

## CHAPTER XVII

### THE NILE WATERS AGREEMENT: A REAL STEP FORWARD AT LAST

THE year 1929 opened upon a scene that was in many respects far from satisfactory. The consolations which could be discerned by those genuinely interested in the welfare of Egypt were only of a negative character, and there were on the other hand some grounds for a despondent view. On the one side it could be computed that there was no reason in the domestic situation to fear an early reversal of the Government. The country, though not in the least enthusiastic, was not actively hostile, and showed itself disinclined for energetic hostility. Nahas Pasha was still leader of the Wafd, and this fact was perhaps the most adequate safeguard against the revival of its power. On the other side it was seen that the King was not yet prepared to allow his Prime Minister to draw any real strength to himself, or to look with equanimity upon the formation of a really national Government. The Prime Minister himself had been suffering a long illness which had caused an inevitable stagnation in affairs. He was still suspicious of His Majesty's attitude towards him, and inclined to counter the intrigues he suspected by movements of his own which did not enhance the good reputation of the administration. In fact, the Government was making little

political headway, the situation was not improving as the optimists had hoped, and there was less and less ground for anticipating a return to sane and reasonable Parliamentary government. Most important of all the adverse factors was the imminence of a General Election in England and the belief that it would return a government which would not acquiesce in the continuance of an unconstitutional régime.

It was unfortunate, therefore, that one of the first steps to be taken in the new year should be the decision to defer Nahas Pasha, and his lieutenants Wassaf Bey and Gaffar Fakhry Bey to a Council of Discipline on the ground of their unprofessional conduct in the Seif-ed-din case. The most that could be hoped for as the outcome of such action was a réprimand, which would leave matters much where they were, while the acquittal which did in fact result was a triumph for the Wafd and a severe blow for the prestige of the Government. It rallied Egyptian sympathies in support of Nahas Pasha, and made it easy to depict the Government as tyrannous and anti-national. Hardly more profitable was the next step—a comprehensive scheme for re-shuffling the personnel of the Department of the Interior, which involved the retirement of several Mudirs. The acceptance of this proposal by the King coincided with the withdrawal by Ismail Sidky Pasha of his candidature for the post of Auditor-General, and rumours at once began to spread that the two transactions formed part of one unholy bargain, whereby the Prime Minister secured his own adherents in office in the Mudirates, while the King got rid of the unwanted presence of Sidky Pasha.

But in spite of the lack of political achievement,

perhaps even because of it, very definite and important advances were made in the direction of settling some of the urgent questions which had been held in suspense for so long between the Governments of Egypt and Great Britain. In a speech which he made in May 1929 Mahmoud Pasha referred at length to these questions: he claimed that the present Government had tackled them with "calm, prudence, frankness, and good faith. It met with great success in its work, and an agreement was concluded in regard to the financial questions and the greater irrigation projects." The claim was to a large extent justified, for in addition to arriving at an agreed settlement of the various financial demands arising out of the War, a settlement which was largely due to the tact and ability of Sir F. Leith-Ross, the very delicate question of the payment of the Ottoman Loan of 1855 had also been adjusted.

In regard to the greater irrigation projects, the subject was of such importance, both in its political and administrative aspects, that it deserves treatment at some length. Mahmoud Pasha described the result of the negotiations which had taken place between us as follows: "Egypt's present and future needs of water were guaranteed, and her rights remained intact. The text of the agreement", he said, "is not the only thing which inspires confidence. Its spirit and the goodwill evinced by the two parties, and their willingness to co-operate, make us more confident." The result of the prolonged negotiations was in fact a very pregnant example of the methods by which agreement with Egypt could be achieved, and the reserved points gradually settled. It went indeed a very long way in the direction of a practical settlement of one of these points, for it deprived of all real

effectiveness the agitators' often repeated cry that Great Britain was prepared to coerce Egypt by cutting off her water supply—a cry which had for many years been one of the principal methods of creating friction in regard to the Sudan.

