

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Secretary of State for Foreign Affairs v. Charlesworth, Pilling, & Co., and Thomas D. Charlesworth & Co., and the Cross Appeal of Charlesworth, Pilling, & Co., and Thomas D. Charlesworth & Co. v. the Secretary of State for Foreign Affairs (Appeal and Cross Appeal consolidated), from Her Britannic Majesty's Court, Zanzibar; delivered 16th February 1901.*

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Present at the Hearing:

THE LORD CHANCELLOR.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Hobhouse.*]

These Appeals relate to the amount of compensation to be paid for land in the Island of Mombasa, taken by the Government under statutory powers. The suits were commenced by two claims lodged with the Collector by the firms of Charlesworth Pilling & Co. and T. D. Charlesworth & Co. who were respectively owners of different plots of the land so taken. The Collector, Mr. Craufurd, who was also acting on behalf of the Government, made awards which the Plaintiffs did not accept, and which therefore were referred to the Consular Court of Mombasa. The Vice-Consul Mr. Cator awarded larger sums which the Defendant has not disputed. But the Plaintiffs were still dissatisfied and they appealed to the Court for Zanzibar.

The Court again enhanced the amount of compensation, with the effect that both parties are dissatisfied and both appeal from the decrees. There are therefore four Appeals, two Original, and two Cross Appeals in the two suits. They have all been consolidated and have been argued as one case falling under the same considerations, with the exception that one important item of claim is peculiar to one plot belonging to Charlesworth, Pilling, & Co.

Mombasa is a small island adjacent to the coast of Continental Africa, and it forms part of the mainland dominions of the Sultan of Zanzibar. The authorities who have dealt with this case are established and regulated by Her Majesty's Order in Council passed in 1884 and founded on a previous treaty; and by a subsequent treaty with the Sultan of Zanzibar in the year 1886. There have been later transactions between the Sultan and an English Company and the Queen, which are referred to in the judgment of the Vice-Consul and in the case lodged by the Defendant the Secretary of State. They confer on the Queen's Government extensive powers of administration during the continuance of existing agreements. But they are expressed not to affect the Sultan's sovereignty, and for the purpose of deciding questions of an international character in these suits, they have not been discussed in the Courts below and need not now be discussed.

The Order in Council dated 17th of October 1884 is founded on the usual form of recital that by treaty, grant, usage, sufferance, and other lawful means Her Majesty the Queen has power and jurisdiction in relation to Her Majesty's subjects and others within the dominions of His Highness the Sultan of Zanzibar. The passages material for the decision of the present questions will be found in Sections 6, 7, and 8. Section 6 shows that the Order applies to British subjects in Zanzibar, to British ships in Zanzibar waters, to

Zanzibar subjects and foreigners in specified cases, and to British-protected persons in so far as by treaty or the other means mentioned Her Majesty has jurisdiction in Zanzibar in relation to them.

“Section 7. All Her Majesty’s jurisdiction exerciseable in Zanzibar under the Foreign Jurisdiction Acts for the hearing and determination of criminal and civil matters . . . shall be exercised under the provisions of this Order, so far as this Order extends and applies.

“Section 8 (a) . . . Subject to the other provisions of this Order, and to any Treaties for the time being in force relating to Zanzibar, Her Majesty’s Criminal and Civil Jurisdiction in Zanzibar shall, so far as circumstances admit, be exercised on the principles of, and in conformity with, the enactments for the time being applicable, as herein-after mentioned, of the Governor-General of India in Council, and of the Governor of Bombay in Council, . . . and so far as such enactments, . . . are inapplicable, shall, so far as circumstances admit, be exercised under and in accordance with the common and statute law of England in force at the commencement of this Order.

“(b) . . . declares certain Indian enactments not affecting this question to be applicable to Zanzibar.

“(c) . . . Any other existing or future enactments of the Governor-General of India in Council, or of the Governor of Bombay in Council, shall also be applicable to Zanzibar, but shall not come into operation until such times as may in the case of any of such enactments respectively be fixed by the Secretary of State.

The subsequent treaty concluded in 1886 has the following provisions:—

“Article V. Subjects of Her Britannic Majesty shall be permitted throughout the dominions of His Highness the Sultan to acquire by gift purchase intestate succession or under will or in any other legal manner, land houses and property of every description whether moveable or immoveable, to possess the same, and freely to dispose thereof by sale barter donation will or otherwise.”

