

COMPLAINTS OF CREDITORS OF THE ORTHODOX
PATRIARCHATE OF JERUSALEM AGAINST
ADMINISTRATIVE MEASURES OF THE
PALESTINE GOVERNMENT.

PUBLISHED
BY
D. I. MURR
Advocate, Jerusalem

1925

Greek Convent Press

PC
BX
440
C66
1925
PAL

**MEMORANDUM SUBMITTED TO THE SECRETARY
OF STATE, COLONIAL OFFICE, LONDON. re the
debt due to Mrs. Herbert H. Clark, American
Citizen of Jerusalem, by the Orthodox
Patriarchate of Jerusalem.**

1. The Orthodox Patriarchate of Jerusalem admits to be indebted to Mrs. Herbert H. Clark of that city for the sum of £.E. 8500 including interest which has been invested in the Patriarchate Bonds before the War.

2. During the war payment of the Patriarchate debts was naturally impossible but soon after the British occupation of Palestine the Patriarchate, while being protected by a moratorium ordered by British Authorities against proceedings of their creditors made every effort to satisfy the latter and succeeded in procuring the necessary funds by contracting a loan with the National Bank of Greece which sufficed to pay all their debts; but the British Administration "vetoed the loan" (vide report of the Commission appointed by the Government of Palestine to enquire into the affairs of the Patriarchate of Jerusalem, page 35).

3. The Creditors were greatly disappointed but soon found relief in the Government's admission that the Patriarchate has secured the necessary funds for payment of debts and that the British Administration having opposed it is under obligation "to render to the Patriarchate a service of the same nature as that of the National Bank (see report above quoted page 202). The debts therefore were still considered as good debts.

4. It was soon found that the help promised was not



of the same nature as that offered by the National Bank of Greece but consisted in keeping the moratorium for an unlimited period and providing a kind of "advisory" or rather "mandatory" commission to the Patriarchate to liquidate its debts.

But although this kind of help was not to give the creditors the advantages they had been offered by the National Bank of Greece, the creditors still hoped that through the supervision of a British Commission the liquidation could be carried out in two years and the full settlement of the debts will be made, as the Government's own commission of enquiry admits that only a part of the agricultural property of the Patriarchate (other than that having historical or religious value) could easily suffice to pay off the debts, (see Report above quoted Page 198).

5. This was indeed justified by the fact that the Patriarchate had already concluded a sale of a part of their property for a sum of £.E. 350,000 in December 1921, and had already received a cheque of £.E. 10,000 on account of the price. All that the commission of Liquidation had to do, was to execute the contract of this sale, receive the price and conclude another sale of lands of the same category.

6. It was not even necessary to have another sale—(although such a sale was under preliminary negotiation by the Patriarchate) the proceeds of the already concluded sale were more than sufficient to pay off all interests in such a way as to restore the credit of the Patriarchate to its pre-war conditions when the bonds of the Orthodox convent were similar to those of Government Treasury being negotiable in the market without difficulty and their bearers could have the money invested therein refunded not by cashing same from the Patriarchate but by ceding over the bonds to other persons seeking good investment as it is well known that the immense assets of the Patriarchate under British control constitutes excellent security.

7. The Commissioners however found their way to disappoint both creditors and debtors by delaying the sale for about 9 months and by reducing the amount from £.E. 350,000 to £.E. 206,000.

This meant for the creditors a reduction of over £.E. 140,000 of the funds available for distribution to them, and the loss of the occasion of the favourable market (the price of land having during this delay fallen considerably) which resulted in the purchaser's (the Palestine Land Development Company) losing contracts of sale they had in their turn concluded on parcels of land included in their purchase, and caused the inability of the said company to pay the instalments regularly on maturity as they could have done had no such delay taken place.

8. The creditors were desirous to attribute this delay and reduction of the sale, -which is indisputably detrimental to their interests, -to some imperative necessity for the safeguard of the interests of the Patriarchate, and seeking for an explanation, they were told that the reduction was due to the exclusion of 70,000 pics (at £.E. 2 each), of land from the sale being the property of the Government and that the delay was due to the necessity of negotiating new clauses for obtaining security for the payment of instalments (Letter of the High Commissioner to me dated 8th December, 1922 Adm. 2017).