The negotiations which finally brought agreement had their origin in Lord Allenby's ultimatum of 1924, issued after the murder of the Sirdar. The sixth clause of that ultimatum had in the end been modified so as to secure the creation of an impartial Nile Commission, which was constituted in 1925. Its report was never accepted in terms by His Majesty's Government or the Egyptian Government, because such acceptance became a part of the wider negotiations for a treaty, and when these negotiations broke down, the question of the irrigation projects remained still undecided. Mahmoud Pasha's Government had put the commencement of these projects at the head of its programme, and realised from the first—that what was indeed clear to all concerned—that the first essential was an agreement with His Majesty's Government upon the conditions under which works for the benefit of Egypt outside purely Egyptian territory would be carried out. This involved the vexed question of "Nile control"—a question the implications of which had been considerably altered by the Declaration of 1922, and by the state of affairs which in practice had emerged in the Sudan. The important point was, that whereas "Nile control" was a question of large political implications which must involve the whole problem of the status of the Sudan—a problem reserved in 1922—the immediate need was not a political settlement but a working agreement. The point was wisely recognised by both parties to the negotiations. Whatever claims might

be adduced in regard to "Nile control", the fact was that Egypt could neither coerce the Sudan administration nor take any action without its co-operation. The facts had at last asserted themselves. So long as Egyptian politicians continued—and were encouraged to continue—in the discussion of political claims, the facts could be ignored, because nobody was endeavouring to take any practical steps. But now that political activity was relegated to the background, and we had a Government in Egypt really anxious to give proof of administrative capacity, the facts took control of the situation again. It had to be realised, on the one hand, that undivided control of the Nile was no longer in the hands of Egypt, and on the other, that Egypt had natural and historic rights in the waters of the Nile, which could never be disregarded. Once this stage had been reached, there was no insuperable difficulty in arriving at an arrangement which preserved the economic interests both of Egypt and the Sudan quite unimpaired, and provided for an amicable settlement of disputes that might arise in the future. The final agreement, which was reached early in May 1929, began by accepting the findings of the Nile Commission of 1925; it recognised the necessity of a greater supply of water for the development of the Sudan, and agreed that such an increase should be made for this purpose "as does not infringe Egypt's natural and historical rights in the waters of the Nile, and its requirements in respect of agricultural extension". The agreement then went on to set out the provisions arrived at for co-operation in the Sudan between Egypt and the Sudan and His Majesty's Government, and for the amicable settlement of future disputes. It concluded: "The present agreement can in no way be considered

“as affecting the control of the river, which is reserved  
“for free discussion between the two Governments in  
“the negotiations on the question of the Sudan”.<sup>1</sup>

Thus for the first time since Egypt secured a measure of independence, an agreement, even though provisional, had been secured upon a question which had long been the subject of acute political controversy. That such an achievement had been possible was due to our continued insistence upon a due regard to the facts of the situation, and to those interests which we could not permit to be ignored. It was Egypt who in all cases stood to gain by thus regarding the facts and apprehending our determination, and in this particular case she had gained the possibility of a rich development of her resources. It was Egypt also who in every case stood to lose by disregarding the real position. We did not help her at all, so long as, by vacillation, we encouraged her in such disregard, and we postponed indefinitely the very object which we had set ourselves—a friendly and comprehensive understanding with her.

Very soon after the satisfactory conclusion of these negotiations, the General Election took place in England, and in June 1929 the Labour Government took office, and Mr. Henderson stepped into the room of Sir Austen Chamberlain at the Foreign Office. At the time there were no very critical questions demanding consideration as far as Egypt was concerned: but there was one matter which, after the Labour Government had taken office and at the time of my resignation, was given considerable prominence. This matter was being discussed during April and May of 1929 between the Secretary of State and myself, and it was subsequently vested with an im-

<sup>1</sup> F.O. Despatch: Lord Lloyd to Sir Austen Chamberlain, May 11, 1929.

portance which makes it necessary to describe it in some detail.

