

1931

Kenya

ENC

No. 17058

A

(Part 1.)

SUBJECT

C0533/407

Tea Magadi Soda Company, Ltd.

Previous

15978/30.

Subsequent

Part 2.

1 Sir H. Mchowan
Inquire when views of Colonial Office and Kenya
Govt. may be expected.

2 February

~~DESTROYED~~

2 To Sir H. Mchowan (1ack'd) 3rd February

STATUTE

As regards the first para see
the second page of the note registered as
No 22 of 15978/30, which gives all the info
in the Dept. No reply has yet been recd
to the dsp sent on the 16 Oct last & a
revising dsp was on the point of
being sent.

? re to Govt as in draft
herewith - & perhaps it is not
necessary to write to Sir H Anderson
Gavin's tender, Mr Harris etc.

JV Allen

5/2/31

~~DESTROYED UNDER STATUTE~~

To Gov. Tel. No 38 - cons - 6/II/31

A OAB. Tel 47 _____ 11 February
- Status is awaiting comments of Railway Advisory
Council. News may be expected about the end
of this month.

JV Allen

Q. Edwards

15/1/31

Accepted
W. L. S.

JV Allen

~~DESTROYED UNDER STATUTE~~

To Sir H. Mchowan 14/2/31

16

To Sir H. Macdonald
Inquire when, news of Colonial Office and Kenya
Dept. may be expected.

2nd February

~~DESTROYED~~

To Sir H. Macdonald (1 ackd)

3rd February

STATUTE

As regards the first para see
the second page of the note registered as
No 22 of 15978/30, which gives all the info
in the Dept. No reply has yet been recd
to the dsp sent on the 16 Oct last & a
recurring dsp was on the point of
being sent.

? See to Sir as in draft
herewith - & perhaps it is not
necessary to write to Sir H. Macdonald
again pending Mr Harris' reply.

J. W. Allen

5/2/31

~~DESTROYED UNDER STATUTE~~

To Gov. Tel. No. 38 - cont - 8/2/31

H. Oab. tel. 47

11 February

State is awaiting comments of Railway Advisory
Council: news may be expected about the end
of this month.

J. W. Allen

General

15/2/31

Accepted
16/2/31

J. W. Allen

~~DESTROYED UNDER STATUTE~~

To Sir H. Macdonald 14/2/31

16

DESTROYED UNDER STATUTE

Sir H. Nicholas to _____ 19 February

Acknowledge no. 5

Purg
Gordon
24.2.31
etc

hr

W. Allen
to ~~W. Allen~~

In view of correspondence on this H. 7 no further action is needed on nos. 22 and 42 on 15948/30, to which we have had no reply

shows
25/2/31
Gardiner
1/2/31

not at present
W. Allen
27/2/31
at once

4 For Report Conf 28 _____ H. March
Comments on the history of the company and state as to the agreement made between Co. & Hly; agree with Railway Council's recommendation not to consider revision of terms of the agreement and requests to be informed.

As Director of Inst
Comments:
to Director & Director
both
Directors, Messrs. Jones

Mr. C. P. ...
Mr. Nicholson
X. 17058/31
3

The obvious initial action on this was to send the duplicate of the despatch to Mr. Hamnett, the First Director & ask him to come round & read it & then discuss it.

Unfortunately Mr. Hamnett is in Pasadena & will not be back till the ^{30th April} ~~middle of the week~~.

It is true that on a previous occasion he had us - see no 3 of 15948/30 - that the ^{ch} Nicholson or Mr. Lynch was to be available during his absence: but I doubt if either of them are at the present occasion an adequate substitute for Mr. Hamnett.

We could of course bluntly tell him to do as in the last lines of the despatch: that the First Director is not prepared to give to any modification - but I think it

Sir John Campbell.

Mr. Allen has attached a memorandum ^{about} our talk with Mr. Marriott on Wednesday, and I now send the papers on to you for your comments on the position. I am sorry that we did not do so in the interval of waiting for Mr. Marriott's return from Panama. I have added one or two points to Mr. Allen's memorandum.

If you wish to read up the earlier history of the concession, Mr. Allen has the papers; ^{but} and I think that it ~~would be~~ sufficient to explain that when the original Magadi Soda Company (run by the Marcus Samuel group) went into liquidation, we had the choice of giving the concession to an independent group which would work in competition with Brunner Mond, or of giving it to a new Company, which would be in effect subordinate to Brunner Mond. It was decided that the latter course gave the best prospect of the deposit being worked, and our choice was simplified by the independent group dropping out.

The terms of the lease of the Lake, railway and Port (which are in the bundle below) were carefully worked out. The safeguards to Kenya were limited to the condition that the deposits should be actively worked, and to the fine contained in the condition that if the Company did not offer to the Railway a certain minimum output in each year they should pay the charges on that minimum output.

The Company found themselves unable to face the prospect of a minimum output of

100,000

100,000 tons by the date fixed, and got a postponement of that date in order that their arrangements for increasing the output might have time for completion. Then it was represented to us that the proper way to get a secured market in the Far East for Magadi soda was to limit all impurities chemical or other and make it indistinguishable with, and yet without distinction from, the product of Brunner Mond. With this hope the Government agreed to certain reliefs in the way of rates or royalty. The Company has now been obliged to give up the idea of complete purification, which is possibly ^{chemically} but not economically.

Finally we have the collapse in trade owing to the very great reduction of consumption, and to the arrangements for self-supply, primarily in Japan but also in India and China. It is this consideration that weighs with me most in feeling ^{rather pessimistic about} optimistic in the future recovery which would make ^{soda} magadi, really profitable either to the Company or to the Government. But Mr. Marriott is satisfied that there is a large market possible in China in the future, ^{and} ^{he claims that} but as regards Japan, the local industry is being fostered by the Government by subsidies on a huge scale. ~~which cannot last.~~

Mr. Marriott points out that to work the Company would merely put the property in the hands of the adventure lords.

There is no doubt that because Brunner Mond have put much money into the concern, and that I should be glad to be cross if you wish. Oct. 7/5/31

Sir Cecil Bottomley.

The despatch from the Govr: does not get down to the real crux of the matter, it seems to me. It is all very well to say that there is the agreement, and there are our rights, and we stand pat on that. But the real problem is:-- if Kenya insists on its rights, what are the consequences going to be? Looking at the results over a series of years (before the deep depression we are now traversing) it seems quite clear that such insistence would mean re-entry and liquidation. The Co: cannot stand a fine of something of the order of £50,000 a year. Nor does it seem probable that any reorganisation would in fact lead to more royalties, or more traffic receipts. I should say it was most unlikely that any organisation which might eventually come in would be in a better position than I C I to work the soda deposits efficiently and energetically, within market limitations. The strong probability is that they would be less efficient, and that the out-turn would be smaller. Broadly, it seems to come to this, that, unless the management is inefficient, Kenya cannot ~~possibly~~ ^{possibly} get more out of the undertaking than it is getting now. And economic forces may lead to a diminution of what it is getting now. It is not-I understand-suggested that the management is inefficient. If that is so, any insistence on their legal rights will almost certainly, in the ultimate analysis, be against their own interests. There is a margin for squeezing the pref: shareholders, of course; I make out that the annual interest on the pref: capital is £32,828.

- 6

I do not at the moment know by whom that capital is held, or what the results have been for last year. There is a report in to-day's "Times", I noticed--but without reading it--for 1930. It will show whether that margin has disappeared or not. But that margin, whatever it is, seems the maximum that Kenya can possibly get, in any circumstances, as things now stand. To take that would strip off everything but the £426,500 of debentures--which could not be touched without leading to liquidation.

2. In view of the latest information, the obviously sound course is to await the new scheme. One does not get much ground for optimism here; but it may be that the Co: can evolve something which will "satisfy everybody". I hope it can. Meanwhile, there would seem to be no harm in simply marking time, without saying anything to Kenya till the new scheme comes in.

The 8-5-31.

*This refers to
the very letter
attached.
W.S.D.*

W.S.D. 8/11/31

** Trading profits down from £52,403 to £23,016. No dividend in any class of share.
£73,450 of debentures redeemed, partly out of cash balance but partly from loan by I.C.I.*

W.S.D.

*The Times report shows for 1930. Their visit - a matter of uncertainty.
W.S.D. 8.5.31
Extract from "The Times", dated 8 May '31*

with
Please see Sir C. Bottomley's minute
of 8/3/31. perhaps

Thomas
9/6/31

Shall I draft a reminder
to the Warcott for your signature
or are you content to wait a
little longer? If you wish I
will ring up the Warcott on
your behalf

J. V. Allen

9/6/31

Mr. Allen

He ring her up - we
can wait a little longer, but we
will get it done

Wed. 7.6.31

Sir C. Bottomley

I saw the Warcott on
the 11th here & I attach a note - Not
I what passed. I wait

J. V. Allen

10/6/31

11/7/31 W.C.B. 15.6.31

alone

Mr. Bottomley

7

Please see Mr. Allen's minute of
13/6/31. Any action required, please

Thomas
3/7/31

Sir C. Bottomley

Could you please see whether you
have heard anything further from
Mr. Morrison? May we still
wait?

Glenn
3.7.31

I have telephoned to Mr. Morrison.
He has reminded the Chairman
several times but nothing definite
has come yet - "they do not
know where they are".

He will try again and make use
of the fact that we must tell
the Governor something.

B. G. [unclear] a week

Wed. 6.7.31

alone

To

W.C.B. 9.5.31

- 12 Mr Maniott (s.o.) 8th July
 Gives details of how proposal for closing
 down works temporarily & compensating
 Kanga Govt
- 12A Minute to Self Campbell
- 13 Note of meeting at Co. on 9th July

No. 12 was discussed at a
 meeting of which no. 13 is the
 record. I have had a
 flimsy of the latter made in
 case it proves useful to send
 it later to the Gov.

Perhaps the record
 does not bring out clearly
 enough the general conclusion,
 namely that Kanga is to
 well to accept the proposals,
 particularly if she can show
 convincing figures of a profit
 made in the past from traffic
 on the Railway. ? admit special
 matter.

Plantwood
 6.7.31
 Alet
 11.7.31
 at will

P.T.O.

Outlines present position
 of Magnadi Soda Co and submit
 scheme for circumventing the difficulty
 confronting the Company - involving
 proposed moratorium for 10 years.
 Suggests that a sum of £10,000
 per annum should amply cover
 any loss the Colony may sustain
 under the scheme.

Mr Allen
 has discussed.

The present letter (1) does not make
 mention of any of the stipulations at
 the end of no. 13. (2) implies
 that the works shd be closed
 down for 10 years - no doubt
 this means in reality for good &
 all.

Comparatively
 minor point. →
 a very important
 point →

There is no mention of the
 provisions for maintenance.

A further discussion with
 Mr Maniott some indication of
 he can be got hold of. Shall
 I ring him up?
 [I feel sure that ~~etc~~ when

the time comes for reply to Kenya
it should be by air mail or
telegram

Parliament

3.8.21.

I assume a further discussion with the
members is the first step.

W. Allen

3/15/21

Whether the 'moratorium'
be for 3 yrs. or 10 yrs.,
I feel that the Colony
will do right to accept
an offer of £10000 p.a.
if this is finally confirmed.

Gen. Rhodes may have
something to say about
the suggestion on p. 4
that the railway is
actually losing on the
India traffic: if he can
prove that the closing
down of Magadi will mean
a loss to the railway,
there may be a case
for asking for a little
more. But it does not
seem worth while, especially
in times like these and with
the miserable prospects
abroad. W. Allen. The

certainty of a substantial
annual payment from a
concern with the U.C.S.
It will be well to get
no comment here to see what
he has to say about
the 10 yr. period & the
points at the end of pp. 13
wh. are not covered by
this letter?

W. Allen
6.8.21

This letter contains no surprises--except as regards
the suggested moratorium for ten years. What they
say about the railway profits is what we expected
them to say: it is for Kenya to examine the figures,
and to establish its case in that matter.

2. I think it rather unfortunate that this letter
should stress the "unemployment" aspect of the
case. That is, one would think, calculated to make
Kenya suspicious and unaccommodating. To my mind,
the crux of the whole thing is that, as things
stand, Magadi is not an economic proposition.
It might be well for us to emphasise that aspect
of the matter in our communications to Kenya.