It was soon found that the Palestine Government was under a misapprehension as the 70,000 pics in question were agreed to be given to the Palestine Land Development Company, from the Nikoforieh land which is adjacent to the Antiochos piece from which the 70,000 pics were to be set apart for the Government.

The desire of purchasers to take over such an area at the same price from the Nikoforieh piece has even continued to exist after the fall of prices and they stipulated a condition to this effect in ART. 3 (H) of the Supplement drawn up several months later by the Commission.

As to the new protective clauses for assuring the payment of instalments, it is unnecessary to discuss their legal value as it is easy to see that they gave no protection whatever when the instalments fell due and were not paid. The Palestine Land Development Company dictated their terms and reduced the instalments from £. E. 24,000 every 3 months to £. E. 3,000 a month. Even this has not been regularly paid as since 3 months the creditors are informed no payments had been made and the costly protective clauses gave no protection (see Report of the Commission on the Finances of the Patriarchate dated 31st March 1924 page 2).

9. The Commissioners received from the proceeds of the big sale up to March 1924, £. E. 99,115, and within the last six months, ending February 1924, the sum of £. E. 25,662 from sale of other properties.

It was expected that the Commission would comply with the elementary principles of the liquidation respected in every country and distribute the funds available a prorata among the creditors, as it has no right to consider any preference except that made by law but the commission set aside such rules and the High Commissioner approved of their policy of preferential treatment both in his above letter of 8th December 1922, and on various occasions.

10. The Commission offered to pay my client "in land," i. e. to cede to her a piece of land equivalent in value to her debt, but the price they asked for was beyond any reasonable limit and it was not to the interest of my client to consent to any such proposal.

11. On or about the end of May 1924, a new Commission was appointed under the Presidency of Sir Gilbert Clayton, the official now Administering the Palestine Government. This new Commission repudiated the methods of the previous one. They offered no settlement "in land" nor did they show the creditors what prospects

they had for obtaining cash and in what time they expected to pay the debts.

The past experience of over three years has shown that the measures taken by the Government through the Commission have proved to be far from being efficient to effect a liquidation, of the debts of the Patriarchate, and it becomes really hopeless for the creditors to obtain payment of their debts through that illegal body. It is sufficient to say that the former Commission took up the control of the Patriarchate in September 1921, the debts were then £. E. 636,700, it has already been shown that the Commissioners have received £. E. 99,115 from the proceeds of the big sale of the Palestine Land Development Company up to February 1924. They have also received during the last 6 months ending on that date from proceeds of small sales £. E. 25,662 making a total of £. E. 124,777.

The Commission has reported that the debts of the Patriarchate have only been reduced at the end of February 1924 to £E. 597,659. If it has taken them over two years to pay about 40,000; 29 years will then be necessary to pay £E. 580,000 which is about the whole debt in capital. But it is not to be forgotten that an interest of 9% (at the legal rate) is running in the meantime against the Patriarchate and such interest accumulating will leave the debtors in the same situation.

Could it be hoped that the receipts of the new commission would be better in future. This question is not answered by the Commission

The creditors can only say that the former commission has been most lucky in finding great sales already concluded by the Patriarchate with occasions most favourable which are not likely to occur again.

What renders the situation of the creditors still worse is that neither the commissioners nor the Government could be held responsible for any prejudice that may be caused to the creditors through their action. (See Orthodox Patriarchate Ordinance 1921 Sec. 14 (II)).