It will be remembered that the sovereign powers of the Egyptian State had been limited, even before we came to be intimately concerned in Egyptian affairs, by the Capitulations. Among the limitations thus imposed, one of the most important and the most resented was the fact that foreign residents, subjects of Capitulatory Powers, were exempt, unless with the consent of the Power concerned, from the payment of certain taxes. In April 1929, Doctor Hafiz Affi, now Egyptian Minister in London, raised the question indirectly with the Foreign Office by setting forth that the present Egyptian Government were desirous of examining the possibilities of certain new taxes in Egypt, and suggesting that the time was now ripe for His Majesty's Government to make some public profession of their sympathy with the principle that foreign residents should bear their fair share of the burden of taxation. Dr. Hafiz Affi mentioned specific taxes in regard to which the Egyptian Government hoped that such an expression of sympathy might be forthcoming. These were:

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| (1) Ghaffir tax.   | (3) Petrol tax. |
| (2) Municipal tax. | (4) Stamp duty. |

On May 1, Sir Austen informed me that he proposed to express the "sympathy in principle" for which Dr. Hafiz Affi was asking—in other words, that he would inform the Egyptian Government that His Majesty's Government was favourably disposed to the general proposal that British subjects should pay the four taxes referred to. He asked for my comments without delay, and on May 6 I telegraphed to him that I concurred with him fully in regard to the Ghaffir tax; that in regard to the Municipal tax the

present state of affairs was undoubtedly most unsatisfactory, but that until concrete proposals were framed for clearing up the basis of municipal taxation, it would be wiser not to give "the sympathy in principle" desired; that in regard to the petrol tax I concurred, but should like to see a horse-power tax substituted for a petrol tax: that in regard to the stamp duty the case was upon an entirely different footing, since, while the other taxes were by way of payment for services rendered, the stamp duty was imposed solely for the purpose of adding to existing revenue, and the state of the Government's revenues clearly did not justify its imposition.

Thus it will be seen that in two instances I concurred fully in the Secretary of State's proposal, in one I suggested delay, and only in one did I disagree with him—for reasons which I fully set out, and which appeared to me after consultation, not only with my Advisers but also with the Governor of the National Bank of Egypt and with the Presidents of the Alexandria and Cairo Chambers of Commerce, to be at least ponderable. The Secretary of State was entirely unable to share this view—on May 9 he replied to me in a telegram which contained the following comments in regard to the municipal tax and the stamp duty: "The gist of the Egyptian complaint is that, for such services as they render, the Egyptians have to pay and foreigners are not legally liable. I am quite aware of the inefficiency of municipalities in Egypt and elsewhere, but it is quite impossible for me to defend the indefensible, and it is not sufficient that I should confine myself to an empty expression of academic sympathy on such an occasion. . . . It is impossible to refuse an expression of sympathy to the imposition of a stamp duty on the ground that it



“constitutes an addition to the existing sources of revenue. . . . In these circumstances I feel it right to agree generally with the request made to me by Hafiz Affi.” It would be foolish for me to deny that I was somewhat surprised by this despatch. But all it appeared to amount to was this—that the Foreign Office had informed me that they would be glad to receive my “comments or suggestions” on their proposal, and having received them together with the considered views of the most influential commercial opinions in Egypt had summarily rejected them. I did not therefore attach any serious importance to the incident, until on May 28 the Secretary of State addressed to me a despatch which clearly showed that in Whitehall the comments and suggestions offered by the High Commissioner and so solidly supported by all interested or competent opinion were regarded as seriously heretical. Indeed, the opening paragraph of the despatch could mean nothing else: “The correspondence which recently passed between Your Lordship and myself in regard to the suggested extension of certain Egyptian taxes to British subjects in Egypt has led me to think that it may be convenient to Your Lordship and is in itself desirable that I should restate briefly the principles upon which His Majesty’s Government desire to regulate their policy in Egypt.” The only conclusion that I was clearly intended to draw from this was that in offering the opinion which I had offered I had departed from the principles of British policy. The remainder of the despatch was occupied with the promised restatement of those principles and deserves, I think, to be quoted in full.

. . . Imperial considerations and the necessity of safeguarding the communications between the different parts of the Empire

have caused His Majesty's Government in the past not only to assume a position of authority in Egypt outweighing that of any other foreign government, but also to stand between Egypt and the rest of the world, protecting her from any external pressure. It is the vital character of the imperial interests thus safeguarded which requires the presence on Egyptian soil of British armed forces and the retention of that special influence which His Majesty's Government exercise through His Majesty's High Commissioner.

From the situation thus created certain consequences flow, secondary in their nature but of the utmost importance. Where the influence of His Majesty's Government prevails, and where their powerful protection is afforded, patent misgovernment cannot be tolerated, and since His Majesty's Government have formally announced that they will not tolerate foreign intervention they are bound to see that a reasonable régime is secured for foreign inhabitants.