“Article XVI. Subjects of Her Britannic Majesty shall, as regards their person and property, enjoy within the dominions of His Highness the Sultan of Zanzibar the rights of exterritoriality.

“The authorities of His Highness the Sultan have no right to interfere in disputes between subjects of Her Britannic Majesty amongst themselves or between them and members of other Christian nations. Such questions whether of a civil or criminal nature shall be decided by the competent Consular Authorities. The trial and also the punishment of all offences and crimes of which British subjects may be accused within the dominions of His Highness the Sultan, also the hearing and settlement of all civil questions claims or disputes in which they are the Defendants, is expressly reserved

“ to the British Consular Authorities and Courts, and removed  
 “ from the jurisdiction of His Highness the Sultan.

“ Should disputes arise between a subject of His Highness  
 “ the Sultan or other non-Christian power not represented by  
 “ Consuls at Zanzibar, and a subject of Her Britannic Majesty  
 “ in which the British subject is the Plaintiff or the Com-  
 “ plainant, the matter shall be brought before and decided by  
 “ the highest authority of the Sultan, or some person specially  
 “ delegated by him for this purpose. The proceedings and  
 “ final decision in such a case shall not however be considered  
 “ legal unless notice has been given, and an opportunity  
 “ afforded for the British Consul or his substitute to attend  
 “ at the hearing and final decision.”

“ Article XX. Should a British subject die within the  
 “ dominions of His Highness the Sultan of Zanzibar, or dying  
 “ elsewhere leave property therein moveable or immoveable,  
 “ the British Consul shall be authorised to collect realise and  
 “ take possession of the estate of the deceased to be disposed of  
 “ according to law.

“ Article XXI. The houses dwellings warehouses and  
 “ other premises of British subjects or of persons actually in  
 “ their regular service shall not be entered or searched under  
 “ any pretext by the officials of His Highness without the  
 “ consent of the occupier, unless with the cognisance and  
 “ assistance of the British Consul or his substitute.”

Article XXIII. provides for the free exercise  
 of religious worship.

In the year 1895 the Government were  
 planning railway communication from some  
 point in Mombasa into the African mainland.  
 In December 1895 the Plaintiffs entered into  
 agreements by which they acquired title to three  
 of the plots of land in question. The fourth plot  
 was purchased in April 1896. At the close of  
 the year 1895 the engineers of the Government  
 entered on the land and began to erect railway  
 offices on one of the plots known in these pro-  
 ceedings as Said-bin-Rashid. This was done  
 without any lawful authority; and it has given  
 rise to questions of some subtlety on which the  
 Consular Court and the Zanzibar Court have  
 differed in opinion. Their Lordships will first  
 address themselves to these questions.

It was not till 27th May 1896 that the  
 Indian Land Acquisition Act of 1894 was brought  
 into force in Zanzibar, and not till 2nd November  
 1896 that Mr Craufurd the Consul-General  
 issued a notice under Section 6 of that Act

declaring that the land would be required for the railway, and inviting claims for compensation. The day of that declaration is the day on which the property is to be valued for purposes of compensation.

The Plaintiffs contend that on that day the buildings erected by the Government were theirs, and they claimed before the Collector to be paid for them. They did not in the first instance claim any specific sum for the buildings apart from the land, but in the course of the hearing before the Vice-Consul they put the amount at Rs. 1,68,000. They contend that the rights of the parties are governed by English law, according to which the buildings would become attached to the land. The Defendant contends that the case is governed by Mahomedan law, and that the landowner is not entitled to the buildings. The Vice-Consul decided that Mahomedan law applied and compelled him to disallow the Plaintiffs' claim entirely. The Zanzibar Court decided that English law applied, and they awarded to the Plaintiffs Rs. 60,140, which was the cost of the buildings to erect. The Plaintiffs insist on the larger sum claimed by them as being the actual value on 2nd November 1896.

The first question is whether the dispute is to be governed by the English or the Mahomedan rules applicable to unauthorised buildings on land. The Indian enactments which the Order in Council makes applicable as far as circumstances admit, either directly or by order of the Secretary of State, do not fit this case; and therefore Her Majesty's jurisdiction is to be exercised under and in accordance with the law of England. But the law of England recognises the principle that the incidents of land are governed by the law of its site. Therefore by the terms of the Order, if we look no further,

Her Majesty would exercise her Zanzibar jurisdiction on the principle that Zanzibar law, which is Mahomedan law, applies to this case. And so far there is no difference of opinion in the Courts below.

