

(71)

OFFICE OF THE GOVERNOR-GENERAL OF
SOUTH AFRICA.

No.

3 / 335

OFFICE OR INDIVIDUAL

from
Ministers.
(367)
/911.

31 March

SUBJECT

Submission to arbitration of certain pecuniary claims outstanding between the U.S.A. & Great Britain.

States that they cannot agree to the case of the late Mr. Brown being included.

PREVIOUS PAPERS

3/320.

4/4/11. To S of S. (telegram)

5/4/11. To " , Conf. No. 4.

5/4/11. To Ministers.

MINUTES

? Communicate Summary by telegraph. Draft submitted. Caption by despatch. Ask Ministers to return original papers sent to them for perusal

B.

3/4/11.

U.S.

Draft tel. to S of S submitted for consideration. The point of international procedure raised by Ministers is interesting, and perhaps a little unfortunate in view of the S of S. statement in his tel. of 23 Feb (file 3/263) that if the U.S.A. insisted on arbitration, the claim would have to go to arbitration, as otherwise the acceptance of the Treaty would be imperilled.

In their Minute Ministers make no reference to the other ~~case~~ case (the claim of the

SUBSEQUENT PAPERS

3/352

No.

3 / 335

Ministers submit that the claim of Mr. Brown's representatives falls within both these categories.

7. For these reasons Ministers would not feel justified in undertaking to satisfy the terms of any award that an international tribunal might make in the matter and they further respectfully submit that an undesirable precedent would be created if a foreign government could invoke international arbitration to determine a claim by one of its citizens merely because that citizen was dissatisfied with the decision of the municipal court upon that claim or was advised that he could not expect from such court a decision with which he would be satisfied.

Booth

Miss Booth

would have depended on the evidence which Mr. Brown's representatives were able to adduce. The difficulty, if any, appears to have lain in the fact that Mr. Brown's representatives were not in a position to place before the Court any evidence in support of the statements which they were ready to make to the Transvaal Executive in 1902. No doubt the obtaining of such evidence would have been difficult and perhaps impossible. If Mr. Brown's representatives had obtained such evidence they might have brought it before the Court and so obtained a removal of whatever bar there was to the enforcement of the judgment obtained by Mr. Brown in 1897. If there was no such evidence the Transvaal Executive was not entitled to take any special administrative or legislative action and no body of international arbitrators would appear to be in any better position to decide the matter, for any evidence which could be placed before them to enable them to decide, could at the present time with greater convenience be placed before the Courts of the Transvaal Province.

To summarize: Mr. Brown in 1897 did not exhaust all forms of legal redress open to him, and in 1902 his representatives failed and have since failed to pursue the matter in the newly constituted Courts. The refusal of the Transvaal Government and His Majesty's Government to take special administrative or legislative action was therefore to be expected. If that is so, it is difficult to follow why an international tribunal should be invoked.

6. Ministers assume that His Majesty's Government would always decline to submit claims to international arbitration if municipal courts exist or have existed capable of adjudicating upon the same or if the claimant has not exhausted all means of redress in such courts.

Ministers can only state with regard to this, that in the records of the Republic at their disposal there is no evidence in support of these allegations, but even if those allegations were correct Ministers are advised that according to the Roman Dutch law and the practice of South Africa Mr. Brown might have proceeded, on the ground of alleged malice or corruption on the part of the Court, for the review of the judgment dismissing his application. The answer of Mr. Brown's representatives to this is that he was advised that the Court was so constituted that it would have been impossible for him to have obtained this redress. Be that as it may, there was nothing to prevent Mr. Brown's representatives, after June 1902 when the Supreme Court of the Transvaal Colony was constituted, from seeking similar redress or from bringing proceedings to enforce the final judgment given in his favour in 1897. Mr. Brown's representatives appear however to have preferred the expedient of endeavouring to move the newly constituted Transvaal Government to grant redress by an Executive or Legislative act. In fact they asked the Transvaal Government, upon statements the truth of which they say the Courts of the country could not test, to act arbitrarily in his favour and as against the then holders of the claims, a mode of procedure which he complains was followed by the Republican Government in 1897 and applied against him and in favour of those holders. Mr. Brown's representatives aver that it was impossible for the judges of the newly constituted Supreme Court if he had taken proceedings before it to enter into the motives that had actuated their predecessors in dismissing his application in 1897. Such proceedings Ministers are advised were not impossible and the result

4. Ministers have the honour to submit that no facts have been brought to light other than those before His Majesty's Government and the Transvaal Government in 1902 and 1903 and that therefore there is no justification for a reopening of the matter.

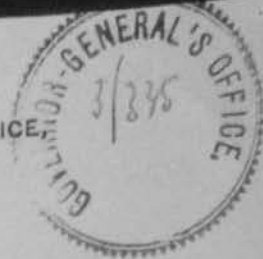
5. Ministers have nevertheless carefully considered the facts of the case as placed before His Majesty's Government and the Transvaal Government in 1902 and they now desire to state how those facts present themselves to them.