Because the interests at stake are of supreme importance to the safety and well-being of the British Empire, His Majesty's Government reserved by their Declaration of the 28th February, 1922, certain matters for their own determination, but even in these cases it is the desire of His Majesty's Government to act with, and where possible, through the Egyptian Government, respecting in the largest measure possible the liberties and independence which by the same declaration they conceded to Egypt.

It is not in the interest of His Majesty's Government to intervene in the internal affairs of Egypt further than is necessary to secure the political objects defined above. The influence which they must ever possess in the councils of Egypt, whether actual or potential, will be best secured by ensuring that the closest harmony shall always govern the relations between the Residency and the Government, and these conditions can only obtain if the interventions of His Majesty's Government into the purely internal affairs of Egypt are reduced to the minimum.

The very fact that in certain limited but most important cases the intervention of His Majesty's Government must be made effective, no matter what the cost, renders it the more necessary that their intervention should be strictly confined to matters of real importance. Since in certain cases it is essential

that the wishes of His Majesty's Government should prevail, their influence must not be frittered away on other and less important matters. Above all, in order that their intervention when it takes place may be decisive, it must never be invoked to cover an abuse or to resist reasonable reforms. Save during the period of the War, Egypt has always enjoyed a very large measure of autonomy, though the degree of autonomy may have varied from time to time according to the political situation of the moment. Applying the principles here laid down, I hold at the present time that, in considering whether in any particular case recourse is to be had to intervention in the internal affairs of Egypt, the criterion to be applied should not be whether the object aimed at is merely desirable, but whether it is necessary in order to safeguard the interests of the Empire as defined in the earlier paragraphs of this despatch.

The difference between the situation occupied by His Majesty's Government in Egypt and that which they occupy in the Sudan leads point to the observations set forth above. In the Sudan, though the condominium continues to be recognised, the responsibility of His Majesty's Government to the population is direct, and to meet it it is necessary for them to feel sure that in any particular case their orders shall be obeyed. In Egypt the responsibility is indirect and contingent, and only in a very limited category of affairs can it be necessary that the authority of His Majesty's Government shall be exercised, though it is to be hoped that when the Egyptians realise the strict limits which His Majesty's Government place upon their own activities, they will be the more inclined to seek on other points of difficulty or delicacy the friendly counsel which His Majesty's Government will always be willing to afford them.

This exposition of policy will, I hope, have made clear to your Lordship the reasons which inspired my reply to the representations made to me by Dr. Hafiz Afifi during his recent visit to London. I am not convinced that the maintenance of foreign privilege in Egypt, *per se*, is a cause for the defence of which His Majesty's Government is required to exercise pressure on the Egyptian Government. The Capitulations have disappeared, or are in a fair way to disappear, in every country

in which they have hitherto obtained, and sound policy would seem to require the gradual acceptance of a similar evolution in Egypt unless it can be shown in any particular case that there are cogent reasons for maintaining them. None such were evident to me in the question of the applicability of the Egyptian taxes under discussion to British subjects, nor could I bring myself to believe that British influence could be strengthened or the interests of British subjects permanently served by insistence on the maintenance of an invidious and indefensible exemption from a fair contribution to services of which they share the benefits.

I am, etc.,

AUSTEN CHAMBERLAIN.

The main points emphasised in this statement were, first, that British intervention in Egypt should be strictly confined to matters of real importance, and second, that the maintenance of foreign privilege was not a matter in regard to which pressure should be exercised upon the Egyptian Government. It would have been possible, of course, to point out in reply that I had not suggested any intervention, or any pressure: that in fact no question either of "intervention" or of "pressure" had been raised. The Egyptian Government had asked His Majesty's Government for a concession, and I had advanced the view that the request was in one case not justified by the facts, but that wherever it was so justified it should be granted. The point that was uppermost in my mind in making this recommendation was that, in the present state of our relations with Egypt, it was most unwise for us without indisputable justification to make concessions which had the practical effect of always altering the *status quo* in Egypt's favour. The cardinal point in the policy laid down by His Majesty's Government was most clearly the maintenance unim-

paired of the *status quo* until such time as Egypt should be prepared to negotiate a reasonable treaty—and not only was this the very basis of our policy, it was also an essential point in our strategy, and therefore doubly important.