3. I suggest that it would perhaps be well to
send all the relevant pps: out to Kenya, at the
earliest possible moment, so that they can get on
with the consideration of the matter from their
end. The railway figures, in particular, will take
a good deal of working out. The comm: might
be s.g. at this stage, making clear that we are
merely sending on the pps: so that they will be
aware of what is happening, and will be able to get
on with their examination of the concrete pro-
position made.

4. I too think it would be well to have a talk with Mr: Marriott, if that can be arranged.

5. The ten year period seems to me much too long. Anything may happen in ten years, and the fixation of so long a period is-I should say-again calculated to make Kenya suspicious. It seems to me that five years ought to be ample, on any view of the case. But one very important point emerges here. The letter--as I read it-- proposes to give Kenya £ 10,000 during the moratorium period. It is only after the expiry of that period that the " terms" are subject to revision. This seems to me a very good bargain for Kenya, all things considered; and I would not therefore take exception to the period suggested, provided it is clearly understood that the payment of the £ 10,000 is guaranteed by I C I during that period.

6. If nothing of importance emerges from the talk with Mr: Marriott (if that can be arranged) I'd simply acknowledge this, and say that the Govt: of Kenya were being consulted. On receipt of their reply, a further comm: would be made. The importance of arriving at an early decision had been emphasized in the corresp: with that Govt:.

The 4th: August 1931.

J.P.H.
4/4/31

*Attach note + discussion with
Mr Marriott this morning. Reo J. Carson
of the Govt of Kenya
to H. Wilson*

Wilson
2/1/31

Mr. Swinton

*I mentioned this to you
yesterday and you agreed to
send it forward to the S. H. by
tonight's post. I am sorry it has
not been possible for you to have it
earlier.*

*The urgency is partly inherent
in the case - it is desirable to
decide matters with I. C. I. as
soon as possible, but also due
to the fact that after next week
Sir J. Campbell, Mr. Marriott, &
I all leave the on leave.*

*The whole thing is a great
disappointment to me; we are
looking what we are all agreed
is the best of a bad job.*

*Yours
6.8.31*

Sec of State

*I read on at once, as I
understand this is most urgent.
I have discussed with Mr. ...*

I recommend telegraphing as
in draft.

R.H.B.

6.8.31

gover

P 718

16 Tel to Gov Kenya No 240-Secret. 8 Aug '31

To Mr. Harry McEwan - 18 Aug 1931

DESTROYED UNDER STATUTE

17 Mr. McEwan's secret Tel - 10 Aug 1931

DESTROYED UNDER STATUTE

18 Mr. McEwan's reply to No 16

The Gov. Hotel at Grant...

...contemplated a

...this week but it seems

...cannot be expected

...The Governor is at

...it is scarcely reasonable

...attempt to press him further

...reason for urgency was still

...that the telegraph

...to be sent by the post,

...in the cases there occurs others,

For it had to say him up & tell him
...shall not get an answer till
...not ask.

* I thought he had been told
...the Government was not
...of Chastanley & that he was saying
...any for the Gov & was I agree. It wd. not be fair
...to speak the Governor.

J.P. Miller

10/5

11/8

Acc. Parkhurst
11.8.31

11.8.31

19 - Gov & H. Comm Transport } 19 Aug 1931
" Telegram 262

...is unable to contemplate
...total cessation of the
...State Company's offer
of £10,000 per annum...
...no more satisfactory for reasons
indicated...
expressed in his conf. dispatch²⁸ of
4th March (No 7)

The first thing is to get
hold of the...
...the...
...that...
...back...
...to Scotland
...note
...from the

The Secy of State, & the Secretary has told
me she can arrange for Mr. Marriott
to get it on his way through London.

Wait. At least 4 or 5
week.

J.V. Allen

7/4/31 advance

Mr. Marriott - 24 Aug 1931

DESTROYED UNDER STATUTE

I attach a note of a discussion

21) which I have had with Mr. Marriott.

The Colonial Office attitude is based on the assumption that the proposed cessation of operations is dictated by world conditions beyond the control of the Magadi Soda Company, and that the best course is to agree to the moratorium proposed, with the offer from the Imperial Chemical Industries of an annual payment of £10,000 a year, coupled with safeguards for resumption of operations when economic circumstances permit.

The local attitude seems to be based on the idea that the Company is simply trying to evade obligations, and should be left to default, consideration of the action to be taken in the case being left over until default actually occurs.

The local attitude seems entirely divorced from realities, and may also be due to some idea that the whole thing is a bluff. There seems to be no reason to suppose any such thing, and there seems no doubt that

to

to refuse the present offer would result in the Government being left with the undertaking on its hands without any compensation or safeguards for resumption, or any prospect of obtaining a purchaser. Mr. Marriott seemed to contemplate that the Secretary of State might now definitely overrule the local Government and close with the offer of I.C.I. That, however, would be a very strong measure, and I think it would be preferable to send another telegram putting the position before the Governor in a most emphatic way with the strongest possible lead to accept without further argument. I have had a further discussion with Mr. Marriott, and have drafted, for conso., a telegram which Mr. Marriott agrees correctly represents the position.

J.V. Allen

7/9/31

7/9/31

Si. S. Wilson

Si. J. Campbell has seen and strengthened the draft. I entirely sympathize with the Governor in A in 20:19 - but I am confident that we can rely on Mr. Marriott's view that the I.C.I. will not improve.

their offer

J.V. as in draft?

Web. 7.9.31

I have not thought it necessary to trouble the S. of S. at this stage; but if the Governor remains unconvinced the whole case will have to be submitted for the S. of S.'s orders.

W.S.
7/9/31
at m

29 Tel to Gov Com. No 213 7 Sept 31

Gov Kenya }
H.C. Transport } 282 ... 9 Sept 1931

In view of facts set forth in 22 has no alternative but to agree. Presumes negotiations may be confidential explained to Railway Council on 23rd. Gov. Railway Budget will be approved.

Accelerating speed but there is no doubt where the time will have to pass.

As to his last sentence please see passages marked & here found in (a) ^{1st} ~~last~~ ^{page} of note in 15 & (b) last page.

of the Gov. Sec. in 10-16.
I tried to get Mr. Marriott today but he is not available. As I shall be at the Court tomorrow I can go to see him. I have arranged with his Sec that he will ring me up between 10.30 & 11.30.

J.W. Allen
9/9/31

I have seen this to Mr. J. Sturges. He says that he can go ahead through Mr. Marriott, but with Sir [unclear] to see whether it is possible.
W.S. 9.9.31

24 — Gov. Sec. No. 286 — 10 Sept
(Indicates form which he considers negotiations with Company for moratorium should take)

This has been discussed with Mr. Marriott & I put up. It is clear. I saw Mr. Marriott agree & agree this actual wording with him. It should return for preparation & wear. of the Gov. Sec.

W.S. 11.9.31
J.W. Allen
15/9/31 W.S.

26 1/2 Gov. Tel. No. 280 Secret 15 Sep 31

15/9/31
Sir J. Shughborough.

We expect a letter in course until Friday, and the opportunity seems favourable for sending on so that Ministers may see the position. Mr Allen has put up a note (opposite) and the minutes of 4-7 August might also be read.

W.C.S. 15.9.31

Sir R. Hamilton

You will see how this matter stands.

V.R.S. 15/9/31

Seen
A.H.H.
16.9.31

Magadi Soda Coy _____ 14 September
State will be unable to operate concession to minimum limits of output, so from 1st November 1931

28.7.31 Magadi Soda Co. (27 Nov) _____
DESTROYED UNDER STATUTE
30. Imp. Chem. Industries (Ld.) Co. (No. 28) Ltd. } 18 SEP 1931
DESTROYED UNDER STATUTE
30. To Gov. Tel. (Secret 282) _____ 18 September 31

As this is urgent, it was dealt with within minutes, but I note here that when Mr. Marriott rang me up, and told me that the letter from the Magadi Soda Coy. was on its way, he spoke specially of two of the details which are mentioned in the telegram to the Governor, (No.26) and are dealt with in the reply from the Imperial Chemical Industries.

(1) As regards the Suerrá water supply for the Masai Mr. Marriott said that, although the Magadi Soda Coy. had the right to harness the supply, they had never done so, and that it would be preferred now to abandon any such rights. As regards the observance of the terms of Clause 6(iii) (a) of the Port Lease, and Clause 5(7) ^{of the Lease} Mr. Marriott said that Imperial Chemical Industries would put in a qualification that they would keep the plant in such condition that it can be started up on the expiry of the period of notice agreed upon, ^{but} thought it was quite reasonable that the plant should be kept in storage rather than running condition.

V.R.S.
19/9/31

30.7.31 Mr Marriott Esq _____ 19.9.31
DESTROYED UNDER STATUTE (Enclosing copy 30)

P.T.O

32 — Impl Chemical Industries — 24.9.3

Submits proposals for dealing with situation arising out of Magadi Soda Co's default

33 — Note on I.C.I. proposals

Mr. Allen

As the attached note shows, the I.C.I. official proposals conform closely with what had been anticipated here, and what has already been communicated to Sir Joseph Byrne. There are, however two additions and two omissions.

Additions.

(a) In Clause 3, I.C.I. presume that if Government decides to accept an offer from other parties it would first agree with I.C.I. a valuation of the Magadi Soda Company's assets, and they suggest the minimum basis of such a valuation.

It is clearly impossible at this stage to commit Government to acceptance of this suggested basis, but the presumption seems reasonable, and may be confirmed.

(b) In Clause 6, I.C.I. suggest that the obligation to observe Clauses 6 III (a) of the Port Lease and 5 VI of the Lake Lease should not bind them to maintain the plant in full working order, nor prevent them from sealing buildings, machinery, etc. They point out that the twelve months' notice stipulation under Clause 3 would give them ample time to re-equip the works. This is of course true, but there

there is no obligation on them to do so, and acceptance of the suggestion would leave it legally open to the Company to strip the works and then decline to restore them. An effect, however, any such action on their part would be taken into account in assessing the valuation under Clause 3. The suggestion may be accepted.

Omissions. Nothing is said (as was

indeed anticipated) as to (a) the position of Mr. Marriott, or (b) the continuance of the efforts to find a purifying process. As to this, see the marked passages in No. 16 (copy as sent) and the marginal note on the draft of 16. As regards (a), it seems desirable to retain power for the Government of Kenya to appoint a successor for Mr. Marriott.

I.C.I. suggest (see their penultimate paragraph) that practical effect should be given to the arrangements by a exchange of letters between the Magadi Soda Company and the Kenya Government. Mr. Robert Wray, whom I have consulted, points out that technically the three leases are Deeds, and in Common Law a Deed can be modified only by another Deed. He agrees, however, that the circumstances of this case (where neither party has any interest in repudiation) will be adequately met by the process of simple contract implied in an exchange of letters.

It may be observed that if Magadi Soda shares in the present upward rush of commodity prices, resumption of operations by I.C.I. may come sooner than was anticipated. The arrangements proposed, however, provide for this contingency, which is perhaps not very likely.

W. Wray
26.9.31

Mr. Allen

At our discussion with Mr. Marriott last night the following points emerged:-

(a) Mr. Marriott agreed that the Secretary of State could not possibly accept the minimum basis for valuation suggested in Clause 3 of the I.C.I.'s letter. (52)

(b) He urged that the proposals in Clause 5 about water supplies should be accepted without demur. He is satisfied that they meet all the Kenya Government's requirements, and to leave them open to question would not be to that Government's advantage.

(c) The point (made by Sir John Campbell) was put to Mr. Marriott, that if the I.C.I.'s suggestion in Clause 6 were accepted as it stands, I.C.I. would be legally at liberty to remove and sell all buildings and fixtures which, under Clause XX of the Lake Lease, should become the property of Government in the event of the termination of the lease (i.e., the lifting of the moratorium to permit of negotiations with other parties as provided for in Clause 7 of the letter). He agreed that I.C.I. should be informed that while the Secretary of State accepted the suggestion in Clause 6 in principle it would be necessary to except from it the Company's houses and buildings at the Lake itself and at Kilindini (not, however, the houses at Kajindo).