But then the order is made subject to treaties for the time being in force, and Article XVI. of the Treaty of 1886 confers on British subjects the rights of ex-territoriality as regards their persons and their property. The whole controversy turns on the meaning of this one word "ex-territoriality." The learned Counsel who argued this case could not find any decision on the construction of the term in a treaty. Nor do the text-books tell us much more than that the word denotes a fiction by which the house and land occupied by a foreign sovereign or his ambassador was treated in law as a part of his dominions; and that it is a convenient word to denote any group of privileges belonging to that class. Their Lordships refer to *Hall on International Law*, page 163; *Westlake on Private International Law*, 3rd edition, p. 236. The same writers warn us that fictions and metaphors must not be pushed too far.

The Court for Zanzibar appears to have pushed the metaphor very far; holding that the term works a complete separation of the British subject and his property from the country in which they are (Rec. p. 493). It seems to have adopted the principle contended for in the Consular Court and negatived by the Vice-Consul, viz., that where there is a question relating to land between two British subjects, the land must be looked upon as actually a piece of British land for the purpose of applying the law (p. 407).

Looking at the latter part of Section XVI. and the succeeding sections of the treaty which

have been quoted above, we find that it actually specifies all the usual benefits accorded by Mahomedan powers to a British subject. If he is accused of crime or is Defendant in a civil suit, his case is decided by his own nation's Consul. If he is complainant the Consul may intervene to protect his interests (Article XVI.). His servants receive similar protection (Article XVII.). In case of bankruptcy his property is dealt with according to British law (Article XVIII.). On his death his property is to devolve according to British law and to be administered by the Consul (Article XX.). His house is not to be entered by the Zanzibar authorities against his consent unless the Consul authorises it (Article XXI.). He is to enjoy the free and public exercise of his own form of religion (Article XXIII.). Their Lordships do not say that the list of specific instances, though very full, is exhaustive of the general term. Other cases of the same kind would doubtless be included if such there are. But it is reasonable to conclude that the things specified show the nature of the immunities desired by and accorded to the British subject,—complete personal protection, assurance of satisfactory judicial tribunals, and such enjoyment of his property for himself and for those who claim under him as British law would afford him for British property. It is going a long way beyond that, and beyond the reason for these immunities, to say that the moment a plot of land is purchased by an Englishman it is stamped with the same character and is attended by the same incidents that would belong to it if it were actually transferred to England and surrounded by other English land; and to say that his neighbours, who may or may not be British subjects, must have their rights and liabilities governed by its fictitious and not by its actual situation. Their Lordships hold

that the grant of ex-territoriality does not involve any such conclusion, and that the Vice-Consul is right in holding that in this case the local law applies.

The next question is how the local law is to be ascertained. Is it matter of evidence, or should the Consular Court take judicial notice of it? The Vice-Consul held that he was an English Judge, that it was to him foreign law and must be proved by evidence; though he says it is an extreme instance of that principle, especially as he is also one of the Sultan's Judges administering Mahomedan law. That circumstance however should make no difference in the principle, though it enabled the Vice-Consul personally to appreciate the evidence which he took. The Zanzibar Court was not called upon to express any opinion on this point because it held that the English law applies.

The situation is one of some complexity. The root of the jurisdiction is the treaty grant or other matter by which the Queen has power and jurisdiction in Zanzibar. She thereby becomes an authority in the foreign territory of Zanzibar, though exercising her powers quite independently of the will of the Sultan. On that state of things the Foreign Jurisdiction Acts supervene for the purpose of binding all the subjects of the Queen; and they enable her to order in what way her authority in Zanzibar shall be exercised. She orders that it shall be exercised in accordance partly with certain Anglo-Indian laws and partly with English law. The English law again for certain purposes, of which the present purpose is one, incorporates the local law of Zanzibar. But throughout the matter Zanzibar remains foreign territory, and the Queen and her officers are acting as Zanzibar authorities by virtue of the power which she has acquired, and which is within its limits a



sovereign power. It results that a Judge acting within these limits is a Zanzibar Judge, and is bound to take judicial notice of the Zanzibar law, whatever it may be, applicable to the case before him.

