

The answer to it all is that the article in
last the *Chin. Review* is only concerned with the
maintenance of the value of the Sovereign, & it is
not except the rate of ^{exchange} for a
Sovereign.

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The Govt. having been advised in a confidential
will feel very aggrieved, & in view of the technical
nature of the discussion, you may think it advisable
to keep quiet for a fortnight, with a Treasury
opinion?

A. G. B. 3/7/19

John Baring
Scott & Co.

I think it is a matter in which we
should consult the H. O. of the Crown.

6 Feb. 31.7.19.

J. B. B. 31/7/19

Sgt. General

at once.

A. G. B.

1/8/19

In the draft I have brought in the E. A. Syndicate
note (30/3/21/19 & f. p.) but have not

clause 42 (a) of their contract the rate for conveyance of coal and soda is fixed at 1/- per ton per mile.

3. I attach copies of two memoranda by the Attorney General expressing his opinion on the subject of payment of Royalty by the Company, which would apply equally to the payment of freight. For the year 1917-18 the average cost of hauling a ton of goods for one mile amounted to cents 5.96 (which is little less than the equivalent of 1d.) and it is probable that the cost has since increased. It will therefore be seen that even if the Royalty of 2^s/- a ton is put against the cost of hauling and the accounts for freight and Royalty are settled at the rate of 1^s/4^d to the Rupee, the Magadi Soda traffic is being carried at a loss to the Government. It therefore appears to be equitable to enforce the Government's full legal rights in regard to these payments.

4. In view of these facts I have instructed the General Manager of the Railway to accept payment locally at the current rate of exchange "on account" only and I await your Lordship's further instructions.

I have the honour to be,

Your Lordship's

humble obedient servant,

Edward Maitley

GOVERNOR.

REPRODUCTION OF THE
PUBLIC RECORD OFFICE, LONDON

143/19.

Attorney General's Office,
Nairobi, February 7th 1919.

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The hon. the Treasurer,
Nairobi.

re: Masai Soda Company.

With reference to your No. 228/1/48 of the 3rd instant, I am of opinion that the royalty on the soda is payable by the Masai Soda Company to the Government i.e. the Protectorate Government in the Protectorate or 'as they shall direct' i.e. as such Government shall direct vide Clause 4 of the lease of 12th April, 1911. In the absence of any direction the royalty is payable in the Protectorate.

2. The next matter for consideration is how the royalty which in the lease is expressed in shillings should be converted into the currency of the Protectorate. The only guide is that in the Currency Order-in-Council of 1903 it is provided that a sovereign shall be legal tender for Rs. 10/-. I think we are justified in taking that as the proper basis and assuming that 20 shillings equal Rs. 10/- royalty should be payable accordingly. It is to be regretted that when the lease was drafted the payments to be made were expressed in a currency foreign to the Protectorate.

J. F. Martin,
Attorney General.

4th June, 1913.

The Honorable
Chief Secretary,
S. I. P. O.

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RE: MAGADI LEASE.

My opinion is sought on the construction of the Lease of the 12th April, 1911, between the Government and the Magadi Soda Company regarding the place where payments should be made thereunder. The lease provides in Clause 4 that "the Lessee shall pay to the Government or as they shall direct in respect of each ton of raw soda or soda products and for every ton of soda estimated to be contained in manufactured soda the produce of the demised premises the royalties following, that is to say:-

(i) in respect of every ton of raw soda the sum of 2 shillings per ton;

(ii) in respect of every ton of soda, soda products or soda contained in manufactured soda the sum of 3 shillings per ton."

Clause 3 of the lease contains a provision for the payment "to the Government" of royalty in respect of minerals other than soda. Clause 7 of the lease provides for the payment of the royalties "at the time and in the manner aforesaid". ~~SAY~~ Clause 4 and Clause 5 specify the dates on which royalties are payable. Clause 7 provides for the keeping of proper books of amount

account and for their location by the Government or any agent thereof for the purpose of carrying on business for the Government or for the non-payment of royalties under the lease or for the non-payment of royalties to the Government or the Government agents. The above is in my opinion absolutely clear that the royalties under the lease are payable, unless the Government otherwise directs, to the Government of the Protectorate. The Government of the Protectorate is naturally situated in the Protectorate and therefore the royalties are payable in the Protectorate. This view is I think strengthened by the fact that when a letter is sent never is varied in the Protectorate they are specifically referred to as instances cited above. That payment should be made to the Government is only reasonable. The intention of the lease in the land is situated in the Protectorate there also is to be found the Protectorate Treasury I cannot conceive any ground of law or common sense on which a claim to pay in London the royalties due can be based. With regard to the expression of the Alliance and hence into English I am of opinion that the current rate of exchange has not long yesterday to do with the rate of conversion and that the most correct conversion or exchange rate is 100 shillings to the pound sterling. It is in my opinion to be fixed at 10.15 to £1 and it is at that rate the

