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SESSION OF THE DANISH WEST INDIES.

LETTER FROM THE SECRETARY OF STATE TO THE CHAIRMAN OF
THE COMMITTEE ON FOREIGN RELATIONS TRANSMITTING A
SUMMARY MEMORANDUM RELATIVE TO CERTAIN ARTICLES OF
THE PROPOSED TREATY WITH DENMARK CEDING TO THE UNITED
STATES THE DANISH WEST INDIES.

Printed in confidence for the use of the Committee on Foreign Relations.

DEPARTMENT OF STATE,
Washington, August 22, 1916.

MY DEAR SENATOR STONE: I have received your memorandum
requesting further information in regard to the following articles of
the proposed treaty with Denmark ceding to the United States the
Danish West India Islands: Article 2, article 3, article 6, article 8
(clause 3), article 9, and article 10.

In reply, I have had prepared and inclose herewith a summary
memorandum which, I believe, contains the information that you
desire. If I can be of further assistance to you or can furnish you
with any copies of the original documents from which the inclosed
memorandum was compiled, I shall, as you know, be very glad to
do so.

I am, my dear Mr. Senator,
Very truly, yours,

ROBERT LANSING.

Hon. WILLIAM J. STONE,
United States Senate.

UNIVERSITY OF CALIFORNIA
LOS ANGELES

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TREATY CEDING DANISH WEST INDIES TO THE UNITED STATES.

SUMMARY MEMORANDUM.

ARTICLE II.

In regard to the last paragraph of this article, the American minister in Copenhagen telegraphs the following note which he has received on this point from the minister of foreign affairs:

(Paraphrase.)

The churches in the Danish West India Islands belonging to the Established Church, are owned by the Danish State, and the expenses connected with their maintenance and repairs are appropriated for in the annual budgets. An exception to this is the church on Kings Hill, which was built by an association in this country, now the West India Church Union. This union still owns the church and keeps it in repair, but the Danish State defrays the stipend to the clergymen appointed to this church.

The endowments, if any, bestowed on the churches, are not comprised in the annual estimate of income and expenditure of the Danish State, in consequence of which no mention is made therein of their amounts. They must, however, be supposed to belong to the congregations of the churches concerned. The congregations, through their vestries, decide upon the application of these resources. The said resources are not considered to be very large.

The control of said resources is exercised by the congregation concerned, and each congregation decides the manner in which this control is to be exercised.

As Article II reserves to the congregations merely the use of the churches, parsonages, and funds, it seems clear that the United States Government is not obligated by this article to continue the appropriations which Denmark has heretofore made for the maintenance and repairs of the properties and the salaries of the clergymen; and that there would be no obligation upon the United States Government to appropriate additional sums toward the maintenance of the "funds," to take title to these funds, or to take part in their dispensation. Department is making efforts to procure further particulars in regard to these matters at the earliest moment.

It may be stated that in the negotiations for the treaty of 1902, the Danish Government appeared to regard such funds as not belonging to the Danish State and therefore not passing to the United States if inserted in that treaty. The church properties, however (three in number), of the Established Church being owned by the Danish State, will pass to the United States under the proposed treaty, but there appears to be nothing in the treaty to prevent the transfer of the churches and church properties to the congregations for their use.

ARTICLE III.

(1) This provision is taken from Article II of the unratified treaty of 1902, with which it is practically identical.

(2) This provision is new and appears to be chiefly of sentimental significance.

(3) The exact amount of the pecuniary claims, if any, held by Denmark against the colonial treasuries of the islands has not been calculated, but whatever they are the United States assumes, with one exception, no responsibility in regard to them. A somewhat similar provision occurred in Article I of the treaty of 1902, but without the exception mentioned in this article. Under this exception whatever current amount may be found due the Danish treasury in settlement of the accounts of the West Indies of the present year up to the date of the cession of the islands is to be paid to the Danish treasury. From the Government account of 1914-15 it appears, as the Danish Government states, that on March 31, 1915, it had to its credit in the West Indies treasuries the sum of 79,671.60 kronen and a cash balance of 110,902.16 kronen. The article provides that if there is a balance in favor of the colonial treasuries the Danish treasury shall pay that amount to the colonial treasuries.