The Vice-Consul acting on his view took evidence on the Mahomedan law, which he found to be in favour of the Defendant's contention. He also stated that such was his own opinion which his experience as a Mahomedan Judge qualified him to form. Their Lordships are now called upon to pronounce for themselves, and to apply, the Mahomedan law which the Plaintiffs' Counsel have argued to be in their favour. On this point they do not feel any difficulty. They follow the law laid down in the Hedaya as translated by Hamilton Book 37, p. 539. "If a person usurp land and plant trees in it, or erect a building upon it, he must in that case be directed to remove the trees, and clear the land, and to restore it to the proprietor. If removal . . . be injurious to the land the proprietor of the land has the option of paying to the proprietor of the trees or the building a compensation equal to their value, and thus possessing himself of them; because in this case there is an advantage to both and the injury to both is obviated." The passage then goes on to show that the compensation is the value which the trees or houses bear upon the proprietor being directed to remove them, because their owner is not at liberty to have them on the ground. That is conclusive against the Plaintiffs' contention that the buildings had become their property on the 2nd November 1896.

The Plaintiffs' Counsel then argued that at all events they had on that day a right to call on the Defendant to remove the buildings and that they were entitled to be paid for their land

with all rights attaching to it. It is not easy to see what such a right would be worth to them; but it is sufficient to say that no such claim has been made. Their Lordships must hold that the Vice-Consul was right in wholly disallowing the claim of the Plaintiffs in respect of buildings, and that the Defendant's Appeal on this point must prevail.

There has been great difficulty in ascertaining the value of the land taken. By the Land Acquisition Act the Court is directed to take into consideration the market value of the land at the date of the publication of the declaration (Section XXIII.) and by Section XXIV. it is forbidden to take into consideration "*Fifthly* any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired. *Sixthly* any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put."

The Plaintiffs claimed to be paid for the whole area as for building ground at Rs. 2 per square yard = Rs. 11,132 per acre, yielding a total of (in round numbers) Rs. 700,000. The Collector took the average of a number of purchases effected by private contract between himself and various owners. That amounted to Rs. 431 per acre yielding a total of about Rs. 32,000. The Vice-Consul rejected both these principles.

The claims of the Plaintiffs he treated as utterly extravagant. There is land available and in demand for building in and adjoining to the town of Mombasa, and again adjoining to the harbour of Kilindini; and sea frontage is valuable. The Plaintiffs' land is at considerable distances from both these places, and it has no sea-frontage. There is no reason to suppose that it has any present value for habitations. The

most part of it is jungle, though here and there are some patches of cultivation. Both Courts are agreed that independently of the railway its value is very small. The rather crude principle adopted by the Collector has this defect, that it does not distinguish between the various plots of land sold to him, which varied largely in price from Rs. 750 an acre and more, down to Rs. 64. Moreover several of the contracts were made with Arabs, and the Vice-Consul thinks them of little value as evidence of price, because he did not find that the Arabs had taken in the idea that the value of their land, which they could actually obtain by bargaining, had been enhanced by the railway scheme; so that the prices given to them would unduly lower the average. As for Indians, he thinks that they were fully alive to the advantage they had got and were quite capable of insisting upon it.

On this part of the case a most unfortunate element has been imported into the controversy. The Charlesworths have accused the Collector of using coercion and deceit to get contracts showing a low average price, and the Vice-Consul complains that, being called upon to pronounce on the validity of the award and on the value of the lands, he has been put to try the motives and character of the highly placed official who valued them in the first instance. He considers that the Collector gave great provocation to the Charlesworths by his faults of temper and by his high-handed dealing with the land before he had acquired any rights over it, but he entirely acquits him of any dishonesty.

Their Lordships regret that the Court for Zanzibar should have thought it necessary to try this personal altercation all over again. In the outset of their judgment they say that there are two principal questions. First the conduct

of Mr. Craufurd' and secondly the amount of compensation. Now it may be that Mr. Craufurd's conduct was directly relevant to the question whether or no his award was valid. Its only relevance to the question of compensation was this; that it might have been found that the average of prices on which he relied was brought about by his own use of improper means. But his award had been adjudged to be invalid. His principle of valuation had been rejected, and his purchases from Arabs, all the cheaper purchases, had been thrown out of consideration by the Vice-Consul. Those decisions were not disputed by the Defendant. How after that his conduct could have any material effect on the question of compensation it is difficult to understand. As however the judgment of the Zanzibar Court has been read and commented on here, though not by the Counsel for the Plaintiffs, their Lordships think it right to say that nothing has come under their notice which justifies the severity of the Zanzibar Court towards Mr. Craufurd, or which leads them to think that the Vice-Consul's opinion of him is too favourable.