expressed in the lease in sterling should be written. The position with regard to the value of the pound is expressed in the lease with the Government of Great Britain and the Government of the Protectorate. The position is as well evident that the clause was inserted in the contract of 1911 between the Government and the Protectorate and stated there the fact it was to be paid. In case of any such clause providing for its payment to the Government of the Protectorate. The opinion expressed above on the conversion of sterling to the local currency in the Protectorate applies equally to the conversion of the exchange of funds expressed in sterling in fact. The General Assembly has given a very sound basis of authority from the ordinary rule that the exchange of funds shall be made at the rate of exchange which should be made.

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M. W. BARTON

Downing Street,

12th August, 1919.

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DRAFT.

THE LAW OFFICERS
OF THE CROWN.

MINUTE.

Gentlemen,

I am etc. to lay before you the following statement of a difficulty which has arisen in the E.A.P. through the appreciation of the rupee, and to request that you will favour him with your opinion as to the position of the Protectorate Govt. in the matter.

2. Under the East Africa Currency Order in Council of the 10th February, 1905, the Indian rupee is the standard coin of the E.A.P. but by article 13 of the Order the sovereign is declared to be legal tender in that country at the rate of 15 rupees to one sovereign.

3. In the lease of Lake Magadi and neighbouring lands, dated the 13th of April, 1911, it is provided that a royalty of 2/- per acre per annum shall be paid

- Mr. Boddley 2/19/19
- Mr. Bunker 7/19
- Mr. Clarke 5/19
- Mr. Grindle
- Mr. H. Lambert
- Mr. H. Buxi 7/8
- Mr. G. Fiddes 11
- Col. Amery
- Lord Milner

Order in Council 1905
 Order in Council 1911
 Contract 13 April 1911
 Agreement of 1908
 Dec. of 1915

Handwritten notes and signatures:
 20
 50468
 40
 17/5

125 of 1911-1911
paid to the Govt. of the E.A.P. and the contract of the same date for the construction of a railway to Lake Magadi provides that a certain charge shall be made by the Govt. Railway for the carriage of soda products from the Lake to the Coast. This charge is expressed in terms of the penny and now stands at 1d. per ton per mile.

4. The same position exists with regard to the lease of an area of 500 sq. miles granted to the E.A. Syndicate Limited, in 1904, in which the Syndicate was required to pay rent at the rate of £500 p.a. and was empowered to acquire the freehold of the land for a payment of £50,000. This concession was revised by a later Agreement with the E.A. Syndicate (now the E.A. Land and Development Company) in 1915, but the later Agreement does not affect the point that the payments to be made to the Govt. in respect of rent and for freeholding the land or parts of the land are expressed in terms of sterling.

5. During the course of the war the exchange value of the rupee has appreciated and now stands at $1/8$ as compared with the parity of $1/4$ d. The Govt. of the E.A.P. has refused to accept from the Company payments tendered locally in rupees at the present rate of exchange, and has demanded that the payments should be made at the rate of $1/4$ which was in force when the Agreements were made. It will be understood that payment in sovereigns is not practicable in present circumstances.

6. Copies of the above instruments are enclosed, for return with your reply, together with a copy of a despatch which has been received from the Gov. which, with its enclosures, sets out the position taken up by the Prot. Govt. in this matter. I am to request that you will take this despatch into your consideration and that you will advise Lord Milner (a) Whether the Prot. Govt. is correct in maintaining that it may call upon these Companies to make the payments required to the Prot. Govt. in Nairobi and not to the Crown Agents for the Colonies who are the agents of that Govt. in London.

(b) Whether you concur in the view of the Attorney General of the E.A.P. that Clause 13 of the Order in Council of 1905, fixing the value in the Protectorate of the sovereign to be 15 rupees, establishes the position that debts due to the Prot. Govt. expressed in pounds sterling must, being paid locally, be paid at the rate of 15 rupees to the pound.

(c)

(c) Generally as to the position of the Govt. in this matter.

~~I am to request that the enclosures to this letter may be returned to me.~~

I am, etc.

Signed E. J. READ

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or whether that class is directed only to the maintenance of the value of the Sovereign and fixes no rate other than the rate of local requirements for a Sovereign.