(d)

(d) He agreed as to the technical necessity, in the interests of the Kenya Government, of providing for the appointment of a successor to himself on the Board of the Magadi Soda Company, (which, incidentally, will continue to exist as a separate entity, though owned and controlled by I.C.I.), but expressed considerable doubt whether I.C.I. could be persuaded to contemplate such an appointment with equanimity. It was agreed that Mr. Marriott should today discuss this point with I.C.I. He has since telephoned to say that, on reflection, he thinks it would be unwise to approach I.C.I. on this point at the moment; he agrees that the draft, ^{E.I.C.I.} as now recorded, (which will meet the case).

(e) I.C.I. are extremely anxious that there should be no such delay in acceptance of their proposals as would be necessitated by referring them to Kenya by air mail. From their point of view it is essential to open negotiations with the holders of Magadi Debentures and Preference Stock at the earliest possible moment. We were prepared to agree that a telegram should be sent to the Governor covering such points as are new to him, and asking him to agree that Crown Agents should be instructed to take the necessary steps on behalf of the Kenya Government to give legal effect to the arrangements.

As regards the I.C.I.'s suggestion that the lease provisions can be terminated by exchange of letters,

letters, please see X in my earlier minute. I have since spoken to Mr. Bush, without, however, giving him the opportunity of studying the papers. On the case presented he advised that as a matter of strict law a Deed would be necessary (which could provide, ^{in the case} that the moratorium might be terminated by notice in writing from either side) and that an exchange of letters, while effective enough as a ^{gentlemen's} "agreement" between the two parties directly concerned, would be useless in the event of litigation arising at the instance of a third party, (if any). He suggested that if time permitted the papers should be sent later to Mr. Duncan for perusal.

I submit a revised draft to I.C.I. and telegram to the Governor. As soon as possible after they have gone, the papers should be recirculated for copies of the letters to be sent to Governor, and for a letter to Crown Agents, enclosing the necessary correspondence, asking them to arrange for the drafting of a Deed, which, after approval of the S. of S., can be sent to the Magadi Soda Company to enable it to reply to the letter which may be expected from that Company in accordance with the suggestion in the penultimate paragraph of

The Marrett has now seen the drafts to I.C.I. and the draft letter to Governor, and agrees.

W. J. Hall
1/12/31

W. J. Hall
30/9/31

J. W. Allen
1/10/31

I have heard the drafts. The question of sending on again through authority etc considered when we have the final drafts.

W. J. Hall
1/10/31

34 Tel No 300 (Secret & Important) to Governor
Kenya - Cons - 1/10/31

35 To J.C.I. (32 Kms) - Lomo.
DESTROYED UNDER STATUTE } = 2 OCT 1931
To Mr. Marrett (w/c's 34 + 35) S.O.

37 - Gov. Secret (w/c's 27, 28, 29 + small)
DESTROYED UNDER STATUTE } 2 OCT 1931
32 and 35

38 To Imp. Chem. Industries Ltd.
DESTROYED UNDER STATUTE } 5 Oct 1931
(S.P.M.)

39 To Mr. Marrett (copy 38) - 5 Oct 1931 (A)
40 To Mr. Marrett, S.O. } 3 Oct 1931

DESTROYED UNDER STATUTE

V.D.

Mr. Duncan

27)

The Magadi Soda Company have given formal notice of their inability to comply after 1st November with certain conditions of the leases which they hold from the Government of Kenya.

32)

Imperial Chemical Industries, Ltd., ^{already} interested ⁱⁿ, and hope shortly to acquire complete control over, the Magadi Soda Company, have suggested that in order to avoid the natural consequences of that Company's default the leases should be suspended for ten years by a moratorium. The Kenya Government, in consideration of their agreeing to the moratorium, would receive £10,000 per annum from I.C.I. during its currency. Provision is to be made for terminating the moratorium if desired by either side, with due notice, before its expiration in 1941. Final agreement on the above proposals is expected to be reached in a very few days; and the question arises what legal action is required to carry them out.

(Refer)

The three leases are in the form of indentures between the Crown Agents, (acting for the Government of Kenya,) and the Magadi Soda Company. I.C.I. suggest that the operation of the leases can be suspended by a simple exchange of letters between the Company and the Government of Kenya [or the Crown Agents acting for them]. We are advised, however, that in the event of litigation by a third party, such a "gentleman's agreement" ^{would} ~~is~~ not ~~to~~ be recognised by the Courts. It is therefore proposed to ask Crown Agents to draft an indenture and submit it for the Secretary of State's approval. But, clearly, we must give them some guidance as to what should be included in the draft. Will it be enough if the indenture

(Last page but one of 32)

indenture includes provision for (a) suspending the leases; (b) terminating such suspension by notice in writing from either party to the other? Presumably some mention should be made of the consideration in return for which the Kenya Government agrees to the moratorium? But we hope you will not think it necessary to embody all the detailed conditions which are set out in the correspondence with I.C.I.

(31 and 35)

It is understood that the Magadi Soda Company will continue to ~~be~~^{exist} as a separate entity, though it will be completely under the control of I.C.I.; and the real guarantee that all the ~~above~~ conditions will be observed is to be found in the assurances given by I.C.I. in para. 8 of their letter of 24th September.

(32)

W. D. Allen
5/10

I am, of course, that a deed is necessary in the present case, and my own view is that, as this seems to be a very important matter, the deed should set out clearly all the conditions of the proposed agreement ^{with Magadi Soda Co} - otherwise there may be trouble in the future.

I should think the best thing would be for the CA. to give Messrs Burchalls a copy of the three leases (which some all drawn up apparently by solicitors) and of the relevant correspondence, and to request them to draft the necessary deed for submission to the S.P.S.

6/10/31

W. D. Allen

It will have to be a tripartite deed with I.C.I. & H.B.

The position vis-à-vis the I.C.I. is not quite clear. It seems to me that some definite agreement with them will also be necessary, because I do not see how, for example, it could be a term of the agreement with the Magadi Soda Co, that a third party - i.e. the I.C.I. - should pay the Government of Kenya £10,000 a year in respect to the moratorium in question.

6/10/31

W. D. Allen

H.B.
W.D.

(41) - Gov. Tel Secret (311) - 6.10.31

Reply to points (a) & (b) in No 34. Promise to telegraph separately as to buildings at Kapado. Enquires whether I.C.I. may be regarded as prospective new lessees.

Mr. Allen

This telegram is most unsatisfactory.

Paras. (a) and (d) read together indicate that the Governor has failed to understand para. (a) in the S. or S.'s telegram of 1st October. He has evidently read "termination of moratorium" to mean "imposition of moratorium" or "termination of lease". The misunderstanding, however, should be cleared up

(No. 34)

on

on receipt of the full correspondence enclosed in the despatch which went by last Friday's air mail; this is due to arrive in Nairobi, I understand, on Saturday, October 10th.

Paras. (b) and (c) will, I imagine, necessitate further consultation with Mr. Marriott, which must, however, be deferred until we get the further telegram ^{promised} ~~promised~~ under (c). In the last resort, we may have to override the Governor. It is out of the question that his inherent mistrust of I.C.I. should be allowed to stand in the way of concluding the negotiations.

Clearly, we are not yet in a position to write to the Crown Agents on the lines indicated in the minutes preceding No. 41. The legal advice therein tendered makes it evident that the new deeds cannot possibly be executed before November 1st. The position will therefore be that for some time after 1st November we have nothing to depend on but the correspondence exchanged between I.C.I. and the Government; but this cannot be helped, and from a practical point of view I do not imagine that any serious consequences will ensue.

Await the further telegram promised para. (c).

Mr. Marriott is calling tomorrow at 10.30 am.

Mr. Marriott
7/10

J.M. Allen

7/10

atance

42 _____ I.C.I. _____

9th Oct.

Mr. Allen

During Mr. Marriott's visit on Thursday two points were agreed:-

(1) I.C.I. would not insist on the right to dispose of the Kajjido buildings, which would therefore be treated in the same way as the buildings at the Lake and at the Port.

(2) The Governor's stipulation in (b) of 41 could be met by substituting "the ^{mint} Government Director" for "this Government"; and in practice

Mr. Marriott would refer to the Colonial ~~Government~~ ^{Secretary}, perhaps through the Colonial Office before giving his consent to

the disposal of any property of importance. It was further pointed out that the Kenya Government's claim to all these assets rested ultimately on the proviso for re-entry in Clause 3 of the Lake lease; but that movables were exempt from the effect of that clause.

The letter subsequently received from I.C.I. meets all the points raised in our letter of 2nd October satisfactorily. The draft telegram herewith should serve to elicit formal acceptance from the Kenya Government. On receipt of the reply we can write to I.C.I. and the Crown Agents. In the meantime a copy of No. 42 should go to Governor Lt. Secret by this week's air mail, and a copy of the telegram should be sent to Mr. Marriott, marked "Personal", Lt. with your compliments.

The Marriott suggested that we should not "assault" I.C.I. as it is under 1000. It suggests that it should be left as an understanding with him.
J.M.A.

See also clause 3 (k).
J.M.A.

(42)

Mr. Marriott
12/10

I agree that the I.C.I. assurances mark records as satisfactory that

it is reasonable to rely on the first
Director so regards sales.

Suggest of course that I
do as proposed it had better be a
despatch saying as regards the
minutes under para 5 a page 2 of
noted that the J.C.I. feels that having
regard to all the areas the
undertaking that given may be
accepted as *salvo facit*.

J.V. Allen

12/10/31

Off. tel. passed. I have added
a specific reference to no: 32
as it seems to me that the
Gov's idea that J.C.I. are
replacing ^{to} Magadi Soda Co. is
~~unacceptable~~
~~unworkable~~
one which may work unworkable
with telegrams & it is not
worth while making an effort to
rework it.

J.V.A.
12.10.31

See Division's minutes.
Tel to Gov Kenya No. 313 Secret. Conto 12/10/31

46 To Marriott (w/ Jospy 4.3) ^{By 11/2} 14/10/31
Personal 107/31

45 Marriott 5/0 14.10.31
No 43 covers position completely
I should now have no doubt wishes
to call again as soon as E.O. am in
position to reply again to J.C.I.

46 Royal Exchange Assurance 14/10/31
(Trustee Dept)

Asks to be informed - as
Trustee for debenture holders of Magadi
Soda Co Ltd - of attitude of
Colonial Office & Govt of Kenya
in the matter of the Company's
failure to comply with provisions
of leases; and how Trustee's
security will be affected

Mr. Allen.
Mr. Duncan
Sir J. Campbell.

This letter was discussed yesterday
afternoon between Sir John Campbell, Mr. Allen,
Mr. Duncan, Mr. Marriott and myself.

It was explained to Mr. Marriott at the
outset that he had been asked to be present solely
in his capacity as the representative of the Kenya
Government, and that he would not be at liberty to
divulge what took place to I.C.I. Mr. Marriott
fully accepted the position.

After considerable discussion, which was
necessarily discursive, it was generally agreed that
a full and effective reply to the letter would entail
disclosure of the detailed arrangements which have
been agreed to in principle between I.C.I. and the
Colonial Office (i.e., nos. 32, 35 and 46 on this
file

file, together with the reply which will be sent to I.C.I. when the Governor's formal assent has been received).

The S. of S., however, is at present precluded from any such disclosure by his tacit understanding with I.C.I. that the negotiations should be kept secret. Premature disclosure would prejudice I.C.I. in their dealings with the debenture holders, who, on learning that the arrangements were contingent upon their assent, would be in a position to exact a higher price for the interests which I.C.I. are anxious to take over. On the other hand, a refusal to disclose would prejudice the debenture holders by depriving them of a legitimate bargaining weapon. In such a conflict of interests the S. of S. could not take sides.

The most practicable way of escape from the dilemma appeared to be:-

to invite the debenture holders to agree to the S. of S.'s communicating to I.C.I. the nature of their enquiry. If they object, the S. of S. can then say that he is not at liberty to divulge the nature of confidential negotiations which have been taking place with I.C.I. at the latter's consent.

If the debenture holders agree, they should be invited to give an assurance before being called upon to make their decision. The debenture holders (or their representatives) would be allowed full access to the correspondence revealed in the correspondence. If I.C.I. decline to give this assurance, the S. of S. will have to consider whether, in

Yours

fairness to the debenture holders, the information should not be made available to them direct from the Colonial Office.

Draft herewith.

Chamberlain
17/10

Please see my marginal comment above.