In coming to this conclusion their Lordships have not omitted to consider the evidence relating to Mr. Craufurd's purchase from Dewji Jamal, and to the non-production of papers in the arbitration, on which the Zanzibar Court have laid so much stress. Mr. Craufurd's proceedings were highly unbusinesslike, and were even calculated to raise suspicion. But their Lordships cannot discover anything approaching to fraud in them and it is clear that, as regards the Vice-Consul, he was well aware that Dewji received valuable consideration for his land over and above his purchase money. The amount of consideration was the only point on which this purchase had any reference to the Vice-Consul's

valuation. Their Lordships cannot help thinking that the Zanzibar Court attached far too much importance to the personal recriminations between Mr. Craufurd and the Charlesworths, and that thereby they in great measure lost sight of the real question which they had to decide.

Having rejected the Collector's method the Vice-Consul had to consider how he should arrive at the value. He could not follow the prices obtained by previous sale of parts of the same estate, because there were none such during the critical period. He had only the prices given by the Plaintiffs themselves in December 1895. He would not follow the course of capitalising rental because it was unjust to the Plaintiffs; rentals for such lands being little more than nominal. So he set himself to inquire at what prices neighbouring properties of similar character had changed hands since the promulgation of the railway scheme; paying careful attention to the nature of the properties sold. The Plaintiffs gave evidence of several sales of small building plots in or close to the town of Mombasa at Rs. 1. 8. 0 or even as high as Rs. 1. 15 the square yard. But in that locality there was demand for such building plots, and therefore prices ruled high. In the case of one witness Adamji, whom the Vice-Consul describes as the principal witness for Plaintiffs and commends as thoroughly trustworthy, the Vice-Consul has made some arithmetical mistake, the only one traceable to him. He says that Adamji's prices work out at less than half a rupee per square yard; whereas they do work out at more than Rs.  $1\frac{1}{2}$ . But it remains true that of the small plots, thirteen or so in number, which Adamji mentions as having been sold by him within a short time of giving his evidence in May 1897, every one is near to the town of Mombasa and has a frontage on the main land caravan route

to Makupa. The same witness says that there is no demand for the shambas (the plots) behind. Sales of this kind are clearly of little use for ascertaining the value of the Plaintiffs' land the situation of which, as above described, resembles rather that of the shambas behind than the plots which Adamji sold.

The Vice-Consul paid close attention to sales of land resembling that of the Plaintiffs. One Indian vendor Peerbhoy took Rs. 550 per acre for land adjoining one of the Plaintiffs' plots and of the same character. Another Indian Laka Kanji sold land with a valuable sea-frontage for Rs. 750 per acre. He had bargained with the Plaintiffs to sell it to them at prices beginning at about  $\frac{1}{3}$  of a rupee per square yard and coming down to  $\frac{1}{5}$ . The latter price would be about Rs. 920 per acre. The Plaintiffs either would not or could not buy at that price. Laka Kanji deposed that he was prepared to take less; and he did take less, and expressed himself to be well satisfied with his bargain.

Then there are purchasers of four plots at Kilindini Harbour in more advantageous positions than that of the Plaintiffs' lands. Mr. Baughan, managing partner of Smith, McKenzie, & Co., a commercial firm of high standing, purchased a small plot from the Government for Rs. 550 per acre. In this case there was no question of the additional statutory 15 per cent. which a seller to the Government might claim to have considered as an element of price in a sale made by private contract in order to avoid an arbitration. That would tend to raise the price above Rs. 550. On the other hand the plot had a good sea-frontage, and was in the nature of accommodation land to Mr. Baughan. And he thinks that the price was excessive, and that no other land in Kilindini is worth so much unless attended by exceptional advantages. The same firm acting for Sir Tharia Topan's executors sold

land to the Government at Rs. 550. So did General Mathews, First Minister to the Sultan. So did De Silva a Portuguese owner, in whose case Mr. Craufurd was charged by the Plaintiffs with coercion, and the Zanzibar Court say that every kind of pressure possible seems to have been brought upon him. But the Vice-Consul, before whom the witnesses were examined at great length, holds that whatever pressure there was De Silva knew perfectly well what he was about. Several other cases were examined by the Vice-Consul, who gives his reasons for thinking the prices high or low or about the average mark. The upshot of his investigation was that he awarded sums which, when the statutory 15 per cent. was added, amounted: for the largest plot of the Plaintiffs Charlesworth, Pilling, & Co. to Rs. 750 per acre; for their second plot Rs. 550; for their third plot Rs. 300; for the plot of the Plaintiffs T. D. Charlesworth & Co. Rs. 550. The awards amount in the aggregate to Rs. 43,627.