(4) The following grants, concessions, etc., are the only ones in regard to which the United States assumes the obligations of the Danish Government. In the same way the 1902 treaty assumed the obligations of the Danish Government in respect to the floating dock concession and the West India and Panama telegraph concession, but excepted the sugar boileries concession. So far as we know, there were no other concessions then in existence. The sugar boileries concession has been closed up, as the Danish Government states, by the law of April 24, 1903, providing a means of settlement satisfactory to the shareholders, and the St. Thomas colonial treasuries. The assumption of the obligations in connection with the following concessions is regarded by Denmark as an essential part of the consideration for the cession, and as justly due to the business interests of the islands, which are naturally apprehensive as to the consequences attendant upon a transfer of sovereignty to the United States. A brief summary of the sugar boileries concession and its settlement is given at the end of the following concessions.

(4a) *St. Thomas Harbor improvement.*—On July 7, 1912, by royal decree under the law of May 25, 1912, the right was granted to a consortium for 99 years to dam in the areas in St. Thomas Harbor marked in red on a plan annexed to the concession; to reclaim these areas, and to own exclusively the areas reclaimed, except for conflicting private rights which might be expropriated; and to have the exclusive right to utilize the basins constructed (dredged) marked in blue on the same plan; to charge wharfage, warehousing, and stake dues alike on all vessels which use these facilities; to construct a mole to St. Rupperts Rocks to be utilized in the same way; to construct and operate one or more floating docks, than which no permit for the operation of another floating dock will be granted. The foregoing grants were to be free from competition save for existing grants, and rights needing no concession for their exercise. Concessionaire has right to erect tanks for liquid fuel for ships on these areas, right to give pilot service for the harbor, erect lighthouses, free importation of his building materials, etc. The usual pilot and harbor dues, however, shall be paid into the harbor treasury according to the prevailing rates. Government had right to buy up concession at end of 60, 70, 80, and 90 years from date of completion of certain works, and also at expiration of concession at appraised value. Company had the preferential right to establish electric light and power plant,

refrigerating plant, waterworks, street car power house, wireless stations, etc., on St. Thomas; and various other rights. This concession was totally annulled January 31, 1913.

After it became known that it would be unable to carry out the terms of the concession of July 7, the West India Co., on January 6, 1913, requested the transfer to it of the more limited privileges granted to the consortium for the drainage and deepening of an area within St. Thomas Harbor mentioned in letters of the minister of finance, dated October 2, 11, and 14, 1912, to the consortium. In reply, January 18, 1913, the minister of finance granted to a new company, with a domicile in Copenhagen, and the majority of the board of directors, Danish subjects, permission "to embank the areas in St. Thomas Harbor which are marked in red on the plan which accompanied the concession of July 7 of last year * * * so that when these land areas are reclaimed the company shall have free and unrestricted ownership thereof," subject to private rights, and granted "the exclusive right to utilize the basins dredged according to the aforementioned plan," and authorizes company "to charge wharfage, stake dues, and other similar dues from vessels which come up to the wharves or otherwise utilize the basins * * * according to previously fixed rates which must be uniform to all," and gave permission "to erect tanks for liquid fuel for ships on the area belonging to it" subject to certain safety restrictions. Pilotage and harbor dues, however, are to be paid into the harbor treasury by ships coming into the harbor and using the facilities constructed by the company. The minister referred to the law of January 1, 1913, giving the Government the right by decree to exempt from customs duties and harbor dues for 10 years from January 1, 1913, all materials imported into St. Thomas for the installation there of considered plants intended to supply or serve ships entering the harbor, or which are otherwise calculated to further navigation in the harbor. On April 1, 1913, a decree was issued putting this law into effect. By letter of April 16, 1913, the minister of finance informed the company that the plans for the extension of the present area of St. Thomas Harbor by making Gregorie and the two Gregori Canals part of the harbor, would not be carried out, because the company regarded them as threatening to its purposes and future. The minister of finance expressed himself as "ready to give his permission that, within a certain period (regarding which we would ask the company for a suggestion) and provided that the company's establishment proves adequate to attend to the expected increased traffic, we will not give any other companies any concessions for commercial, industrial, or navigational establishment in St. Thomas Harbor." The department is informed that this concession is without monopoly or promise of monopoly. The Danish Government states that period within which other companies should not be granted concessions in St. Thomas Harbor was never agreed upon, and that the letters of January 18, 1913, and April 16, 1913, mentioned above, set forth all of the rights of the West India Co.