I felt it most unfortunate that the existing Government in England should be closing its relations with me on a note of disagreement, however unimportant the particular point at issue. I realised, however, that the matter was not so simple as it appeared on the surface, but was, on the contrary, embarrassing enough to cause serious irritation. It will be remembered that not long before the time of which I am writing, His Majesty's Government had made an important declaration in regard to extra-territorial rights in China. The Egyptian Government were not slow to realise the value to them of this declaration, and no doubt they subtly insinuated that, as in China, so in Egypt, a policy of disregarding the views of foreign residents and making concession to national demands would be acclaimed as equitable and humane. On the other side, the British Government were placed by their policy in China in a situation where they had clearly very little alternative but to accept its logical consequences in other parts of the world. This fact, of which I was sadly aware at the time, could not, I think, have been held as a sufficient reason for not representing to Whitehall the point of view of British and foreign business men and residents in Egypt, but it no doubt contributed to the severity with which my representations were treated. And when I re-examined those representations I could hardly find in them ground for the view that I had withstood a just claim advanced by Egypt. The position was that British

subjects were exempt under the Capitulations from the four taxes to which Dr. Hafiz Afifi referred: that the British Government was being asked to agree in principle to the removal of this exemption before—in the case of the municipal tax—the Egyptian Government had evolved any satisfactory method of assessing the tax,—and before—in the case of the stamp duty—any case had been made out for the necessity of the tax at all. In fact the concession would amount in practice to a complete relinquishment of the capitulatory privileges as far as taxation was concerned, and these privileges were by no means a matter which concerned us alone. The question that I felt impelled to ask myself was this: was our policy of securing a reasonable agreement with Egypt likely to be advanced by such an ample concession at this stage? The four points which we had reserved in 1922, and by which Egypt's independence was qualified, still stood. It was still essential to maintain those reservations unimpaired. The moment for generous concessions on our part would arrive when Egypt on her side showed herself ready to make even reasonable concessions. And by further concessions, which could not easily be justified before that moment arrived, we were emptying our hands quite unnecessarily of counters that would be very valuable to us at the conference table. It was at the least arguable that such a standpoint was more consistent with declared British policy than a readiness to surrender in anticipation: unless, indeed, British policy had invisibly changed, . . . 'though year by year is 'nought to see, so delicate its motions be.'

Moreover, the lessons of the more remote past and of the most recent past alike had shown that a policy of mere concession even at the conference table, had

no effect at all except that of hardening Pharaoh's heart, and making the Egyptian more intransigent than ever. And finally this same question of the Capitulations was being approached in a comprehensive form that for Egypt's true interests was of far greater practical interest than that of taxation. It was, to say the least of it, strange, therefore, that at such a time an urgent need should have been discovered to make concessions in regard to a single item in capitulatory privileges—concessions which would have had a most prejudicial effect upon the larger negotiations now contemplated in regard to the Capitulations.

It will be remembered that among the many jurisdictions existent in Egypt, that of the Mixed Courts had been the triumphant creation of Egyptian diplomacy in days before the British Occupation. These Mixed Courts were manned by judges appointed by the Egyptian Government and by the various foreign Powers who had been parties to the instrument which created them. They exercised jurisdiction over cases to which foreigners were parties, and had also a very limited jurisdiction over foreigners. Now, and for a very long time past, it has been a laudable ambition of the Egyptian Government to do away with the impossibly cumbrous system whereby criminal charges against foreigners had to be tried in the Consular Court of the Power to which the foreigner concerned was a subject. The obvious method by which this could be most successfully achieved was by a gradual transference of their jurisdiction, *i.e.* the Consular jurisdiction, to the Mixed Courts—a process which would be consistent with steady progress and, moreover, contained some possibility of being found acceptable by the Powers.