19/10/31 *H. Duncan*

W. Allen
19/10/31

We all agreed that the issue of this draft was the necessary first step. We all agreed, also, (I think) that information as to the negotiations which have taken place between the S/S and I.C.I. must--somehow--be ^{made} available to the trustees of the debenture holders (though possibly not directly to the debenture holders themselves) before they are called on to make their decision.
The 19-10-31.

W. Allen
17/10/31

I have passed the draft, which is clearly necessary on the first stage. The next must depend on the reply.

W.S.A. 19.10.31

W. Allen

DESTROYED UNDER STATUTE
Royal Exchange Assurance Co. 19.10.31
To Gov Secret (copy)
Circulating copy (62) 19 Oct 1931

All papers relative to the reply will not further be read

17/10/31

It was suggested as a possible course, but no conclusion was arrived at; and personally I think if such a course were adopted in all the circumstances to be satisfactory.

19/10/31 H.D.

44) Royal Exchange Assurance
Trustee Dept. 9 — 20 Oct 1931

(No objection to communicating
substance of 46 to I.C.I.)

50 — Gov Tel } — 22/10/31
329 Secret }

(Submits obscom on points
raised in GO telegram of 12 Oct (No 43))

51 Tel.
(Asks for repetition of part of 34)

52 Mr Marriott — 23 Oct 1931

(States that at interview
with Chairman of I.C.I. and other
Directors it was unanimously agreed
that ~~the~~ Nos. (28 & 29) 32, 35 & 42
should be immediately available
to Trustees for debenture holders
Indicate arrangements
made for letting debenture holders
inspect this correspondence and
report result of meeting with
principal debenture-holders.)

SECRET
CONFIDENTIAL
STANLEY

On receipt of No. 49 a meeting
was held on the evening of October 21st between
Mr. Stanley, Mr. Marriott, Mr. Allen and
Messrs. Mr. Marriott stated that he would be
seeing Sir Harry McGowan at 10.45 a.m. on the
following morning, and that at 11.30 a.m.
Mr. McGowan would be ^{meeting} seeing some of the
principal debenture holders of Magadi Soda.

It was agreed that at his private interview
Mr. Marriott should tell Sir H. McGowan that a letter
of enquiry had been received from the Trustees, and
should represent that he would like to be in a
position to tell the Colonial Office that I.C.I.
would communicate to the debenture holders the full
correspondence between themselves and the Colonial
Office. It was further agreed that Sir H. McGowan
would be justified in warning the debenture holders
at the meeting that in the event of a breakdown in the
negotiations between I.C.I. and the Colonial Office
caused by their reluctance to accept the terms
proposed by I.C.I., Government would be at liberty to
terminate the Magadi leases, in which case their
assets would largely disappear.

It was contemplated that after hearing from
Mr. Marriott the results of the morning's proceedings,
we should write to I.C.I. giving the substance of
No. 46, and saying that the S. of S. understood that
a meeting had taken place between I.C.I. and the
debenture holders; if any points in the Trustees'
letter had not been disposed of by what took place
at the meeting, the S. of S. would be glad to learn
what reply I.C.I. would wish to be sent to the various
points in the Trustees' letter.

The letter from Mr. Marriott (No. 52) shows
in effect that as far as concerns those debenture
holders who were present at yesterday's meeting, the
position is fully understood, and a satisfactory con-
clusion has been reached. As is stated in the last
paragraph of 52, we informed Mr. Mackenzie-Grieve
by telephone at about 1 p.m. yesterday that the full
correspondence was available to him (as representing
the

the whole of the debenture holders) at the
offices of I.C.I.

In these circumstances, it seems possible
to short-circuit the circuitous procedure
previously thought necessary, and I venture to
suggest that a letter on the lines of the draft
herewith will serve to close the correspondence.

No. 50. Para. 1 of the Governor's tele-
gram is quite incomprehensible except on the
assumption that para. (a) of the S. of S.'s
telegram of 1st October (No. 54) was incorrectly
transmitted or decoded. The coding has been
checked by the Telegraph Section here. I
am therefore sent off No. 51, and further
awaiting the receipt of a reply.

Para. 2 of No. 51, to all intents and
purposes already covered by para. (b) of No. 49.
I do not want to give way to the
objection, on its immaterial point, a formal
reply is given to Mr. Marriott to con-
form to the Governor's wishes.

At the same time, I am afraid, have to
ask Mr. Marriott to elucidate this.

The land, houses and water supply at
the site are dealt under some local arrange-
ments independent of the main leases,
and in consulting Mr. Marriott again it would
be to await a reply to No. 51.

W. A. P. Austin
22/10

I have since (at Mr. Allen's suggestion) read

over the draft to Mr. Marriott, who agrees to it. He
further agrees that there is no need to send a reply
(a substance) of 46 to Sir H. McGowan (see X)
on p. 2 of 52 unless the reply from the Trustees
is in the negative.

W. A. P. Austin
22/10/31

The attached draft letter to the
Trustees of the debenture holders assumes that
Sir H. McGowan did make the correspondence in
question available to the debenture holders at
the meeting on the 22nd October. This may be
the fact, but if it is I am surprised that
Mr. Marriott, who attended the meeting himself,
did not confirm it. If his letter of the 23rd
October is read carefully, it will be seen that
he does not say that the correspondence was
produced to the debenture holders, but that an
offer was made by the I.C.I. and gratefully
received by the debenture holders.

I note the last paragraph of No. 52, but
I think that the correspondence in question should
have been produced at the meeting on the 22nd
October before the offer was made by the I.C.I.,
because the questions which I put to Mr. Marriott
at the meeting on 16.10.31 definitely elicited
the information that, although a good offer was to
be made by the I.C.I. to the debenture holders,
the latter would get a better one still if they
knew what was in the correspondence.

24.10.31.

H. D. Owen

Mr. Allen, Mr. P. Austin, and I discussed the matter
this morning 24/10/31 H.D.

*This really a distinction
without a difference
The M. can be asked
to conf. with the
Gov's notes 21/10*

*This has been
discussed with Mr
Marriott & he
wishes to have
the Gov's notes*

W. A. P. Austin
27/10

*Some draft
27/10*

approximation £70,000
£400,000 (approx)

After the discussion with Mr. Duncan, Mr. Allen & I have again seen Mr. Rowitt. As a result of what he told us, it is now clear that in addressing some of the debenture-holders on 27 Oct. Sir H. Kyrle did not refer to the C.O. - I.C. correspondence; nor did they learn from him of the key-position occupied by the debenture-holders as a body.

According to calculations which were apparently agreed at the meeting, appointment of a receiver would result in the deb. holders receiving not more than £20 in the £100. Sir H. Kyrle offered them £40 in 7% I.C. preference shares; and made it clear that this was not a bargain, but a final offer. Whether they would have stood out for ^{still} better terms if they had been told the full facts, and whether by so doing they would have improved their position, are open questions. But, in any event, they will subsequently have had the opportunity, through the Trustees, of knowing all that the Sigs. can tell them, and can modify their attitude, if they so desire, at the full & formal meeting which has still to be held.

Mr. Allen has suggested an alternative

draft to the Trustees.

Mr. Rowitt
26.10.31.

Mr. Allen
27/10/31

Any debenture holder who thought most favourable that he could be receiving. Therefore, although I.C. may have better terms of this class, I am not sure that if the trustee had been revealed any debenture holder would have asked for better terms.

^{the} As Mr. Rowitt says, they can still push the series on.

27th passed.

W.S. 27.10.31

53 To Royal Exchange Assurance (Trustee Dept)
46 & 49 avon. - avon - 27 Oct 1931

~~54~~ - Royal Exchange Assurance - 27
(Trustee Dept)

REGISTERED UNDER STATUTE

As no 53 states has seen correspondence referred to.

If further information requires would like to make further enquiry if no objection.

Para 1. is equivalent to what was asked for in (53). Para 2. merely serves to keep the door open, and calls for no reply.

? Put by 54. (See further minutes on Part II file.)

Mr. Rowitt
30/10/31

See S. Wilson
to see

C. O.

17098/31

K'a.

53²⁰

Mr. *Allen* 26/10

Mr. *Duncan* 27/10/31

Mr. *Allen* 27/10

Mr. Tomlinson.

Sir C. Bottomley. 27.10/31

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C.D.
R 70CT
D 127

27 OCT 1931

522
Sh

DRAFT.

The Manager
Trustee Dept.
Royal Exchange Assurance.

46)
49)

W. reference to your letter of the 14th and the 20th October. ~~to me~~ in regard to the affairs of the Dagashi Soda Co. Ltd. I am ~~to~~ state that he understands that ^{informal} ~~an~~ meeting was held on the 22nd October between the Chairman of Imp. Chem. Industries Ltd and some of the principal debenture holders in Dag. Sod. Co. Ltd. It is also understood that a further meeting will be called to obtain the consent of the debenture-holders to the offer made

by Sir H. H. Brown at the informal meeting.

3 After ~~the~~ meeting on the 22nd

October it was reported to the ~~Col. Office~~ ^{S. of S.} that the full correspondence between the I.C.I. and the Col. Office would be made immediately available to the Trustees of the debenture-holders at the offices of I.C.I.; and you were so informed by telephone.

4. As the terms of that correspondence are now, no doubt, known to the

Trustees, it is assumed that the points raised in your letter of the 16th October call for no further elucidation. (16)

I am to enquire whether the Trustees agree that this assumption is correct.

(Signed) H. T. ALLEN

by Sir H. H. Gosset at the informal meeting.
3 After that meeting on the 21st of October it was reported to the ^{S. of S.} Col. Office that the full correspondence between the I.C.I. and the Col. Office would be made immediately available to the Trustees of the debenture-holders at the office of I.C.I.; and you were so informed by telephone.

4. As the terms of that correspondence are now, no doubt, known to the Trustees, it is assumed that the points raised in your letter of the 14th October call for no further elucidation. I am to enquire whether the Trustees agree that this assumption is correct.

H. T. ALLEN

Hugh F. Marriott
Consulting Engineer

H. INST. M. E. (MAY 1904) H. INST. C. E. A. I. E. A. R. C. E. E.

TELEPHONE GERRARD 5100-7.

14. WATERLOO PLACE,
LONDON. S. W. 1.

23rd October 1931

H. T. Allen, Esq.,
Colonial Office,
Downing Street,
S. W. 1.

My dear Allen;

Magadi Soda Company.

The following is the record of the events of yesterday, 22nd October, 1931 :-

I had an interview with Sir Harry McGowan, the Chairman of the Imperial Chemical Industries, at which some of the other Directors, the Secretary and the Company's solicitor were present.

I informed the Chairman that the Royal Exchange Assurance, through their Manager of the Trustee Department, Mr. C. J. Mackenzie-Grieve, had written to the Secretary of State asking, as interested parties, several questions to elucidate their position qua the Government in the various possibilities of outcome of the present negotiations; that this letter had been marked

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"confidential" and therefore could not be dealt with adequately by the Secretary of State in view of the negotiations already in progress with I.C.I.; that the Royal Exchange Assurance had released the letter from being confidential and were quite willing that a copy of it should be sent on to the I.C.I.; that the Secretary of State would therefore do this in due course.

In the meantime as the Chairman was meeting a number of the principal debenture holders yesterday morning it was advisable that any doubts in the minds of the Trustees should be at once cleared up and I asked if the Chairman was agreeable that the whole of the correspondence between the Colonial Office and the I.C.I. should be rendered available to the Trustees for the Debenture Holders, and I particularly mentioned as part of the information to be rendered available to the Trustees for the Debenture Holders, the clause that the tentative arrangement between the Government and the I.C.I. was subject to the successful conversion of Magadi Debentures and Preference Shares into I.C.I. shares.

The letters comprising the whole of the correspondence referred to are as follows:-

"confidential" and therefore could not be dealt with adequately by the Secretary of State in view of the negotiations already in progress with I.C.I.; that the Royal Exchange Assurance had released the letter from being confidential and were quite willing that a copy of it should be sent on to the I.C.I.; that the Secretary of State would therefore do this in due course.

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The letters comprising the whole of the correspondence referred to are as follows:-

C.O. Letter of 18th September. 28 1-29
I.C.I. letter of 24th September. 32
C.O. Letter of 2nd October. 35
I.C.I. Letter of 9th October. 42

These letters were produced at the interview
and it was unanimously agreed that they should be immediately available to the Trustees for the Debenture Holders.