(4b) *Agreement between communes of St. Thomas and St. Jan and the West Indies Co. to furnish the city of Charlotte Amalie with electric light.*—On August 10 and 14, 1914, the minister of finance of Denmark, apparently in behalf of the communes of St. Thomas and St. Jan, entered into an agreement with the West Indies Co., whereby

the latter undertook from April 1, 1915, under certain conditions, to light the streets of Charlotte Amalie with electric lights and to furnish other current to private persons and the public. After 10 years, if the commune desires to take over the lighting system, or if the company desires to become free from its obligation, the commune may then take over the system upon the payment of a sum equal to the capital invested, less a deduction of 5 per cent at the end of each calendar year. The company agrees to comply at all times with the laws and regulations in force in regard to establishments of this kind. (Contract of Aug. 10 and 14, 1915.)

(4c) *Floating dock in St. Thomas Harbor.*—Royal decree of February 2, 1897, authorized the Government of the West Indian Islands to grant a concession for the exploitation of an iron floating dock in St. Thomas Harbor for 21 years to the "Floating Dock Co. of St. Thomas (Ltd.)." On March 12, 1897, the West Indian Government granted the concession for a period of 21 years from March 12, 1897, to "Floating Dock Co. of St. Thomas (Ltd.)." Later it was transferred to the St. Thomas Dock, Engineering & Coaling Co. (Ltd.). The proposed dock was to be 250 by 70 feet, with a capacity of 3,000 English tons. Company is to fix its own rules and fees for use of dock so long as they do not interfere with order and security in the harbor, and apply to vessels of all nations alike. Danish warships and mail ships of all nations have the preferential right to use the dock. If there is no neglect in keeping the dock in a usable condition, the Danish Government will not permit any other floating dock in the St. Thomas Harbor for vessels over 200 tons, but the concession does not affect the floating dock already existing or its improvement. If defects hindering the use of the dock are not remedied within a period to be set by referees, unless there is no negligence, the concession may be forfeited. The company may not move its dock away from the island unless it has failed to yield any profit for three consecutive years. Interpretation of concession rests with the Government. (Ministry of finance, Feb. 19, 1901; original concession papers.)

(4d) *West India & Panama Telegraph Co. (Ltd.).*—By royal decree of November 30, 1914, the yearly subsidy hitherto granted to the company, amounting to 15,000 francs, from the St. Thomas colonial treasury, and 5,000 francs from the St. Croix colonial treasury, was insured to the company for a period of 10 years from April 1, 1915, on conditions mentioned in the decree of November 2, 1885, provided the company maintains throughout said period the maximum prices for the transmission of telegrams stated in the decree. The decree also insured the company against competition from any other cable company for the same period of 10 years (but the existing line on St. Thomas belonging to another company may be used whenever the connections of the West India & Panama Co. are interrupted or deranged). The decree reserved to the Government the privilege to grant concessions for wireless telegraphy. The company is subject to the decree of April 18, 1910, regarding telegraphs in the Danish West India Islands.

(4e) *Concession to K. B. Hey for telephone system on St. Thomas Island.*—By royal decree of September 18, 1906, and grant thereunder of the governor of the Danish West Indies of November 3, 1906,

K. B. Hey was given the exclusive privilege to establish and operate telephones on St. Thomas Island for a period of 20 years from November 3, 1906, subject to the right of the commune to take over the plant and concession upon the payment of indemnity. The concession was later transferred to "St. Thomas Telephone Co." This concession excepts telephone systems exclusively used by the commune or communal institutions, and under certain conditions private individual systems. The concessionaire is not obliged "to pay anything to the commune except such indemnities as may be due the commune" for damages, etc. There are restrictions regarding access to private property.