I therefore beg to submit:-

That the existence of the moratorium is illegal and prejudicial to both the creditors and the Patriarchate. It is illegal because the intervention of the Government could only be justified when necessitated by public order or public policy. There is no necessity of public order as the Patriarchate is not in a state of Bankruptcy and a part of its assets which have no historical or religious value are quite sufficient to pay off all the debts, (See above No. 4) nor is there any necessity of public policy as it could not be conceived that such policy would aim at the destruction of the credit of the Patriarchate whose Bonds are now being sold at 50% of their face value; in consequence of Government intervention, nor could it be believed that it is for the public good to create a precedent for other Institutions who could ask for such a moratorium when they find themselves in a similar situation as this would prejudice credit in general in the country. The protection of the Patriarchate against the sale of the assets under their real value is sufficiently provided for by the general Laws and Ordinances which provide that the President of the District Court is authorised to refuse the sale of property when the real value is not obtained and the practice has been that every sale is preceded by an evaluation of experts.

The refusal or delay of selling land of the Patriarchate in the same way as that of the other debtors merely because a better price may be fetched is a speculation which has proved dangerous to the debtor rather than protective and no other administration has ever taken the responsibility of such speculative measures.

It is also to be noted that the above measures taken by the Government are in no way satisfactory to the Patriarchate who has repeatedly protested against the existence of the Commission as at present constituted.

In view of the above, I beg to request that the Moratorium existing in favour of the Orthodox Patriarchate of Jerusalem be removed and the said Institute be

treated like ordinary debtors but if the moratorium is to remain at all costs it should at least be allowed only for a reasonable and limited period and sufficient guarantee should be given to the creditors that such a period will not be exceeded and the interest of the debts will be regularly paid.

(Sgd.) D.I. MURR

London, 22nd August 1924.

SECRETARIAT,
GOVERNMENT OFFICES,
JERUSALEM.

5th November, 1924

Adm. 26/2017

Sir,

I have the honour to refer to your memoranda, on the subject of the debts due by the Orthodox Patriarchate of Jerusalem to Mrs. Herbert E. Clark of Jerusalem, and to the Zervudachi Bankruptcy of Alexandria, which were presented by you to the Secretary of State.

2. The proceeds of the sale of only a part of the agricultural property of the Patriarchate would no doubt have sufficed to pay off all its debts. On the other hand, it was not, at the period to which you refer, nor has it subsequently been, easy to find purchasers. Indeed at no time since the formation of the Commission on the Finances of the Patriarchate has an opportunity presented itself of liquidating the debts of the Patriarchate by selling its property on a large scale.

3. You suggest that, when the Commissioners entered into office, arrangements had already been completed for the sale of a part of the property of the Patriarchate in the amount of £E. 350,000, but you overlook the fact mentioned in the Annual Report of the Commission for the year ending 31st August, 1922,—that on examination of the draft contract it was found necessary to alter in favour of the Patriarchate, the essential clauses respecting the guarantees to be given by the Company.

4. In the form in which the Deed of sale was first submitted by the Patriarchate to the Commissioners, the High Commissioner must certainly have refused to allow the sale to go forward.

The Commissioners were obliged to reduce the area to be sold by 70,000 square pics, because the records of the Land Registry showed that the plot thereby excluded from the sale, was Government property.

So much for the past.

5. As for the present and the future the present Commission has already decided to follow the policy which you commend, of complying with the universally accepted condition of liquidation, to distribute funds available pro rata amongst creditors without favour or discrimination. The Commission proposes, at an early date, to invite all creditors to prove their debts. This requirement should eliminate amounts in respect of exorbitant interests or the treatment of certain borrowings as on a gold basis, and reduce the interest-bearing debt of the Patriarchate correspondingly.

6. There is no cause to apprehend that the receipts of the Commission will not, in the future, be larger than they have been in the past. The revenue of the Patriarchate accruing in the main from rents has been much curtailed since the war by the operation of the Rents Restriction Ordinance. That Ordinance no longer applies to private houses, and will probably cease to apply to shops as from next Moharrem: the income of the Patriarchate will then be appreciably augmented, and it is hoped that it will thenceforth be consistently in excess of outgoings.

I have the honour to be,

D.I. MURR, B.A.,LL.B.

Sir,

Jerusalem.