The Court for Zanzibar awarded sums which, again adding the statutory 15 per cent., amount to Rs. 2,420 per acre throughout, and to an aggregate of Rs. 1,76,997. This is in addition to the Rs. 60,140 awarded for the buildings on the Said-bin-Rashin plot.

Their Lordships will not here express in detail the minor points on which the Zanzibar Court has differed from the Vice-Consul. It must be remembered that the Vice-Consul had, for such an enquiry as this, more than the usual advantages of a Court of First Instance; for besides examining the witnesses he knew the locality and visited the spots in dispute. Moreover their Lordships find that the Vice-Consul explains much more fully than does the Zanzibar Court the mode in which he deduces his values from the evidence; and the values he brings out

are not at nearly so great a distance from those which he examines. It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity. In such an enquiry as the present, relating to subjects abounding with uncertainties, and on which there is little experience, there is more than ordinary room for such guess-work; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at. Nevertheless between the bulk of the evidence referred to by the Zanzibar Court and their valuation at Rs. 2,420 per acre there is a very wide gap; and how is it to be bridged over? The judgment of the Court leaves the answer to that question very uncertain.

One class of evidence which might serve the purpose is that of sales of small building plots in or close to Mombasa. To this the Zanzibar Court appeared to attach some importance, but they mention it rather vaguely and do not show how they apply it. Their Lordships think that the Vice-Consul was quite right in rejecting the sales of town building plots as a guide to the value of land on which, as he shows, there was on 2nd November 1896, and indeed up to the time of his judgment in July 1897, no plot adapted for the building of godowns or bungalows, nor the chance of any. It seems to their Lordships that so far as the Court have followed this sort of evidence, they have followed a misleading guide.



Another piece of evidence relates only to the plot of T. D. Charlesworth & Co. It was purchased by Charlesworth, Pilling, & Co. in April 1896 for Rs. 1,300. In October 1896 they transferred it to T. D. Charlesworth & Co. for Rs. 120,450 (7,000*l.*) paid for by credit notes of T. D. Charlesworth & Co., and as to 6,000*l.* applied to the discharge of a debt due by the former firm to the latter. The Vice-Consul says this was a mere fanciful value invented by the Plaintiffs themselves; being either some family arrangement or effected for the purpose of creating a standard of value. He refused to look at it. The Zanzibar Court say that though the price appears excessive it is not to be entirely disregarded, and that it affords some help in the task of fixing the proper price. To what extent they have relied on it they do not say. Their Lordships agree with the Vice-Consul, and think that to the extent to which the Zanzibar Court have relied on this transaction there has been error in their process.

These are the only specific pieces of evidence which tend to bridge over the gap between the prices on which the Vice-Consul relied and the price of Rs. 2,420 per acre. If that price is to be justified, it must be on some more general considerations. Their Lordships have already out of justice to Mr. Craufurd made some remarks on the disproportionate amount of consideration which the Zanzibar Court bestowed on his conduct. It is difficult to discover that his conduct was relevant at all to the question of compensation as it stood upon appeal, except possibly with regard to the single sale to De Silva; whether it ought to have been taken with the many others with which the Vice-Consul classed it as a fair test of value. The bearing of that is remote, indirect, and on so very small a portion of the case that whichever

way it was decided it could not much influence the result. Yet this enquiry into conduct was the subject of fresh evidence—oral and documentary—none of which related to De Silva, and of half the written judgment. It is difficult to suppose that the Court would have paid so much attention to this matter unless they considered that it must in some way affect their judgment on the question of value. And yet so far as it did affect their judgment it must have led to error.

There is another general consideration of great importance. The sections of the Land Acquisition Act have been stated which provide that land is to be taken at its market value on a given day, and that the Court is not on the one hand to give more because the object for which it is taken is likely to increase its value, nor on the other hand to give less because the same object is likely to increase the value of the owner's remaining land. That appears to their Lordships to exclude for both parties speculations on the effects which the railway may produce on prices except to the extent to which it is shown that such speculations had actually entered into the market price of this sort of land by the 2nd November 1896.