The Government reserved the following rights:

- To fix the maximum rates;
- To require extensions and improvements;
- To prescribe with respect to the operation of the plant;
- To require explanations about the plant and to have access thereto;
- To prescribe rules and conditions for connecting with telegraph companies;
- To approve in certain cases resort to proceedings to install on private property and to determine compensation therefor;
- To prescribe conditions for the acceptance of subscribers, if circumstances warrant;
- To determine disputes with other electric lines (telegraph, lighting, etc.) as to right of way, etc.
- To consent to complaints of violations of the provisions of the concession, punishable by fine;
- To supervise the installations and their operations;
- To decide upon complaints by the public regarding the attitude of the concessionaire or his employees
- To determine further rules for supervision over the concessionaire;
- To approve bonds given by employees, not to divulge information, etc.;
- To demand the discharge of employees who have committed such acts, which are described;
- To declare the concession forfeited if the concessionaire fails to comply with instructions lawfully given by the Government, or if he fails without necessity to operate the system; in either case the Government may operate the system;
- To impose a fine not over 500 francs upon the concessionaire for violations of the concession; and
- To construe the meaning of the concession.

The concession provides that the grant shall not be transferred or leased to any other party without consent of the "Government for the Danish West Indies." (Governor's grant of Nov. 3, 1906.)

(4f) *Grant to the St. Croix commune to establish and operate telephones on St. Croix Island.*—In pursuance of authority in ordinance No. 30 of August 21, 1908, the governor of the Danish West Indies granted on February 28, 1913, to the municipality of St. Croix, an exclusive concession to establish and operate telephones in St. Croix Island for 20 years from February 28, 1913, upon certain conditions, and subject to the laws and regulations relative to telephones. Government owned and certain private telephones are excepted, but otherwise any telephone lines erected may be confiscated, and owners fined, but complaint can only be entered at the request of the Government. Passage over or under private property is regulated, provision is made for indemnifying damages. A bond is required of employees not to divulge information from the telephones. Employees divulging such information are subject to fine and dismissal. There is a provision for the concessionaire to take over the telegraph system of St. Croix. The concession shall not be transferred or leased without the consent of the Government of the Danish West Indian Islands. There is a provision that the concession can be

declared forfeited by the Government if the concessionaire does not within the time allotted by the Government comply with its lawful orders. The concession is to be interpreted by the Government. (Governor's decree, Feb. 28, 1913.)

(4g) *Concession to Einar Svendsen for electric plant in Christiansted, St. Croix.*—On July 16, 1915, the minister of finance granted to Einar Svendsen a nonexclusive concession for the establishment and operation of an electric plant for the supply of electric light to Christiansted, St. Croix. The remaining specifications for the execution of the concession are to be determined by the Government of the Danish West Indies. (Concession and letter of minister of finance, July 16, 1915.)

(4h) *Concession for the establishment of the Danish West Indian Bank of Issue.*—Acting under the Danish law of March 29, 1904, the minister of finance on June 20, 1904, granted a concession for a period of 30 years to a group of banks consisting of the National Bank of Copenhagen, the Private Bank of Copenhagen, the Danish Farmers Bank, the Mortgage and Exchange Bank, and the Copenhagen Commercial Bank, for the establishment in the Danish West Indies of a joint-stock bank under the name of the Danish West Indian Bank of Issue, which will have for its object the promotion of the economic development of the islands, and which shall have the sole right for 30 years, upon showing specified specie reserve and realizable assets, to issue notes which shall be legal tender and exchangeable by the holder upon demand for gold coin. If the bank becomes unable to fulfill its obligations, the concession shall be forfeited.

The capital stock was 5,000,000 francs, at least one-quarter to be paid in cash, the remainder to be covered by certificates of guaranty of the four banks composing the group, which are to be deposited with the minister of finance. The minister of finance, when he deems it necessary to fulfill the obligations of the bank, may require further cash payments on the capital stock, in which case the certificates of guaranty shall be credited with the corresponding amount. The Danish Government or the minister of finance reserve the right to consent to an increase of the capital stock; to call in the old Danish West India bills of credit of 1849 within a certain period (Apr. 30, 1907); to prescribe rules for loan business; to choose two of the seven members of the bank council and one substitute member; to set aside resolutions of the council contrary to the by-laws; to appoint one of the two auditors of the bank; to prescribe rules to govern the auditors' supervision of the bank; to determine the by-laws of the bank; to withdraw or restrict the right to issue notes, in which case the bank is entitled to demand that the Government take over the bank, the assets and liabilities of the bank, and redeem the capital stock at par plus the amount of profits received by stockholders over 4 per cent per annum, but in no case over 125 per cent; and to construe the meaning of the concession.