Your obedient servant,

(Sgd.) **N. BENTWITCH**

A/ Chief Secretary.

Jerusalem November 28th 1924.

**The Under Secretary of State
Colonial Office**

LONDON S.W. 1.

Sir,

With further reference to your letter of 8th September 1924 No. 41003/ 1924 I have the honour to forward herewith copy of a letter dated 5th Nov. 1924 No. Adm. 26/2017 received from H.E. The Chief Secretary in reply to my memorandum of 22nd August 1924, submitted to you in London relating to the claims of Mrs. H. E. Clark of Jerusalem and the George Zervudachi Bankruptcy of Alexandria against the Orthodox Patriarchate of Jerusalem.

1. The Chief Secretary does not contest the facts mentioned in my memorandum i. e.

(a) the prohibition of the Government to the Patriarchate to pay the creditors by procuring a loan from the National Bank of Greece explained in No. 2 of my memorandum (I refer to numbers of paragraphs of the memorandum submitted on behalf of Mrs. H, E. Clark).

(b) the promise made by the Government to render a service "of the same nature" as that offered by the National Bank of Greece and the failure of the Government to carry out this undertaking as shown under No. 3 and 4 of my memorandum.

The Government of Palestine does not therefore contest their responsibility to the creditors for the non payment of their debt in full.

2. Nor does the Chief Secretary contest that the Government has deprived the creditors of the sum of L.E. 140,000 by reducing the sale of a part of the properties

of the Patriarchate from L.E. 350,000 to L. E. 206,000 and have prejudiced their interests by delaying the sale over 9 months as shown in my memorandum under No. 7 and 8.

I have already in my above memorandum sub No. 8 shown the explanation given by the Government in their letter to me dated 8th December 1922 No. Adm. 2017 and have fully answered to same under No. 8 of my memorandum. In this letter the Chief Secretary pointed out at that time the necessity of excluding 70,000 pics (at L.E. 2 a pic) being the property of the Government as the reason for the reduction of L. E. 140,000 and the desirability of introducing protective clauses for assuring the payment of the price as the reason for the delay. It will be remembered that I have shown that the understanding with the purchasers was to replace these 70,000 pics by the same area from an adjacent piece of land called Nicoforia. As to the costly protective clauses, I have pointed out that these were tested and proved unprotective as they could not prevent the purchasers from reducing instalments from L.E. 24,000 every 3 months to L. E. 3000 a month and even refusing to pay the reduced instalments (See report of the Commission of March 31st 1924) although transactions concluded by them every day (Purchase of Sursocks lands etc.) show that they have funds at their disposal which will enable them to pay the whole amount at once. It is astonishing that the Chief Secretary should give identical reasons as already given by the Government in their above letter without attempting in any way to contest my answer to the Government explanation and reasons.

3. The main question of the creditors has been "are we ever to be paid? and if so, when?" It has been shown in my memorandum under No. 11 that an experience of 3 years has shown mathematically that the liquidation will never be effected and the debts will never be paid by the measures taken by the Government through the Commission of the Patriarchate.

The facts and reasons leading to this apprehension are given by the Commission themselves as although unusual sums have been received the amount which has been paid of the debts has been so small as not to exceed the interest.

The Chief Secretary confirms the creditors views that no funds are to be expected from the proceeds of sales on a large scale. Whence should the funds come then ?

The Chief Secretary mentions two ways through which he hopes to arrive to a settlement of the debts exceeding half a million i.e. reduction of debts by eliminating amounts of exorbitant interest and the treatment of certain borrowings as on a gold basis and increase in the rents. These reductions are estimated at L. E. 66914 (Bertram Report page 299) but a large part has already been confirmed. Such hopes are, when reduced to practice nothing but illusions as the idea of paying other than the amount promised is not in accordance with universally accepted business morals. The bills being negotiable have in many cases passed to other hands and consequently the holders for value are in every case entitled to the full sums promised. The matter and fact that most of the bonds are made in foreign money, added to above reasons make it a most doubtful case to take up. It is interesting to say that other Institutes such as the Franciscans, the Jewish Companies, the American University of Beirut etc. etc. had been exactly in the same situation but none of them had thought it good to do what the commission is now planning. At any rate whether the Commission is right in this or not, it does not in any way make my clients any nearer to receive payment. I do not mean to advise the Commission not to attempt to fight their cases with certain creditors but, the principles of liquidation do not permit that debts uncontested like those of my clients should be delayed as the contested debts could be registered as such and the pro rata amounts belonging thereto reserved.