I informed the Chairman that the Colonial Office would at once notify the Royal Exchange Assurance that this correspondence was immediately available for their perusal at the offices of I.C.I. and I arranged with the Secretary that if they desired a copy of this correspondence they should have it.

The Meeting was then held with the principal Debenture Holders. It was informal, Only those having large holdings were asked to come so as to obtain their point of view and approval if possible before the meeting to called officially.

I attended the Meeting at the request of the Chairman. The Chairman recounted the position year by year, showing the varying fortunes of the Company and the events that had led to the present position where further operations had become impossible.

The Debenture Holders had no illusions about their position or rights in the business. They realised

C.O. Letter of 18th September. 28-29
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The Debenture Holders had no illusions about their position or rights in the business. They realised

that on the Company defaulting the Government had a right to cancel the lease and it evolved at the Meeting that the uncalled capital and the moveable property were the only assets in which they would have an interest if they stepped in and took over the business. Further that, as regards a large portion of these assets, they would only rank with other creditors of which the I.C.I. themselves were the chief.

The Chairman then made his offer of forty 7% cumulative Preference shares of £1 each in I.C.I., carrying interest from 1st January 1932, in exchange for each £100 nominal 6% Debenture Stock of the Company. The interest of the Debentures would be paid up to 31st December 1931.

The Meeting at once received this offer with every expression of gratitude for the generous treatment on the part of I.C.I. and expressed their willingness to assist this scheme to be carried through.

A formal Meeting of the Debenture Holders has to be called and 75% of the members present have to approve the scheme before it becomes effective.

Arrangements are now being conducted to this end. After the Debenture Holders have been dealt with negotiations have to be carried through with the Preference

Shareholders. In view of the favourable reception yesterday it is not anticipated that any serious difficulties will present themselves to the conclusion of the internal business of the Company in such a manner that the I.C.I. will be able to carry out their tentative agreement with the Government.

As it was quite likely that the Debenture Holders at the Meeting would at once return to the City and discuss the question with the Trustees you thought it advisable to clear up the position with regard to the Trustees' letter by informing Mr. Mackenzie-Grieve, over the telephone that the whole of the correspondence was available for his inspection at I.C.I. This you did immediately and this removed any possible hitch in the continuance of negotiations on account of the enquiries emanating from the Royal Exchange Assurance.

Yours sincerely,

R. J. Mackenzie-Grieve

C. O.

Mr. *Frederick Jones*

Mr.

Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

17050 / 51
Kenya
C
R 23 OCT
R 23

Indiscreet
Nov. 11. 5.55 A 23/10/31

H.C.

Gov. Nairobi

DRAFT. Tel.

Secret. No 328. Your tel. 22 Oct 329

- (50). Secret. Please repeat back ^{decode of} following
- (34) ~~section~~ ³⁰⁰ of my tel 10 Oct Secret ~~to~~ ^{Repetition}
 begins from quotation begins (a) my telegram
 No 280 Secret paragraph two quotation ends
 to quotation begins shall be taken over by
 new lesser quotation ends.

"

SECRET

RECEIVED
22 OCT 1931
COL OFFICE

Telegram from the Governor of Kenya to
the Secretary of State for the Colonies.

Dated 22nd October 1931. Received 1.6 p.m 22nd October.

16085/30

No. 329 Secret.

Reference correspondence terminating with your

43

telegram No. 313 Secret. One. I agree but I greatly regret that
presumption expressed in clause 3 of Company's letter of 24th
September confirmed in Colonial Office letter No. 17058/31 on
2nd October was not brought out in telegraphic correspondence.

32 (hand page)

35

It was to guard against this contingency that the wording in
paragraph (a) of my telegram No. 311 Secret was used

No. 41

and I urge if possible the matter should be reconsidered on
basis of this Government having right to dispose of Company's
assets upon such terms as it considers fit subject to (a) twelve
months notice (b) the offer being genuine and one backed by
adequate resources (c) the Magadi Company being given first
opportunity to resume operations.

Two. My advisers consider sale of any material
assets should be subject to approval of this Government and that
Marriott should be instructed accordingly.

Three. As it is not present intention to terminate
concession to the Company, the lease of 742 acres and six houses
and supply of 3000 gallons of water per day at Kajindo subsisting
until 1936.

MEM

(Trust No. 1,450) 46

TRUSTEE & EXECUTOR DEPARTMENT

ACCESS BY EAST ENTRANCE TO ROYAL EXCHANGE



RECEIVED 15 OCT 1931 COL OFFICE

TELEPHONE MANSION HOUSE 9886 TELEGRAPHIC ADDRESS FOXHOUND, STOCK LONDON

Confidential

ROYAL EXCHANGE ASSURANCE G.P.O. BOX NO 436 ROYAL EXCHANGE, LONDON.

RECEIVED 15 OCT 1931 COL OFFICE

R

14th October, 1931.

Dear Sir,

The Magadi Soda Company, Limited

As Trustee for the debentureholders of the Magadi Soda Company, Ltd., my Corporation has been informed of the position in which the Company now finds itself - namely, that owing to the world economic crisis the value in price of soda ash and the contractions in the markets which normally take Magadi soda ash, the Company is unable to earn its debenture interest or find the necessary moneys for debenture redemption; and further, that it is also quite unable to comply with the provisions of the leases which it holds from the Kenya Government, under which from the 1st November next it is obliged to produce a minimum of 100,000 tons of soda ash per annum.

In view of the Company's notification the Trustees would feel grateful to you if you could inform them of the attitude which His Majesty's Colonial Office and the Government of Kenya are likely to take in this matter, and how the failure of the

The Colonial Office.

And (ad interim) 19.10.31 (No. 11) and 27 Oct 1931

ROYAL EXCHANGE ASSURANCE.

DATE

14/x/31.

CONTINUATION SHEET No.

1.

The Maradi Soda Company, Ltd.

Company to comply with the provisions of the leases, and its undertaking to produce the above minimum amount of soda ash per annum, will affect the Trustees' security.

The Company has informed me that it has notified your Office of the full facts, and that having been so notified neither His Majesty's Colonial Office nor the Government of Kenya are prepared to hold the Imperial Chemical Industries, Ltd., as owners of the Ordinary capital of the Company and the successors to Messrs Brunner, Mond & Company, liable for the fulfilment of the terms of the leases. If this is the case and no such liability can devolve on the Imperial Chemical Industries, Ltd., and the Company itself is unable to carry on its undertaking, then it seems to me that there is only one thing for the debentureholders to do - namely, to endeavour to sell the undertaking to some willing purchaser and to appoint a Receiver.

I gather that the Company is about to call its debentureholders together when it hopes to be able to put before them an offer by the Imperial Chemical Industries, Ltd., for the acquisition by that Company of the debentureholders' security.

As it will be seen from the above, the debentureholders'

The Colonial Office.

DATE 14/x/31.

CONTINUATION SHEET No. 2.

The Magadi Soda Company, Ltd.

position will depend almost entirely on what attitude His Majesty's Colonial Office and the Government of Kenya are likely to take up in respect of the failure of the Company to carry on its obligations under the leases, and as to whether they hold the Imperial Chemical Industries, Ltd., liable in any way to fulfil the covenants under the leases; and further, in the event of the enforced appointment of a Receiver by the Trustees, what attitude the said parties would take towards a proposal for the disposal by the Trustees of the Magadi soda lake and the various other specific assets charged to the debentureholders by way of a sale in the open market - say, to Japanese or other interests.

If you are in a position to give the Trustees the above information it will be extremely helpful to them and the debentureholders in the negotiations which must of necessity now be instituted for the protection of the debentureholders' security.

Yours faithfully,

Manager, Trustee Dept.

The Secretary of State for the
Dominions,
The Colonial Office,
Downing Street,
S. W. 1.

Coded & sent

45
37

*7.30p
12-10-31
Hes.*

O. O.

Mr. Freeston 12/10.

Mr. Allen. 17/10

Mr.

Mr. Tomlinson.

* Sir C. Bottomley. 12.10 *am*

Sir J. Shuckburgh.

Sir G. Grindle.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

No. 313 Secret.

Your telegram No. 311 Secret.

DRAFT.

tel.

*copy to Marriott 14 OCT 1931
14 OCT 1931*

Governor, Nairobi.

(a) From my despatch of 2nd October Secret

you will now have learnt that proposal

for valuation applies only to event of

offer from third party during currency

of moratorium, and that your

reservations stand.

(b) It is understood that sales will

be subject to prior consent of Government

Director who will consult your Government

when necessary.

(c) I.C.I. now agree that Kajicho

buildings should be *on same footing as* ~~not subject to disposal~~

as buildings at Lake and Kilindini, i.e.

not subject to disposal.

(d) Position is explained in enclosures

to my despatch under reference. *See enclosure
letter of 24 Sept.*

I.C.I. have now replied to Colonial

Office letter of 2nd October, giving

32

35
(47)

satisfactory assurances on all points. They
are now initiating negotiations with Magadi
Debeature holders and shareholders and
hope it may be possible to put moratorium
in effect as from end of this year. I shall
with least possible delay
be glad to be informed/~~by telegram~~ that you
now agree to my authorising Crown Agents to
proceed in due course with necessary legal
formalities on behalf of Colonial Government.

38
IMPERIAL CHEMICAL INDUSTRIES LIMITED.

FROM: THE CHAIRMAN.
(SIR HARRY MOGDAN, K.B.E.)

MILLBANK,

LONDON, S.W. 1

9th October 1931.



PC acknowledged
cc K. H. H. 10/10
30

The Under Secretary of State
for the Colonies,
Colonial Office,
Downing St. S.W. 1.

Sir,

Magadi Soda Company Limited.

We have to acknowledge with thanks receipt of your letter of 2nd October and beg to reply as under to the various points raised therein.

Paragraph 2. We note that the Secretary of State is prepared to accept the principle of a valuation of the Company's property (if necessary by arbitration) which may be required in connection with its transfer to any outside party, but that he cannot accept the basis of valuation suggested. In these circumstances, therefore, we are agreeable to withdraw the latter condition.

Paragraph 3. We agree that all houses and buildings at the Lake and Kilindini and Kajiado should be excluded from the property which we would be at liberty to disperse.

Paragraph 4. We agree that Mr. Marriott, or any successor appointed by the Governor under clause 5 (xxi) of the

19 Oct 1931
(No 42)
copy to Gov Secret (35)

To The Under Secretary of State,
The Colonial Office.

9th October 1933

Lake Lease, should at all times be kept in a position to form an opinion as to the feasibility of recommencing operations at Magadi on an economic basis.

Paragraph 5. The position with regard to research on purification processes for Magadi is that we will be prepared at all times to apply to the technical problems of Magadi such new knowledge or developments as may arise in the general research on Alkali problems which we are constantly carrying out. We put the matter in this way because it can be definitely stated that the work which has already been done on the technical chemistry of Magadi processes has exhausted every possibility that can at present be foreseen. To say that active research will be continued, therefore, would convey the somewhat misleading suggestion that the chances of ultimate success would be improved by a further programme of sustained research in what has been proved to be an economically barren field.

Our general alkali research programme will, however, always be conducted in such a way that any new developments will invariably be examined in their bearing upon Magadi and this should give you all the assurance you require that no possibility of finding an economic new process will be overlooked.

In these circumstances, it appears that we are now in agreement upon all points of principle involved in the proposed moratorium scheme, and we thank you for having placed the whole

To The Under Secretary of State,
The Colonial Office.

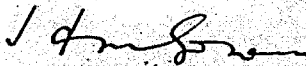
9th October 1931

matter before the Governor of Kenya. In the meantime we are proceeding with the steps necessary to initiate our negotiations with the Magadi Debenture holders and Shareholders, and we hope that the Company will shortly be in a position to communicate with the Crown Agents on the lines suggested. If, therefore, matters proceed as we anticipate it may be possible to put the moratorium scheme into effect as from the end of the current year, and we mention this point in case it should be of any assistance to you to know the period of time which we have in mind, before all the necessary arrangements can be completed.

We have the honour to be, Sir,

Your obedient servants,

IMPERIAL CHEMICAL INDUSTRIES LTD.



Chairman

DECODE

REC'D
-6 OCT 1931
OO L OFFICE

X 1705 8/31

4.74

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 6 October 1931. Received at 9.50 a.m. on 6 October.