The by-laws further reserve to the minister of finance or the Government the right to approve the form and denomination of the notes, to demand proof that the bank is observing the rules, by-laws, etc., to approve amendments to the by-laws, to annul resolutions contrary to the by-laws, to decide questions arising out of the preparation of annual account of the bank, and to proceed against the

bank for failure to live up to its obligations under the law of March 29, 1904, and the by-laws. The by-laws further provide that in case one-third of the capital stock is lost, the bank may relinquish the right to issue notes upon two years' notice to the minister of finance, and thereafter to pass a resolution for dissolution. The by-laws contain numerous other details.

The specie reserve shall consist of legal-tender coin of the islands, gold in bars, and foreign gold coin and bills payable on demand at the National Bank of Copenhagen. Other assets or security may be pawn certificates, bills of exchange, debts in foreign banks, public interest-bearing paper, Danish West Indies bill of credit, and bank's own mortgage bond.

The bank shall pay an annual tax to the Danish Government of 10 per cent of the annual surplus of the bank, for which payment bank may use the old Danish West India notes of 1849 which it has redeemed. As long as the tax is paid in such bills of credit, the bank may deduct from the tax a sum equal to the interest at 4 per cent on three-eighths of the bills of credit held in the bank from the date of redemption to date of paying this tax. Denmark agrees, in a communication of July 18, 1916, to redeem the bills of credit redeemed by the bank, and amounting on March 31, 1916, to 442,610 francs. The bank shall be obliged to receive free of charge all revenues of the islands and make all expenditures in the islands on account of the Danish treasury or the colonial treasury, under rules to be adopted by the minister of finance; shall not issue notes in excess of 10,000,000 francs under certain conditions; shall keep a specie reserve amounting to 30 per cent of the notes in circulation in the bank's main office, and the remainder in the National Bank at Copenhagen. (Concession and by-laws of bank; Danish note of July 18, 1916.)

(4i) *St. Thomas Harbor loan, 1910.*—Under authority of the law of April 30, 1909, No. 87, the Danish Government guaranteed the payment of the interest and redemption of a loan originally amounting to 500,000 francs (the remainder on Mar. 31, 1914, being 453,000 francs) known as the St. Thomas Harbor 4 per cent loan of 1910, and made by the harbor council for the purpose of deepening the harbor of St. Thomas. The harbor council authorized the ministry of finance to conclude the loan agreement, which it did. The Danish West India Bank agreed to furnish the loan at 98 per cent to be represented by 500 bonds of 1,000 francs each, marked with the Government guarantee and signed by the harbor council as debtor, and exempt from stamp tax. The loan runs 21½ years from December 11, 1910, and bears 7 per cent interest and redemption per annum, of which 4 per cent shall be interest and the remainder redemption. (Letters between council of Danish West Indian National Bank and ministry of finance, Feb. 3, Aug. 6, Aug. 13, 1910: copy of a bond.)

St. Croix Joint Sugar Boileries.—Under the law of February 25, 1876, the Danish Government granted a loan to the St. Croix Joint Sugar Boileries Corporation, which, in the Government account for 1899–1900, amounted to 1,414,784.57 kronen, secured by first mortgage on all the property of the company in the West Indies, including operating equipment and inventory. The company was to make a yearly payment on the loan, of which 5 per cent per year of the amount due was to be interest and the remainder sinking fund. The interest in arrears on March 31, 1900, was 878,436.67 kronen.

One of the conditions of the Danish Government granting the loan was that the St. Croix colonial treasury should guarantee the fulfillment of the obligations of the company arising from the loan, and this was done by St. Croix order No. 24 of June 16, 1875, "but it never became effective." (Ministry of finance, Feb. 19, 1901.)