It was accordingly upon these lines that Sarwat

Pasha had been endeavouring to proceed during the days of his last tenure of the Premiership. But the collapse of the treaty negotiations, and the advent to power of the Wafd had for the time prevented all possibility of further progress, and it was not until the autumn of 1928 that action seemed again advisable. At this time the Government of Mahmoud Pasha took up again the former proposals for a degree of reorganisation of the Mixed Courts which would at last pave the way for an enlargement of their jurisdiction at the expense of the Consular Courts. The Egyptian Government hoped that these proposals might form a basis for discussion at a joint Conference of representatives of the Powers. The latter, however, were clearly inclined to prefer the method of separate negotiation. The reasons for this difference of view could in all probability be fairly stated as follows. An extension of the jurisdiction of the Mixed Courts was only acceptable to the Powers in return for safeguards. Such safeguards would naturally take the form of appointments of foreigners in the personnel of the Courts, since such appointments would, to the foreign colonies, be the most obviously conclusive evidence that their rights would not be overlooked. When such appointments were in question each individual Power preferred to bargain separately with Egypt rather than in conference.

The Egyptian Government thus found themselves in a position of difficulty: the extension of jurisdiction of the Mixed Courts was an undeniable advantage, but, viewed politically and by Egyptians in the mass, it would count as nothing against the creation of posts to be occupied by foreigners. Confronted with this problem, they lost patience, and early in 1929 began to suggest that the proposals for limited



advance should be dropped, and that the question of the general transfer of jurisdiction from the Consular to the Mixed Courts should forthwith be brought under consideration.

The Secretary of State's view upon this proposal was that it was not one to be encouraged—a view in which, needless to say, I concurred. "The aspect of "it", he wrote, "which strikes me with particular force "is its seeming unwisdom from the Egyptian Govern- "ment's own point of view. It has taken some two "years to induce the Powers to come within measur- "able distance of accepting certain limited changes in "the present régime, and it seems, therefore, quite "unreasonable to hope that what amounts almost to a "total abolition of the existing system could be ac- "cepted without more ado. Moreover, if, as seems only "too probable, the new proposals fail to command the "assent of the Powers, it may not be easy to revert to "a policy of gradual transfer, on which a start is now "not far from being possible. Again, looking at the "matter from the Egyptian standpoint, if the limited "changes . . . were put into force and in practice "worked well . . . the Egyptian case for further and "more sweeping changes would be greatly strength- "ened, and in the course of time might become virtu- "ally unanswerable."<sup>1</sup> The Secretary of State therefore proposed to talk to Dr. Hafiz Afifi in London, and to advise him strongly that it would be better to abandon this sweeping proposal. The Secretary of State did not, curiously enough, refer to this as intervention, but such it undoubtedly was.<sup>2</sup> It was

<sup>1</sup> F.O. Despatch: Sir Austen Chamberlain to Lord Lloyd, April 11, 1929.

<sup>2</sup> *Vide* page 294 *ante*: The reader will see that in the Despatch there quoted the Secretary of State laid down that intervention was only justified if "necessary in order to safeguard the interests of the Empire". But in this case he was intervening in order to prevent what he himself described as an act of "unwisdom from the Egyptian Government's own point of view".

moreover fully in consonance with the principles of our policy, for it was beyond contradiction that demonstration, and demonstration alone, could make the Egyptian case unanswerable. If they could give proof that they were capable of administering impartial justice, the Consular Courts could not endure, any more than foreign exemption from taxes could endure, in the face of a proved capacity for impartial assessment and collection.

It was, therefore, most unfortunate that at this moment impatience and over-confidence should have been engendered in Egypt by the anticipation that a change of British policy would be the result of the forthcoming General Election. This was indeed what the majority of Egyptians confidently expected—and the expectation was not entirely disappointed. The position of the Wafd had been maintained throughout the country very largely because it was thought that a change in British policy would restore them to power before long. It was bound to take time—probably a long time—to weaken the superstitious attachment to the Wafd which was widely felt by the fellaheen. The Wafd had been linked for so long with the name of Saad Zāghlul—and that name had mystical connotations. It meant great dreams of vague liberties and vaguer material blessings, and however unworthy the shoulders upon which Saad's mantle fell, the mantle itself retained its magical properties. Time alone could weaken this hypnosis, and time was not yet to be allowed to do its work, for in May 1929 the Conservative Government in England fell heavily from office, and a Labour Government took its place, with immediate repercussions in Egypt which will be described in the next chapter.