draw your attention to the provisions of §4 of the Foreign Jurisdiction Act of 1890 and to suggest that instructions may be sent to the Government of East Africa that, if any question is raised as to the right of the Protectorate High Court to exercise jurisdiction over foreigners of the nationality of one of the Treaty Powers, the matter may be referred by the Court to the Secretary of State for decision in accordance with the provisions of

that

(20153/09)

that section.

I am,

Sir,

Your most obedient,

humble servant,

W. Langley

J.O. 21822

E.A.P.
Zanzibar

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13
14

~~31~~

Yours

DRAFT. *confidential*

only

15 July 1902

MINUTE.

- Mr. Parkyn 10/10
- ~~Mr. Parkyn~~
- Mr. Butler 12
- Mr. Risley 12
- Mr. Frost Read
- x Mr. Antrobus
- x Mr. Cox 12
- Mr. Fiddes 12
- x Sir C. Lucas
- x Sir F. Hopwood 13.7
- Col. Seely
- The Earl of Crew. 13.7

Sir, I have the honor to ack. the receipt of your Conf. despatch of the 29th April, transmitting memoranda by the Principal Judge and the Crown Advocate in the jurisdiction of the Courts of the E. S. A. P. over the subjects of Powers having Treaty Rights in the Dominions of the Sultan of Zanzibar.

2. I have to inform

~~you that~~ the Principal Judge and

for comment

Chas. F. C. F.
W.M.

and the Crown Advocate
could appear to have
misconceived the true
intent & meaning of the
arrangement between
H.M.'s Govt & the French
Govt for the closing of
the French Court in
Zanzibar. The intention
of Monsieur Cambon's
note of May 13th, 1902,
seems clearly to have been
that French citizens,
subjects, & protégés should
be placed under the
jurisdiction of the same court
as British subjects if
the French Govt had actually
abandoned their jurisdiction.
French citizens would have
been subjected to the
disadvantage of being
under

under the same courts & the
network of Zanzibar, while
British subjects continued
to enjoy extra-territorial
rights, & France consequently
would have been at a
disadvantage. By stipu-
lating that French citizens
should be under the British
Court, the French Govt
obtained equivalent
treatment.

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3. I am advised that
it is a mistake to assume,
as Judge Hamilton does
in his memorandum, that
H.M.'s Govt have abandoned
their extra-territorial rights
in E. Africa or that the
High Court at Mombasa
no longer possesses extra-
territorial jurisdiction.

4

all the jurisdiction
purported by H. His Gt.
in Africa is extra-territorial,
the whole country is
administered under
the provisions of the Foreign
Jurisdiction Act &
the jurisdiction is
extra-territorial whether
derived from the
Agreement with the
Sultan of Zanzibar
of 1895 or the abrogated
Treaty of 1886. In
fact, the rights acquired
by Her Majesty's Gt.
in 1895 included those
acquired in 1886.
The idea that the
jurisdiction which
H. Majesty's Gt. exercise
in Africa is

~~Case~~

exercised on behalf of
the Sultan is erroneous.
It is exercised on behalf
of His Majesty, the King
under the extra-territorial
grant of the entire
administration.

DRAFT

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5 In conclusion,
I have to request that
should any case arise
in which ^{any} ~~the~~ question

MINUTE.

- Mr.
- Mr.
- Mr. Just.
- Mr. Antrabus.
- Mr. Coe.
- Sir C. Lucas.
- Sir F. Hopwood.
- Col. Seely.
- The Earl of Crewe.

A question of jurisdiction is raised
as to the right of the High Court
of the Exchequer to exercise jurisdiction over
the ~~contract~~ ^{contract} ~~way~~ ^{way}

frequency
the name of the
the
Truly
Powers

be instructed to appear
for the Gt., & call the
attention of the Court

to Section 4 of the
Foreign Jurisdiction
Act, 1890, and
to request the Court to
take action under that