As to the expected increase of the rents it is un-

derstood that the attempt of the Commission is to render them 50% more than what they now are.

The rents being now L.E. 11,338 (See above report) will not exceed L. E. 16,000 in the coming year. But the Commission have shown in their report a deficiency in the budget of the Convent which will be first paid, leaving nothing for the creditors. The creditors are then justified in concluding that they will never be paid if the plans of the Commission are nothing more than what the Chief Secretary shows them to be.

Yet the Commission has been created for the protection of the creditors.

In point of fact **nothing** has been done for the creditors and in **reality** protection is necessary against the said "protectors."

4. The Chief Secretary states that for the present and the future the Government has decided to follow the policy which I commend with the universally accepted condition of liquidation. These universally accepted conditions have been set out in my memorandum submitted to H. E. the High Commissioner on behalf of the creditors on October 19th 1922.

They are:

- (a) Equality of treatment hence the necessity of suppressing preferential policy.
- (b) Control of the liquidation by creditors who should themselves appoint the liquidators.
- (c) Responsibility of liquidators for their "faute lourde."

My suggestions were refused by the Government who in the above quoted letter of 8th December 1922 sanctioned and confirmed the violation of principles adopted—certainly not without reason—in every country and at every time, and the Commission was allowed to continue to commit the most inequitable blunders.

Although the error was obvious to everybody, it

took three years for the Government to see that it is now necessary to respect the principle of equality among creditors and to follow the policy which I commend.

The wrong however has been done and no body is responsible.

5. Yet while deciding to respect one of the principles of liquidation they sanction the violation of the other principles i.e. that of the control of liquidation by creditors and the responsibility of liquidators to creditors.

What is most surprising is that the Government considers the debtor as insolvent, (letter of Commission to me dated July 14th 1924 No 17/OP/1/2) hence, the greater necessity to conform to the principles above stated as the assets of an insolvent debtor are really the property of the creditors and the interference with it in this way constitutes a violation to the right of private property which has always been sacred to British Authority.

6. One must be permitted to doubt the wisdom of appointing persons who have never previously in their careers undertaken similar duties, neither have they acquired the necessary experience for the managing, and liquidating of an estate worth several millions.

At least if the Government persists in having a commission two cardinal conditions should be observed:

- (1) The Commission should be for the protection of the creditors as well.
- (2) It is to be composed of individuals approved by them or at least of individuals who are properly qualified.

I make bold to say that there is not one member of the present commission who has proper **business** experience.

My clients are therefore justified in insisting that they be allowed to elect professional liquidators who have had the necessary business training.

The Government admits that with regards to "saleable lands" and property of no historical nor religious interest, the Patriarchate cannot be treated differently from any other person. Such lands and property, have already been determined and should be handed over to the Assembly of Creditors. The intervention of the Government has no longer any *raison d'être*.

For the above reasons and,

Whereas the Government of Palestine cannot say when will it be possible to pay the creditors, nor point out to a practical scheme making it possible for them to expect payment, and

Whereas the said Government has been unable to show why the creditors should not logically conclude that they will never be paid through the measures now carried out and,

Whereas an everlasting moratorium is in no way admissible,

I beg to confirm my former submission that the Government's intervention is illegal, injurious, and without any *raison d'être* and to request that the moratorium be cancelled leaving it to the Courts to take the necessary protective measures for both the interests of creditors and debtors in the same way as hitherto done with success in respect of other persons.

