

OOMA,
OCEAN ISLAND.
12th January, 1914.

Dear Mr. Eliot,

I have carefully considered the contents of your letter of yesterday. In reply, I would say that evidently we look at the Phosphate and Trees Purchase Deeds in different lights. You consider them leases. I have always looked on them as the definite purchase of mining rights - the time-limit was an afterthought entirely; the earlier deeds did not contain any. When Mr. Campbell saw the first batch of deeds he expressed the view that a time-limit should be inserted, and it was accordingly done. The Banabans have never raised the point: they look on the transaction as the definite sale on their part of the phosphate on the lands concerned. They have not suffered in any way through the phosphate not having been removed within the stated time; on the contrary they have had the use of their trees much longer in some cases than they otherwise would.

Obviously the right thing to do would have been to get the time extended, had we considered the validity of the deeds being in danger. This I was prepared to do when Captain Dickson brought the matter up; the whole question was gone into then, and I would like to show you the correspondence which passed on the subject. He did not consider it an opportune time for any such arrangement with the natives. Meantime three years have elapsed during which it has been impossible for us to do anything as the matter had been taken out of our hands. I do not consider that any difference should be made as regards the so-called time expired deeds, for the following additional reasons:-

meet the views of the Resident Commissioner - to make a separate payment for the trees over and above the £40 or £60 per acre for the land. The deeds accompanying your letter of the 11th August last provide for the cutting down of these and any other trees on the mining sites without extra payment, but they also provide for re-planting the worked-out lands as far as possible. Such re-planting could not have been reasonably called for except as part compensation for the trees previously cut down.

In a letter dated the 31st January, the Company's representative at Ocean Island referred to the purchase of the first 16 acres of land on the new terms, and adds:—

" Monies paid for coconut trees on the 16 odd acres, for which deeds have been signed, amounted to £250. This runs out at nearly £16 per acre additional to the £60 per acre paid for the land."

On this basis the coconut trees on, say, 170 acres, to be acquired would cost over £2,700, and my Directors do not conceive that the Secretary of State would wish the Company to bear such an additional charge. Although Mr. Ellis, for the sake of expediency, agreed to the wishes of the Resident Commissioner, my Directors trust that the Secretary of State will not allow advantage to be taken of the fact, but will include the cost of the trees in the price agreed upon for the land, as was distinctly arranged, and that if the Banabans demand payment for food-bearing trees, such payment shall be deducted from the amount otherwise payable as royalty to the Banaban Fund.

(10) In a letter dated the 6th January last,* my Directors observe that Mr. A. F. Ellis asked the Resident Commissioner that the annual royalty of £50 payable to the Banabans under the agreement with them of the 3rd May, 1900, be merged in the new royalty on tonnage, but without any prejudice to that agreement. From the reply of the 6th January last,† my Directors note that the Resident Commissioner has referred the matter to the Secretary of State, but they would prefer that this payment be made separately to the Banabans, as hitherto, in accordance with the terms of the agreement of the 3rd May, 1900, in order that this agreement may in no way be prejudiced or affected by subsequent arrangements.

I have, &c.,

FOR THE PACIFIC PHOSPHATE COMPANY, LIMITED,
A. J. REEVES,
Secretary.

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No. 12.

THE SECRETARY OF STATE TO THE HIGH COMMISSIONER.

(Sent 5.27 p.m., 28th March, 1914.)

TELEGRAM.

[Answered by No. 14.]

AGREEMENT in Elior's letter, 22nd December, 222,‡ does not cover lands proposed to be dealt with in Deed A enclosed in my despatch of 23rd August, No. 219.§ Have you later information as to action taken regarding these lands?—
HARCOURT.

8678

No. 13.

THE SECRETARY OF STATE TO THE HIGH COMMISSIONER.

[Answered by No. 42.]

(No. 86.)

SIR,

Downing Street, 31st March, 1914.

I HAVE received direct from the Resident Commissioner of the Gilbert and Ellice Islands copies of his letter to you, No. 179, of 15th November last,|| regarding certain exchanges of land already effected in Ocean Island, and of the Deputy Commissioner's letter, No. 14, of 21st January last,* relative to the other proposed exchanges of land.

* Enclosure 1 in No. 7.

† Enclosure 2 in No. 7.

‡ No. 5.

§ No. 36 in Australian No. 212.

|| No. 2.

¶ No. 9.

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2. The deeds A, B, C, D, E, and F, enclosed in the letter of 15th November, are wholly irregular in form, since, unlike the Phosphate and Trees Purchase Agreements which in each case they replace, they purport to make an absolute transfer of the land, and not merely to confer certain rights over the land for a limited period. I presume, however, that this was not intended; but the Resident Commissioner should at once inform the representative of the Pacific Phosphate Company that it is, of course, understood that, notwithstanding the wording of these deeds, the lands in question are regarded as subject to the conditions set forth in paragraph 3 (4) and (9) of the letter from this Department to the Company of 11th March, 1913, a copy of which was enclosed in my despatch No. 66 of the same date; I observe that the lands affected are nearly worked out. If therefore these conditions are accepted by the Company, and the said lands are replanted and given up to the natives in due course, it will not be necessary to cancel the agreements and substitute others in the proper forms.

3. The deeds C, D, E, and F, are further irregular inasmuch as the Company thereby purports to transfer land over which they only received rights of usufruct from one native, not to the same native (the actual owner of the land), but to another native; and in one case, E, the original agreement, E1, had already expired. The native who signed the original Phosphate and Tree purchase agreement was not made a party to these transactions, and even if he had been, he would apparently have had no power to part with the absolute ownership of the land, since, as indicated in paragraph 4 of my despatch No. 219 of 23rd August last, I understand that the Banabans possess only a life interest in their lands. In the case of B, I observe by the endorsement on deed B1, that the original owner, Biriam, purports to be a party to the arrangement, but, for the reason just given, this endorsement cannot apparently be regarded as giving a valid title to Nei Tabuta. As at present advised, it appears to me that these lands must eventually revert to the original owners, and I shall be glad to receive any recommendations which the Resident Commissioner may be able to make for the equitable adjustment of these five cases between the several natives concerned.

4. This difficulty does not seem to arise in the case of A, since the same native is owner of the two areas in question, if I am correct in assuming that the signature "Timotea" at the foot of A1 should be "Timotio."

5. As regards Mr. Darbshire's letter, No. 14, of 21st January, I was fully aware, as you will have gathered from my despatch No. 318 of 31st December last, that the draft agreement B (as to exchanges) would, in most cases at any rate, not be acceptable to the owner of the land within the delimited area, but there may be some cases where the agreement or a modified form of it might be acceptable to the parties concerned, *e.g.*, where the outside area is larger and presumably more productive than the inside area, as was the case with some of the exchanges reported in Mr. Eliot's letter of 15th November;* where the same native owns the outside and inside areas. But it was not, and, of course, is not, my intention that any pressure should be put upon the natives to accept these exchange agreements against their will.

I have, &c.,
L. HARCOURT.

12211

No. 14.

THE HIGH COMMISSIONER to the SECRETARY OF STATE.

(Received 7.40 a.m., 3rd April, 1914.)

TELEGRAM.

[See No. 16.]

Your telegram of 31st March.** No later information received. Am communicating with Eliot.—ESCORT.

* No. 2.

† No. 3 in Australian No. 212.

‡ L. F.

§ No. 36 in Australian No. 212.

¶ No. 9.

* No. 44 in Australian No. 212.

** 11815: not printed: See No. 12.