There are some expressions in the judgment of the Vice-Consul (Rec. p. 414) which at first sight look as if he had admitted speculation on the subjects which the Act forbids. Remarks in that sense were made upon them during the argument though the Defendant has accepted the findings of the Vice-Consul and has never sought to disturb them in any way. But on reading the whole judgment together the expressions admit of the construction that the learned Judge was doing no more than trying to ascertain how far such speculations had actually affected men's dealings in the market. So read, they are in

accord with the whole tenor of his reasoning, which bases his valuation on inferences from ascertained transactions. He points out that a year earlier the value would have been much less, that the Government had been badly served, and there had been such delay in introducing the Land Acquisition Act and in making the declaration under it that before the 2nd November 1896 the Government itself had created special values.

The Zanzibar Court treat the matter very differently. After disposing of Mr. Craufurd's purchases and expressing agreement with the learned Judge below that if the Government had come promptly into the field they would have had to pay very little, they continue as follows:—

“ The purchases made by Mr. Craufurd, which have been  
“ dealt with already not constituting in our opinion such sales  
“ as to give us a fair and proper rate, we must rely on other  
“ facts and the evidence produced at the trial in the Court  
“ below.

“ When we consider the potential or prospective value of the  
“ land taken, whether what was or is now mere agricultural  
“ land will probably in a few years time become valuable, we  
“ must bear in mind the fact that all this land is in close  
“ proximity and contiguous with the terminus of a railway  
“ running many hundreds of miles into the heart of the African  
“ Continent, for the construction of which 3,000,000*l.* has  
“ been voted by the Imperial Government. Although the  
“ Plaintiffs' view of value in the future may be somewhat  
“ sanguine, yet we think the learned Judge was also some-  
“ what pessimistic; a railway must increase trade and traffic,  
“ and the value of building sites near its most important  
“ station, which undoubtedly is Mombasa.”

The only “other fact” mentioned besides the evidence of specific purchases on which the Vice-Consul proceeded and on which their Lordships have already commented, is the sale by one of the Plaintiffs to the other at a fictitious price. For after mentioning this and referring to the opinions of two gentlemen who gave evidence, and of another gentleman who was not called, as to the prospects of the Protectorate, they inclined

to the opinion that it is in a prosperous condition  
 “ and it is legitimate to infer that the railway has  
 “ been a most important factor in effecting it.”  
 They then add “ On therefore the potential values  
 “ we feel bound to differ from the learned Judge,  
 “ and for that reason to estimate more highly  
 “ the properties the subject of this Appeal.”  
 (Rec. p. 492.)

Their Lordships cannot read this part of the judgment without seeing that the learned Judges have admitted into their minds those very considerations which the Act directs them to exclude viz., speculations on the value likely to be conferred on the land taken for the railway by the construction of the railway itself. To what extent their valuation has been affected thereby does not appear, but it may easily account, even if standing alone, for any amount of increase over a market price which has been inferred from an examination of actual transactions.

Their Lordships conclude that the valuation of the Vice-Consul is more consonant to the evidence and is based on sounder principles than that of the Zanzibar Court. The Plaintiffs have profited largely by advances in the prosperity of the Protectorate which have been caused by the advent of the British Government and by the action it has taken. If the officials had acted promptly the Plaintiffs would have got little if anything more than their purchase money plus the statutory 15 per cent. As it is they have by the Vice-Consul's valuation got within twelve months: for one plot twice what they paid for it, for another half as much again, for a third fifteen times as much, and for the fourth six times as much. The very large increase on those prices which the Zanzibar Court has awarded is due either to attending to evidence not properly applicable to

he case, or to general considerations which ought not to have been allowed to enter into the mind at all. As regards evidence they have given misleading importance to sales of small building plots within or close to Mombasa; and they have treated the transfer from one set of Plaintiffs to the other as if it had some relation to market value. As regards general considerations, possibly that of the behaviour of the Collector, and certainly the large importance attached to "potential values" have been sources of error.

The Zanzibar Court made one decree on both Appeals of the Plaintiffs. It should have dismissed both with costs. Their Lordships will humbly advise His Majesty the King to make an Order to that effect on the Defendant's Appeals, and to dismiss the Plaintiffs' Appeals. The Plaintiffs must pay to the Defendant the costs of the consolidated Appeals.

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