No. 311 Secret.

Your telegram no. 300 secret (a) I see no objection to Imperial Chemical Industries making a valuation for their own purposes prior to moratorium, but I must ask that the reservations^{of}/this Government in paragraph 2 of my telegram no. 286 secret stand.

(b) As regards disposal of plant machinery stores etc. no sale should be allowed without prior approval of this Government.

(c) I will telegraph separately regarding buildings at Kajiado.

(d) I should be glad to know if in your opinion Imperial Chemical Industries may be regarded as prospective new lessees

34
used tel - 12/10/31 24

d. o.

42

- Mr. Freeston. 30/9
- Mr. Allen. 1/10/9
- Mr. J. Campbell *1/10/91*
- Mr. Tomlinson.
- Sir C. Bottomley. 1.10.21. *for*
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

17058 Kenya.

Downing St. 2 OCT 1931 1931.

Sir,

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of 24th September, and to offer the following observations upon the proposals therein contained for meeting the situation in regard to the Magadi Soda Company's contemplated default.

Copy to Mr. Secret. 2 OCT 1931

DRAFT.

(No.32)

CHAIRMAN,

IMPERIAL CHEMICAL INDUSTRIES, LTD.

Extra copies for Mr. Nuttall C.A.

4 dfts.

~~Copy with 52 to~~

~~Gov. in compr. dft.~~

~~circ. for letter to Mr. Marshall~~

Reciv. immediately for letter to C.A.

2. Mr. Thomas is prepared to confirm the presumption expressed in ^{Clause 3} ~~in~~ *as the third page of your letter* ~~therein~~ that, before giving notice of termination of the moratorium, the Government of Kenya would agree with I.C.I. the valuation (fixed if necessary by arbitration) at which the existing assets should be taken over by the new lessees. He is, however, unable

the

unable

unable to accept the basis suggested
by I.C.I. for such a valuation.

3. The Secretary of State
accepts as reasonable in principle
the suggestions as regards maintenance
of plant etc. made in clause 101
of our letter. It is, of course, necessary,
however, to make provision for buildings
and other plant and equipment
at the expense of the company
to be established. It is proposed
that the company should be liable
for the same.

The proposals are here
regarding the Government's
proposal that
the company should be
represented at
the Board
should be
in a position that

he is at all times able to form an opinion as to the feasibility of a recommencement of the operations on an economic basis; that when the Government receive a report from him to the effect that this point has been reached, negotiations will be re-opened; and that in the event of re-opening, adequate notice will be given to Government.

? before the termination
- unless "E.?"

^{In case} ~~It should~~ ^{if} should prove necessary, ~~during the currency~~ of the moratorium, to appoint a successor to Mr. Barrett, the Governor should retain powers analogous to those vested in him under Clause XXII of the Loans Act.

5. Mr. Thomas will be glad also to receive an assurance that efforts to find a purifying process for Magadi Soda will be actively continued by I.C.I.

6. Subject to the foregoing

modification

modification
observations, Mr. Thomas is

prepared to recommend to the Government
of Kenya full acceptance of the
proposals enumerated in your letter.

The points with which the Governor
is not already familiar are being
communicated to him by telegraph,
and he is being invited to signify
his concurrence in the arrangements
at the earliest moment practicable.
Subject to any further points which
may arise from Sir Joseph Byrne's
reply, the Crown Agents for the
Colonies will be instructed to act
on behalf of the Government of Kenya in
the matter, and the communication
from the Masadi Soda Company suggested
in the penultimate paragraph of your
letter should accordingly be addressed to
the Crown Agents.

(Signed) H. T. ALLEN

O. O.

- Mr. Freeston. 20/9
- Mr. Allan 1/10/31
- Mr. Sir C Campbell 1/10/31
- Mr. Tomlinson.
- Sir C. Bottomley. 1. 10. 31 *done*
- Sir J. Spuckburgh.
- Sir G. Grindle.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

17058 Kenya.

Goodman
 5.30 PM
 1/10/31
 Downing-St.

34
44

1931.

To 300 He
 Secret (in part) 8/10/31
 (H)

SECRET

No. 30.

My telegram 282 Secret. Formal

DRAFT. Tel. (conf. code)

Important
 Governor
 Nairobi

GVERNOR.
NAIROBI.
NO.

1931 OCT 31

Copy to Mr. Marritt s.o.

proposals now received from I.C.I. To avoid undesirable delay in opening negotiations with existing Magadi stock holders they are anxious for acceptance at earliest possible moment. Subject to following points proposals conform accurately to what has been foreshadowed in my earlier telegrams and meet all requirements indicated in your telegram 286 Secret of 10th September.

(No. 24.)

(No. 26.)

(a) My telegram No. 280 para. 2.

I.C.I. presume that Government would be prepared, prior to giving notice or termination of moratorium, to agree

Extra copies
 for Mr. Marritt
 CA.

[Handwritten signature]

with

34

10.0.

Mr. Freeston 30/9
 Mr. Athor 1/10/51
 Mr. Sir C Campbell 1/10/51
 Mr. Tomlinson
 Sir C. Bottomley 1.10.51 done
 Sir J. Spenceburgh
 Sir G. Grindle
 Permt. U.S. of S.
 Parly. U.S. of S.
 Secretary of State.

17058 Kenya.

Good sent
 5.30 PM
 1/10/51
 Downing St.

1951.

To 300 He
 Answer (in part) 6/10/51
 (H.A.)

SECRET

No. 30.

My telegram 282 Secret. Formal

DRAFT. Tel. (conf. code)

Important
 Governor
 Nairobi

2 OCT 1951

Copy to Mr. Harcourt s.v.

GOVERNOR.
 HARROBT.
 H.A.

proposals now received from I.C.I. To avoid undesirable delay in opening negotiations with existing Magadi stock holders they are anxious for acceptance at earliest possible moment.

Subject to following points proposals conform accurately to what has been foreshadowed in my earlier telegrams and meet all requirements indicated in your telegram 286 Secret of 10th September.

(a) My telegram No. 280 para. 2.

I.C.I. presume that Government would be prepared, prior to giving notice of termination of moratorium, to agree

with

Extra copies
 for Mr. Harcourt
 C.A.

4 d/10/51

with them a valuation (to be fixed if necessary by arbitration) at which Magadi Soda Company's assets should be taken over by new lessees.

(b) Your telegram 286

(No.24)

~~para 5~~ I.C.C.I. agree to adhere

of both of take (referred to in para 5)

to clauses ~~named~~ of leases so far

as the maintenance in reasonable condition is concerned. They suggest

that this should not bind them to

maintain plant in full working

order, nor prevent them from

disposing of plant, machinery, loose

tools, furniture, stores; also of

buildings at Enjiado. Object is to

avoid excessive maintenance costs

on ~~the~~ ^{plant} plant, etc. I regard

both (a) and (b) as reasonable;

valuation of assets under (a) would

of course be reduced proportionately

by any ~~amount~~ ^{disposals effected} taken under (b).

Handwritten signature

I.C.I. are being informed

that I regard as essential part of arrangement the stipulation as to Marriott's position contained in my telegram No.240 of 8th August. Necessity has not been overlooked of providing for appointment of successor to Marriott, should occasion arise. They are also being asked for assurance regarding active continuance of efforts to find purifying process for soda. I have no reason to suppose that they will decline to accede to these two conditions.

(16)

It is my considered judgment that the arrangement as a whole is the best that can be devised in the interests of your Government. I trust that you will inform me at earliest possible date that Crown Agents may be instructed to take the legal action necessary to give effect to the arrangement.

(16)

I.C.I. are being informed that I regard as essential part of arrangement the stipulation as to Marriott's position contained in my telegram No.240 of 8th August. Necessity has not been overlooked of providing for appointment of successor to Marriott, should occasion arise. They are also being asked for assurance regarding active continuance of efforts to find purifying process for soda. I have no reason to suppose that they will decline to accede to these two conditions.

It is my considered judgment that the arrangement as a whole is the best that can be devised in the interests of your Government. I trust that you will inform me at earliest possible date that Crown Agents may be instructed to take the legal action necessary to give effect to the arrangement.

No further announcement,
confidential or otherwise, should of
course be made until authorised by me.

G. E. H.

NOTE ON I.C.I. PROPOSALS

Clauses 1 and 2. These tally exactly with the proposals put to the Governor in the Secretary of State's telegram of 8th August (No. 10 on file).

Clause 3. This corresponds to para. 2 of the Governor's telegram of 10th September (No. 2 which was replied to in para. 2 of the Secretary of State's telegram of September 15th (No. 26). A new point, however, is introduced, viz., the suggestion ^{for an agreed} ~~that an agreed~~ valuation in the event of the assets being taken over by other parties. As to this see my minute.

Clause 4. This contains the provisions of paras. 3 and 4 (a) in No. 26; the provision for reconditioning at the Company's expense is found in para. 6 of No. 24 and 6 of No. 26).

Clause 5. This appears to follow the general lines of para. 4 in 24 and para. 4 (b) in 26. The water supply agreements referred to do not appear in any of the Leases; from the minutes on 20686/25 it seems that one at any rate of the Agreements dates back to 1915. From Mr. Allen's minute of 19th September on this paper it seems that there should be no objection to the Company's proposals but as a matter of form the point had better be left to the Governor.

Clause 6. This follows para. 5 of Nos. 24 and 26, with the added proviso foreshadowed in Mr. Allen's minute of 19th September (see my minute).

Clause 7. Corresponds to the Governor's requirements.

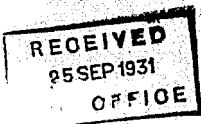
requirements in para. 7 of 24, which was
replied to in para. 7 of 26.

Phase 8 is eminently satisfactory
GPH
26/9

3
47
IMPERIAL CHEMICAL INDUSTRIES LIMITED.

FROM: THE CHAIRMAN.
(SIR HARRY MCGOWAN, K.B.E.)

TELEGRAMS:
IMPKEMIX. PARL. LONDON.
TELEPHONE:
VICTORIA 4444.



MILLBANK,
LONDON, S.W.1.

24th September 1931.

3 e .

The Under Secretary of State
for the Colonies,
Colonial Office,
London, S.W.1.

Sir,

MAGADI SODA COMPANY LIMITED.

29
We acknowledge receipt of your letter No. 17058/31 of the 18th September in the above connection, and beg to give you below the proposals which we have to put forward for meeting the situation with regard to the Magadi Soda Company's default.

In order to place these proposals in perspective it is necessary first of all to make a brief reference to the present situation of the Magadi Company. The general nature of the factors which have led to the decline in the economic capacity of Magadi (namely the limitations imposed by quality, competition etc.) have already been described in the letter sent to you by that Company on 9th October last year and there is no need to recapitulate these here. It suffices to point out that the financial results for 1930, and the forecasts for

9

copy to Sir Secrel - 2 Oct. 1931

5978/30 (32)

To The Under Secretary of State.

24th September 1951

1951 and 1952 indicate very clearly that, under present market conditions, the limitations suffered by Magadi are manifesting themselves in terms of steadily increasing financial loss; so much so that were it not for the support given to that Company by I.C.I. its collapse could not be long delayed.

It should be made clear also that, while the general world crisis is no doubt the chief contributory to this state of affairs, the limited financial resources of the Company and its own inherent defects as regards quality of product are also factors which place it at a considerable disadvantage except in the most favourable market conditions.

It will be realised that, in these circumstances, I.C.I. can no longer continue to finance the Company and either the Company must be left to its own devices or a scheme adopted which will protect it from the consequences of uneconomic production, while retaining its economic potentialities ready for use should a favourable opportunity again arise.

The first alternative offers many disadvantages to all who are directly interested in the undertaking, and not least to the Kenya Government and Railway Administration, and should certainly be avoided if, as we believe, a better alternative exists.