Mr. Brown's case, as put forward by his representatives, was that he had obtained a final judgment of the late High Court of the South African Republic declaring him to be entitled to licenses for certain gold mining claims in the Transvaal or in the alternative to damages, that the issue of licenses in a form which carried a right to renewal was wrongfully refused by the Republican officials and that the High Court, constituted of different judges from those composing the Court which gave the judgment, unlawfully and corruptly refused to assist him in enforcing the judgment.

The claim of Mr. Brown's representatives first to intervention by His Majesty's Government and the Crown Colony Government of the Transvaal is based entirely upon ex parte statements that the judges who had pronounced judgment in his favour had been dismissed or forced to resign on account of that judgment, that the successors of these judges had been appointed under a pledge to prevent his enforcing the judgment, and that the dismissal of the application made by him to the newly appointed judges was due to this alleged pledge.

ATTORNEY-GENERAL'S OFFICE

CAPE TOWN,



PRIME MINISTER'S OFFICE,

CAPE TOWN.

31 March, 1911.

Confidential.Minute No. 367

Enclosure No.....in South Africa Despatch.

Conf: No....4.....of 5/4/11.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor-General's Minute No. 3/263 of the 8th March covering a telegram dated the 13rd February from the Secretary of State for the Colonies with reference to a suggested arbitration between His Majesty's Government and the Government of the United States as to the claim of the late Mr. Brown.

2. Ministers have the honour to inform His Excellency that they cannot advise him to accept on behalf of the Union Government liability for any adverse award that might be given by the arbitrators in the event of His Majesty's Government allowing Mr. Brown's claim to be submitted to arbitration.

3. Ministers have the honour to point out that while the Union Government has succeeded to the obligations of the Government of the late Transvaal Colony, the latter Government by despatch Transvaal No. 732 of the 22nd December 1902 from Lord Milner to Mr. Chamberlain advised His Majesty's Government that it was unable to recognize Mr. Brown's claim, and to point out further that His Majesty's Government from a letter addressed on the 11th August 1903 to Mr. Blackstock (Mr. Brown's representative) appears to have endorsed the view taken by the Transvaal Government and to have communicated its decision to the Government of the United States.

App'd
4-4-11
3-4-11

Sent
4-4-11



To S. of S.

4 April 1911

Your tel of 23 Feb. Reunary claims convention with United States.

^{in a long & earnest statement}
Ministers inform me that they cannot advise acceptance of liability on behalf of Union Govt for any adverse award in event of Brown's claim being allowed to go to arbitration.

They review circumstances of case in a long minute which I am forwarding by mail, arguing that Brown and his representatives did not exhaust all means of redress in Transvaal Courts and deprecating as undesirable precedent reference to ~~an~~ international arbitration of claim by a foreigner ~~subject~~ merely because he was dissatisfied with decision of Municipal Court or was advised that he could not expect from such Court decision with which he would be satisfied.

Ministers have not yet replied as to claim of Union Bridge Company. I am calling their attention to omission and will report ^{answer} as soon as possible.

SOUTH AFRICA.

CONFIDENTIAL, No. 4.



Government House,
Cape Town.

5-14 April, 1911.

Sir,

With reference to my telegram of the 4th. April regarding the Pecuniary Claims Convention with the United States, I have the honour to transmit to you a copy of a Minute from my Ministers on the subject.

2. It will be observed that Ministers make no reference to the claim of the Union Bridge Company, the omission doubtless being due to the fact that His Majesty's Government have undertaken full responsibility in regard to that claim.

I have the honour to be,

Sir,

Your most obedient,

humble Servant,

(s^d) Gladstone

GOVERNOR-GENERAL.

The Right Honourable

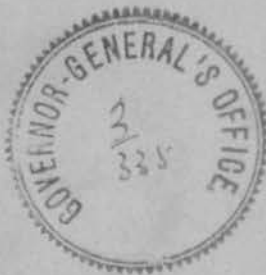
Lewis Harcourt, M.P.,

etc., etc., etc.,

Downing Street,

LONDON.

No. 367
31 March



Government House,
Cape Town.

5 April, 1911.

CONFIDENTIAL.

MINUTE No. 3/335.

The Governor-General acknowledges the receipt of Ministers' Confidential Minute No. 367 of the 31st. March regarding the Pecuniary Claims Convention with the United States, and requests the return of the papers regarding Mr. R.E. Brown's claim referred to in the third paragraph of his Confidential Minute No. 3/263 of the 8th. March.

(Sgd.) GLADSTONE

GOVERNOR-GENERAL.

Union Bridge Company
which was also proposed
for reference to arbitration
I think their attention
might be called to
this omission by
Minute

H.S.
3/4/11

G.

J.L. 11

Prepare despatch & minute

H.S.
3/4/11

As H.M.G. say that they
accept full responsibility
in regard to the claim
of the Union Bridge Co
no answer is necessary
from Ministers on this
point. I had overlooked
this statement in the
I. of S. telegram

H.S.
4/4/11

H.S.
For approval

H.S.
5/4/11

G.

J.L. 11