The St. Croix colonial treasury also guaranteed to the stockholders of the company 5 per cent per annum interest on their stock. The stockholders, however, have never received any interest or profit from the company, and the guarantee has never been made effective, as the colonial treasury was not able to satisfy it. It is suggested that this guarantee may be assumed by the Danish Government in case of a cession of the islands. The amount of interest due under this guarantee was \$45,275.98 in the 1899-1900 budget. But this figure in the budget is explained as including both the guarantee of St. Croix to the Danish Government and to the stockholders, this amount appearing in the budgets unchanged since 1884-85, but never being paid. (Minister of finance, Feb. 19, 1901.)

The department is assured by the Danish Government that this matter is closed by the law of April 24, 1903, providing for a means of settlement whereby the shareholders have been fully satisfied in respect to all claims, including all claims against the St. Thomas colonial treasury on account of the interest-guarantee under the decree of 1876. (Danish memorandum of June 28, 1916.)

(5) This provision is practically the same as that in Article II of the unratified treaty of 1902. Its object is to save to Denmark the private debts due her by individuals at the date of cession. In order to prevent future holdings of Danish property taken over for debts of private persons, a provision is added that any such property shall be sold within two years and the proceeds removed from the islands, or otherwise the United States will sell such properties on behalf of the Danish Government.

(6) This provision is almost exactly the same as that in Article IV of the unratified treaty of 1902. The last budget, for March 31, 1916, provided for about 30,000 francs for such pensions.

ARTICLE VI.

This article is taken almost bodily from Article III of the unratified treaty of 1902, the only important differences being the provision that parents or guardians of children under 18 years of age may make their declarations of allegiance, and the change of two years to one year within which the election of allegiance must be made.

The provision in the second sentence is the result of a compromise. The Danish Government objected to its subjects—the native inhabitants of the islands—being placed on a par with other aliens. The United States Government could not guarantee them the same rights which American citizens have, in advance of the citizenship being conferred upon the inhabitants of the islands who transfer their allegiance to the United States. Consequently a middle ground was sought by which aliens of Danish nationality in the islands will at least enjoy no fewer rights and privileges than at the present time. It seems that an effort was made to attain a similar object in the treaty of 1803 ceding Louisiana to the United States. In this connection, it should be borne in mind that the Danish subjects in the

islands have had no voice in the proposed transfer of the sovereignty of the islands to the United States, and that many inconveniences must necessarily result to them if they retain Danish allegiance after the transfer.

The second paragraph of this article is the usual one in cessions of territory to the United States. It is exactly the same as the corresponding provision in the unratified treaty of 1902 and similar to that in the treaty with Spain of 1898.

ARTICLE VIII.

This article provides for the execution of judgments already rendered in both civil and criminal cases and the continuance of civil and criminal suits still pending at the date of cession before the courts in the islands or before the superior courts in Denmark. These provisions are substantially the same as those of Article XII of the treaty with Spain of 1898, except the second paragraph of section 1, which seems to be a reasonable addition.

ARTICLE IX.

This is the usual provision for securing the rights of copyright and patents upon change of sovereignty. It occurs in almost exactly this same language in Article XIII of the treaty with Spain of 1898. Without such a provision Danish subjects in the islands might be held to have lost whatever rights they now hold in patents and copyrights under Danish laws.

ARTICLE X.

The treaties extended by this article to the Danish West Indies as a part of American territory are:

Convention of friendship, commerce, and navigation of 1826.

Consular convention of 1861. (Under the seaman's act this Government has given notice to Denmark that the articles of this treaty in conflict with that act will be abrogated. Denmark has accepted this condition of affairs.)

Naturalization convention of 1872.

Trade-marks convention of 1892.

Extradition treaties of 1902 and 1905.

Peace treaty of 1914.

The following cable from the American minister at Copenhagen was sent to the Committee on Foreign Relations by the Secretary of State after the receipt of the foregoing papers:

COPENHAGEN, August 24.

SECRETARY OF STATE, *Washington*:

Am informed by the foreign minister that it is not the intention of the Danish Government that the United States shall assume the responsibility for the church funds or the salaries of clergymen, etc.; the clause in the treaty is intended merely to safeguard them. It is not expected of the United States Government that it shall act as trustee for any ecclesiastical funds. Official documents will be sent. There is no objection to an exchange of notes on this subject.

(Signed)

EGAN, *American Minister*.

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