I have the honour to be

Sir,

Your obedient servant

(Sgd.) **D.I. MURR**

Jerusalem January 4th. 1925

The Under Secretary of State
Colonial Office
London S. W. 1

Sir,

With further reference to your letter of 8th. September 1924 No. 41003/1924 and in continuation of my letter of November 28th 1924, I have the honour to submit to you herewith copy of the Resolutions of the creditors of the Orthodox Patriarchate of Jerusalem passed on the 18th of December 1924.

I have the honour to be

Sir,

Your obedient servant.

(Sgd.) D.I. MURK

**Resolutions of the creditors of the Orthodox
Patriarchate of Jerusalem**

18/12/1924

A general meeting of creditors of the Orthodox Patriarchate of Jerusalem was held on Thursday December 18th 1924 at 3 p.m. in the Chamber of Commerce under the presidency of Mr. Shelley.

Eighty creditors were present and represented, among whom the directors of the Credit Lyonnais Bank, The Banco di Roma, the Anglo-Palestine and the bankruptcy of George Zervudachi of Alexandria.

Discussion elicited the following facts which have vitally effected the interests of the creditors:

1. The Commission on the Finances of the Orthodox Patriarchate of Jerusalem appointed by the Palestine Government has practically existed for about four years costing heavy expenses with no benefit to the creditors and great loss of prestige and confidence in the Patriarchate.

2. The said Commission has proved itself incapable of dealing with the matter in a business-like and efficient manner.

8. It has failed to carry out the suggestions made by Sir Anton Bertram thus nullifying the costly and important services of an expert in Greek Church Temporalities.

4. It has shown itself utterly callous and unsympathetic towards poor creditors whose sole capital was locked up, in the Patriarchate thus forcing them into the position of paupers and treating them as beggars whenever they approached the Commission.

In view of the above facts and also of the very serious blow dealt to creditors' interests by the Government in refusing the help of the National Bank of Greece years ago, thus practically accepting the responsibility of providing equal facilities for the payment of debts, this meeting unanimously agrees to press the following points:

1) That the Government should accept the proffered loan now offered by the National Bank of Greece to be applied exclusively to the payment of Patriarchate debts and in the first place to creditors not connected with the Convent; it being understood that the conditions laid down by the Bank are both moderate non political and sympathetic.

2) Failing this that the Government be held directly responsible to creditors for their capital and interest.

3) Prohibition to the Commission to sell any more property and to functioning in any way pending arrival of the loan.

4) That local Banks should act as Trustees of the Loan assisted by an official from the National Bank of Greece.

5) That local claims acknowledged by the Patriarch as true should be settled by the Trustee Banks without any other interference whatever. It is emphasized that the Patriarch knows why and wherefore the deposit was made and the circumstances effecting the transaction (in many cases amounting to a loan in order to help the Convent over a crisis) and therefore

he is best able to reimburse the money and to close down the whole matter with grace and gratitude upon his own part.

6) That the balance remaining due to the Patriarchate by the Palestine Land Development Co. should be exclusively used for the payment of the creditors.

7) That in case the loan proposed by the National Bank of Greece should for any reason not be concluded the creditors request the abolition of the Commission considering its existence as prejudicial to both their interests as well as those of the Patriarchate.

The creditors maintain that the Government intervention is unnecessary and uncalled for, that they could arrange their affairs direct with the Patriarchate much better than through such a body as in case any difficulty arises the Courts could always deal efficiently therewith giving fair and due protection to all parties when necessary.

In order to carry out the above Resolutions, the following creditors have been elected as an executive committee under the presidency of Mr. E. Shelley.

A. P. S. Clark Esq. Manager of the Anglo Egyptian Bank Ltd.
Jerusalem
J. Spagnolo Esq. „ „ „ Banco di Roma „
Dr. Levy „ „ „ Anglo Palestine Bank „
Coustandi Salameh Esq., merchant and contractor—Jerusalem
Maitre D. I. Murr, Advocate—Jerusalem
Yacoub Jumeiaan Esq. merchant,—Jerusalem.

No answer has been received from the Colonial Office.