We have, therefore, prepared a scheme which we consider offers a satisfactory means of escape from most of the difficulties which confront Magadi at the present time, while leaving

To The Under Secretary of State

24th September 1931.

unimpaired its economic potentialities such as they are, and the details are as follows:-

- (1) That the Magadi output should for the present be discontinued by means of a grant of a Moratorium on the Magadi leases, and that the supply of the Magadi markets be transferred to the English Works of I.C.I. It is suggested that the period of the Moratorium should be for ten years, and that within two years of the expiry of that period I.C.I. should give notice to the Kenya Government as to whether conditions had improved sufficiently to justify the re-opening of the Magadi Works, and, if not, to suggest terms for an extension.
- (2) That I.C.I. should pay to the Government of Kenya a sum of £10,000 per annum during the currency of the Moratorium by way of compensation for the loss of royalties, profits (if any) on railway traffic etc.
- (3) That the Government will be free at any time during the Moratorium to consider offers from other parties to open and work the deposits; and should any offer be satisfactory, the present Company will be given the first refusal of recommending operations. Should the Company decline, the Government may terminate the Moratorium on 12 months' notice.
It is presumed that any offers of this nature will not

To The Under Secretary of State.

24th September 1951

be considered by the Government unless the backing is substantial and can show adequate resources for the work which it is proposed to undertake. It is also presumed that the Government would be prepared, prior to giving such notice, to agree with I.C.I. a valuation at which the Magadi Soda Company's assets should be taken over by the new lessees. This valuation could, if necessary, be fixed by arbitration, but we should like to suggest as a minimum figure the total capital cost to I.C.I. of acquiring the assets of the undertaking, plus the cost of maintenance during the Moratorium, less realisations.

- Refer*
- (4) During the Moratorium the Railway Administration should maintain any sections of the Magadi Branch or Port Branch Railway which they wish to operate, up to the standard that meets their traffic requirements. Similarly, any sections of the line not required by the Railway Administration shall be maintained by the Company up to the standard necessitated by their own traffic requirements. On the termination of the Moratorium, any sections over the Magadi or Port Branch Railway which have not been fully maintained on a soda traffic basis would be reconditioned at the Company's expense up to the standard required.

To The Under Secretary of State.

24th September 1931.

(5) The Magadi Company will agree to observe the agreement in force with regard to the Ngong water supply in so far as is required to supply the Masai troughs, the Kajiado Settlement and that section of the branch line which is at present supplied by Ngong, and which the Railway Administration will require to maintain for their own traffic requirements. The remainder of the pipe line will only be maintained sufficiently to meet the requirements of the Magadi Soda Company for its own employees. With regard to the Suerre water supply, it is suggested that as no water has been forthcoming from this source for many years, this agreement should be given up by the Company.

X (6) The Company will adhere during the Moratorium to clause 6 (iii) (A) of the Port Lease and clause 5 (vii) the Lake Lease in so far as the maintenance of their property and plant in reasonable condition is concerned. It is suggested, however, that this condition should not bind the Company to maintain its plant in full working order nor prevent it from dismantling, removing, selling or otherwise disposing of any buildings, houses, plant, machinery, loose tools, furniture, stores etc. The object of this stipulation is to avoid excessive maintenance costs during the period of the Moratorium on plant and machinery which may be obsolescent by the

To The Under Secretary of State.

24th September 1931.

time the Moratorium expires, and having regard to the fact that the 12 months' notice period should give the Company ample time in which to re-equip the Works for a satisfactory output capacity.

- 9.11
- (7) I.C.I. will undertake that all outstanding liabilities due to the Governor and the Railway Administration, by the Magadi Company, will be met before the Moratorium commences.
- (8) Although the operation of many foregoing clauses will have to come into force as a matter of form by agreement between the Magadi Soda Company and the authorities, I.C.I. will undertake to see that they are properly carried out.

As regards giving practical effect to the scheme, it is clear that, as the cessation of output would contravene the provisions of the Magadi Leases, and as it is not desirable that the Leases should be abrogated in the present circumstances, it is necessary that the lease provisions should be suspended. This formality can be completed by an exchange of letters between the Magadi Soda Company and the Kenya Government conferring the grant of a Moratorium. By this means the Leases would automatically operate again from the moment the Moratorium was lifted, and, if the undertaking passed into other hands, they could be terminated in the usual manner.

8

To The Under Secretary of State.

24th September 1931.

By negotiating with the Magadi Shareholders and Debenture Stockholders, we hope to acquire full control of the Magadi Company. The foregoing scheme is contingent upon the necessary conversion operations being successfully carried out, as we are naturally unable to bind an adverse majority of Stockholders and Shareholders. At the present time, however, we have no reason to suppose that there will be any such difficulty, and we shall, therefore, be glad to have on behalf of the Government of Kenya your acceptance in principle of these proposals so that we may proceed with the negotiations with the Stockholders and Shareholders with as little delay as possible.

I have the honour to be, Sir,

Your obedient servant,



O. O.

Mr. Freeston. 19/9
Mr. Allen 18/9
Mr.
Mr. Tomlinson.

17058 Kenya.

54
O. D.
R 196EP
19
Handed to [unclear] 19/9/31
7 pm

X Sir C. Bottomley. 18/9/31

September 1931.

Sir J. Shuckburgh.
Sir G. Grindle.
Parli. U.S. of S.
Parly. U.S. of S.
Secretary of State.

No. 282 Secret. My telegram 280 Secret. /Magadi

Begin

DRAFT. *Beefcode*
TELEGRAM.

GOVERNOR
SECRET Nairobi
NO.

SECRET

18/9
19/9/31 (31)
Copy to Mr. Mammott 5/6

*Copy to Mr. Merrill -
conf. - dt*

Soda Company has given formal notice that owing to unprecedented depression in trade consequent upon world crisis it will be unable as from 1st November next to operate the concession to the minimum limits of output required by ~~Beers~~ ^{Beers} ~~losses~~. This will doubtless involve a cessation of output for a period. Discussions are actively ^{in London} proceeding here with a view to arriving

at an arrangement ^{ends} following ^{you may communicate}
Statement may be communicated foregoing confidentially to Railway Council in strict confidence

SECRET

Mr King
TELEPHONE: VICTORIA 4444.
TELEGRAMS: SODAGADI, LONDON.

5527

WORKS { MAGADI, KENYA COLONY.
KILINDINI

The Magadi Soda Company Limited.

DIRECTORS:
~~SIR HARRY W. BOWEN, K.C.B. (CHAIRMAN)~~
~~J. G. NICHOLSON (DEPUTY CHAIRMAN)~~
SIR E. K. ALLEN, C.B.E.
W. F. LUTYENS,
H. F. MARRIOTT,
D. MARSH,
~~THOMAS A. HOLLIST, C.B.O.~~
G. O. BAUNDERS.

*Imperial Chemical House,
Millbank,
London, S.W.1.*

RECEIVED
OUR REFERENCE
YOUR REFERENCE
18 SEP 1931
COL OFFICE

17th September, 1931.

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

W SC

Sir,

My Board have instructed me to notify you that owing to the unprecedented depression in trade consequent upon the world crisis, it is impossible to market an output of soda up to the minimum required under the terms of the Company's leases. I therefore now give you formal notice that this Company will be unable as from November 1st next to operate the concession to the minimum limits of output required.

We shall accordingly be glad if you will advise us of your wishes in the matter.

I have the honour to be, Sir,
Your obedient Servant,

FOR THE MAGADI SODA COMPANY LTD.

A. E. Gawler
Secretary.

(A.E. Gawler)

Copy Imp. Chem. Industries, 18 SEP 1931
Copy to Gov. Secret., 2 OCT 1931

26a

MEMORANDUM.

The Magadi Soda Company is under agreement to increase its output of soda ^{from} ~~and~~ from 50,000 tons to 100,000 tons a year as from the 1st November next (its present output is about 45,000 tons), but, owing to world conditions, including lack of market, the Company is unable to fill its obligations, present or prospective.

Sir Harry McGowan, of the Imperial Chemical Industries, which has been financing the Magadi Soda Company has submitted proposals for a moratorium for ten years, the Government to be paid £10,000 a year to reimburse its losses.

There seems no reason to doubt that in present conditions the Company cannot continue to work on an economic basis, and arrangements on the lines proposed appear to offer the most satisfactory solution possible in all the circumstances. It is understood that there is no intention to close the works permanently, but ^{that} it is desired to re-open as soon as economically possible, and there is obviously a strong incentive to do so in view of the large sum already found by Imperial Chemical Industries and their further liabilities under ^{the} present proposals, and for the redemption of debentures. It is estimated that these sums would amount by the end of the moratorium period to over £700,000. It is proposed to make it a condition of acceptance of the scheme that Mr. Marriott, the Government Director, should be placed and kept in such a position that he is at all times able to form an opinion as to the feasibility.



feasibility of a recommencement of the operations on an economic basis; that when the Government receive a report from Mr. Marriott to the effect that this point has been reached, negotiations will be re-opened; and that in the event of re-opening, adequate notice will be given to the Government. This condition, coupled with the requirement in the ~~Lease~~ Lease as to working to the best economic capacity and the financial incentive already referred to, appear to afford adequate safeguards that ~~the Company~~ ^{operations} would ~~be~~ ^{be} resumed ~~operations~~ as soon as economically possible. Further efforts to find a purifying process will be actively continued.

The scheme was submitted to the Governor, who, however, strongly objected to any further concessions to the Company, and considered that the offer of £10,000 a year was in no sense satisfactory, and stipulated for a much larger sum.

It was then pointed out to the Governor in reply that refusal to accept the present offer would lead to a cessation of operations (which is inevitable in present conditions, whatever arrangement is made) ~~that~~ ^{but} without any compensation or safeguard or prospect of finding an eventual purchaser since there was reason to believe that I.C.I. would in that case withdraw all support from the Magadi Soda Company and ~~the~~ Imperial Chemical Industries is the only body which would make a similar offer, which there was every reason to believe was the most favourable that could be obtained. Also, there was a grave risk that further delay would lead to the offer being modified, or even withdrawn. Sir J. Byrne then replied that in view of the facts he had no alternative, both as Governor and High Commissioner, but to agree. It is understood that the
Magadi

Magadi Soda Company will now send in a formal notice of the intention to default, on receipt of which it is proposed that Imperial Chemical Industries should be invited to put their proposals on an official basis.

C. D.
R 15 SEP
B 15

59

C. O.

Mr. Allen 12/9.

Mr.

Mr.

Mr. Tomlinson.

* Sir C. Bottomley. 15.9 at once

Sir J. Shackburgh.

Sir G. Grindle.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

Downing Street,

September, 1931.

24

No. 280 Secret.

Your Secret telegram 286 Magadi

(1) Notice of intended default is expected to be received from Company this week and Imperial Chemical Industries will then be given opportunity of formulating proposals for moratorium. On receiving notice I will communicate with you again as to statement which may be made confidentially to Railway Council.

As regards other points mentioned it is understood as a result of discussion with Marriott that attitude of Imperial Chemical Industries will be as follows:-

DRAFT. Tel.

Conf. Code.

GOVERNOR

~~SECRET~~
NAIROBI.

(2). No difficulty as to this condition on understanding that it would only apply to genuine offer backed by adequate resources.

(3) and (4) (a) Branch Railway. It will be suggested that during period of moratorium Company should be responsible for maintenance for their requirements of section hitherto used for soda traffic only but that Government should in respect of any section it may desire to operate for other purposes continue to be responsible for maintenance up to standard necessitated by such traffic requirements. (b) Water (i) Masai ^{needs} require/Company will definitely agree to observe agreements in force regarding Masai troughs. As regards Suerre supply necessities of case will be met (ii) Railway and Government requirements. It will be suggested that Railway Government and Company will each continue to provide water under the arrangements at present in force.

(5)

60

(5) No difficulty anticipated.

(6) On expiry of moratorium all sections of Magadi railway whether maintained by Company or railway administration during period of moratorium will be reconditioned at expense of Company up to standard required for transport of soda ash.

(7) This will of course be done.

25
61

Magadi Soda.

Note and Results of discussion on 14th August, 1931.

Present: Sir C. Bottomley
Mr. Marriott (Government
Director)
Mr. Allen.

It was agreed

(a) The Magadi Soda Company should after the Meeting of the Board on Thursday the 17th September communicate with the Colonial Office giving formal notice of intention to default.

(b) The Colonial Office should acknowledge receipt of notice and say that Governor is being informed by telegram of intention to default: add that it is understood that Imperial Chemical Industries have proposals: that the Secretary of State would be glad to receive them and that a copy of the correspondence is accordingly being sent to Imperial Chemical Industries to afford them an opportunity of putting their proposals forward officially.

(c) Send copy of correspondence to Imperial Chemical Industries saying that the Secretary of State will be glad to receive as soon as possible the proposals which it is understood they are prepared to put forward.

(d) The suggestions in the Governor's telegram of 10th September (No. 24) were discussed and the terms of a reply were agreed as in the telegram in No. 25 which has now been sent. (It is understood that the views as indicated in that telegram will be embodied in the proposals to be submitted by the Imperial

Imperial Chemical Industries. The Colonial Office conditions at passages marked in blue in No. 16 are left over to be embodied in the Colonial Office reply to Imperial Chemical Industries.)

(8) As regards the proposed confidential communication to the Railway Council at the meeting of the 23rd September it was agreed that the communication should take the form of a statement that notice of the intended default had been received from the Magadi Soda Company that it will doubtless involve a cessation of output for a period and that discussions are proceeding in London with a view to arriving at an arrangement.

Port Lease

Clause 6 (iii) (a)

Keep demised premises tall
buildings & branch railway in
repair & in working order.

Lease Lease

Clause 5(7)

Keep roads, tunnels
watercourses, railways
engines, fire machinery &
other works in repair & in
working order

DECODE

24 63

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated the 10th September, 1931. Received at 4.15 p.m. on the 10th September.

IMMEDIATE.

23
*send notes
cannot continue*
No. 206. SECRET. Further to my telegram of 9th September Secret No. 282 it is urged that negotiations for moratorium should take following form :- 1. Moratorium should follow not preced default of Company in order to maintain legal position and to avoid creating undesirable precedent.

2. Grant of moratorium should not preclude this Government considering offers from other interests and terminating moratorium on 12 months notice ~~but~~ should such offers be received ^{but} present owners would first be given opportunity to re-open works.

3. Company should state their proposals regarding maintenance of Branch Railway(ies) and Company's properties and water supply during the period of moratorium.

4. Railway administration must retain right to operate or to close any section of the branch line and for this purpose Company must maintain sufficient ⁱⁿ water supply to meet such Railway and Government requirements and also to implement their agreement regarding water troughs in Masai Reserve.

5. During the period of moratorium Company should be held strictly to terms of Class 6 III(a) of Port Lease and Class 5 (7) of Lake Lease or alternatively Railway and Colony should carry out its provisions at the expense of Company.

6. On Expiry of moratorium any sections of Railway which have not been fully maintained to be reconditioned at the expense of Company.

7. All outstanding payments must be made up
to date of the moratorium.

C. O.

170587/31
Kenya

2
65
8307
7/9/51
G

Mr. Allen 3/4 + 7/9

[Handwritten signature]

Mr.
Mr.

Mr. Tomlinson.

Sir C. Bottomley 79.

Sir J. Shuckburgh.

Sir G. Grindle.

+ Perm. U.S. of S.

7/9/31
at once

Parly. U.S. of S.

Secretary of State.

IMMEDIATE.

No. 273..... Secret.

C
R - 8SEP.
18

or conson. v. minutes.

(19)

DRAFT. Telegram.

Governor, Nairobi.

[Handwritten mark]

Your Secret telegram No.

262 Magadi. ~~I have every reason to~~

believe that only result of attempting to negotiate on basis of your telegram would be that Imperial Chemical Industries would withdraw all support from Magadi Soda Company which would then be compelled to go into liquidation at once. This would ~~throw~~ ^{be} ~~property~~ ^{pledged as security} into hands of debenture holders who are not in a position to continue operations and could not find

^{debentures} purchasers. Debenture holders would then approach Government for moratorium as now ~~suggested~~ ^{it is most unlikely} but they would be ~~unlikely to be~~ in a position to accept liability for annual cash payment of amount now offered and certainly could not offer safeguards

for undertaking as going concern.

for

for resumption of operations. In the
circumstances refusal to accept present
offer would throw ~~undertaking on the~~
~~hands of the Government~~ without any

*had to cessation of operations
(which is inevitable in present
circumstances) conditions
to be made but*

compensation or safeguards or prospects
of finding purchasers. ~~I am also~~

*Considerations mentioned
in penultimate sentence
of this telegram have
not overlooked but there
is every reason to believe*

~~convinced~~ that negotiations already
conducted have produced the most favourable

offer for the ~~Colony~~ ^{Government} that can be obtained

~~and I am~~ therefore strongly ^{of opinion}
~~that that offer should be accepted~~ forthwith.

and ~~I fear that~~ further delay will involve *grave*

risk of existing offer being modified or ~~even~~

withdrawn. In the circumstances ~~I feel that~~

~~I must press strongly that offer should~~ ^{now} be

~~accepted without further delay, and I~~

trust that you will ~~now~~ be prepared to

*both as Governor
and H. Commis
and to*

agree ~~and~~ inform me accordingly by telegraph.

Reply urgently required.

SECEP.



NOTE.

Mr. Marriott called to discuss this on the evening of the 31st August. I showed him the telegram to the Governor on No.16, and also the Governor's reply in No.19. He was very critical of the figures in No.19, and he regarded it as absurd to base any claim to compensation on the output of 100,000 tons which the Company is required to produce annually after the 31st October next seeing that in the present state of depression there would be absolutely no market for the increased output even if produced. Further, he makes the point that the railways hitherto contended that they carried soda products at a loss, and in his opinion, this would apply equally to an output of 100,000 tons.

Mr. Marriott is quite clear that it is useless to go back to Imperial Chemical Industries with any proposition on the lines of that put forward by the Governor, the only result would be that they would refuse any further support to the Magadi Soda Company. In that case the Company or the debenture holders, not having funds to carry out their obligations under the agreement in order to dispose of the undertaking (there being no possible buyer except the Japanese on knock-out terms), will be bound to come to the Colonial Office with a similar request for a moratorium, but ^{possibly} without any offer of compensation even to the extent of £10,000. The view expressed in the Governor's Confidential despatch of the 4th March (No.7 in this file) was that the Magadi Soda Company



Company should be informed that neither the Colony nor the Transport Administration are prepared to agree to any modification of the existing agreements at present, and that the question of action being taken on default should be held over until default ~~was~~ occurred. In Mr. Marriott's view the only ~~action~~ ^{course of} ~~on~~ default would be for the undertaking to lapse to the Government, which ~~could~~ ^{has} neither work it nor dispose of it, and ~~have~~ ^{has} it left on its hands minus the £10,000 a year offered by I.C.I. and ^{what} any safeguard ^{as to} ~~when~~ the resumption of operations ^{is} economically possible.

Mr. Marriott said that I.C.I. at first wanted a twenty years' moratorium. He thought he had done as good a stroke as possible for the Government in getting the I.C.I. to agree to a shorter term of ten years, also to make the offer of an annual payment of £10,000. He thought it possible that he might be able to screw the I.C.I. up to, say, £12,000, but he thought it would be bad policy to force them to this grudgingly as it would react in other ways to the disadvantage of the Government, e.g. they might refuse to continue the efforts to find a purifying process. He was satisfied that it would be much better to accept the £10,000 which I.C.I. has offered with the other safeguards to which the Company are at present prepared to agree.

Mr. Marriott is nervous that the position ^{may} ~~will~~ worsen, and I.C.I. ^{may} ~~will~~ even withdraw their present offer. He therefore ~~considered~~ ^{considered} that the only possible course for the Secretary of State was to insist upon acceptance of that offer. I pointed out that this would involve overruling the Governor and High Commissioner in a very important matter, and I thought it would be difficult

to put such a proposition forward in the absence of Sir John Campbell and Sir C. Bottomley, who would however be back early next week. Mr. Marriott agreed that a delay until then would not do any harm.

Mr. Marriott was inclined to read into the Governor's telegram an idea that he would be prepared to agree as a result of further strong pressure.

It will be seen that the Governor refers in the penultimate paragraph of his telegram to the loss to the Government which would result from the withdrawal of the circulation of monies spent on wages, local purchases, etc. It was anticipated that he would do this (see the first paragraph of Note of Discussion in No. 15) but it was agreed that this was a matter which could hardly be taken up with I.C.I.

11

19

Telegram from the Governor of Kenya and High Commissioner for
Transport Kenya-Uganda to the Secretary of State for the Colonies
Dated 19 August 1931. Received 6.12 p.m. 19 August 1931.

No.262. Secret I am unable to contemplate practically total
cessation of this industry and to allow Company which has
consistently avoided its obligations to retain full right for
in effect an indefinite period.

The offer of £10,000 per annum is in no sense satisfac-
tory since from terms of lease railway is entitled to expect
shipment of 100,000 tons per annum vide clause 4 (v) (a).

The revenue for 100,000 tons of soda would be £92,500
per annum revenue from resulting returns traffic would be
£30,000 whilst harbour and Port would amount to £5000 per
annum.

The railway would demand as a minimum towards payment
interest and maintenance charges on equipment provided and
also towards recouping losses already incurred sum of
£50,000 per annum during whole period moratorium i.e. £92,500
guaranteed under agreement less direct cost of haulage of
100,000 tons of soda.

As far as Colony is concerned matter of far greater
importance than loss of royalty and customs dues is withdrawal
from circulation of moneys which would be spent on about £1000
native labour ^{or} salaries local purchase etc.

In these circumstances I strongly adhere to view
expressed in my despatch 4th March Confidential No.28 1931.

O. O.

17058/31-Kenya.

16 70

Mr. Allen. 5/8

Mr. Kalungu 5/8/31

Mr. A. J. Campbell 4/19/31

Mr. Tomlinson.

Mr. C. Bottomley. C.S. 31

Sir J. Shuckburgh.

Sir G. Grindle.

Perm. U.S. of S. 2/16

Parly. U.S. of S. 6831 (No. 7)

Secretary of State.

D 7/8

Answered No. 19
No. 2440.. Secret.

Added despatch
Part I 4:30 pm
II 5:50 pm
2/5 8/9/31

DRAFT. tel

for conson.
vide minutes.

GOVERNOR

Immediate

NAIROBI.

Your confidential despatch 4th March No. 28 Magadi Government Director's absence from this country when your despatch was received and since his return matter has been under verbal discussion. In the meantime views in your despatch have not been communicated to Company but ^{matter} ~~it~~ has been receiving attention of Imperial Chemical Industries in consultation with Marriott and letter now received from Mr. Cowan in which he represents that the conditions have worsened since last year and Imperial Chemical Industries view future of Magadi Company with serious concern. Potential market for Magadi ash is stated to have ^{be} ~~be~~ constructed still further and price levels now are far less remunerative and without support from Imperial

Chemical

Chemical industries little doubt
Company could not pay way even
at present time. ~~No prospect in~~
~~sight of market conditions improving.~~

That situation can hardly con-
tinue indefinitely and Board of
Imperial Chemical Industries now
submit proposals of which the
following is a summary and which
the board believe would circumvent
present difficulties.

Summary begins. Japan output
small for the present as has hindered
and supply of market. Markets be
trade with English works for
this purpose in addition to ^{arriving at} mutually
agreeable arrangements between

Imperial Chemical Industries and
and
Japan. ^{and} share
agreement necessary with Govern-
ment of Japan whereby financial
provision ^{of} ^{new} towards
Transport Admin
acting in case to Colony/ subsequent



upon cessation of Magadi operations.

At present ^{these} Colony's sources of income may be classified as follows:-

1. Railway rates on inward and outward traffic.
2. Royalties.
3. Port Dues.
4. Customs Duties.

As regards item 1. it has recently been demonstrated that Magadi traffic is being carried at no profit to the railway. From figures collected by representative of Company in Kenya last year it appears that it has actually been carried at a loss to the railway and that little or no profit remains even after including profit on inward traffic (i.e. stores bags, oil, etc.). Prima facie therefore it would seem that cessation of Magadi traffic would actually be advantageous. Therefore in arriving

arriving at amount which might reasonably be expected to be paid under suggested agreement items 2, 3 and 4 would be charges principally concerned. If all these sources of revenue including railway rates are calculated on a maximum tonnage at present ^{in sight} ~~inside~~ of 50,000 ^{tone} per annum it is considered that a sum of £10,000 per annum would amply cover any loss under the scheme as cessation of output would directly contravene provisions of leases it would be necessary for these provisions to be suspended. This could best be done by a moratorium for a period of ten years. If moratorium be agreed and assuming conditions above mentioned ^{had} not within two years ^{at before} expiry of period approved sufficiently to allow re-opening of Lugadi works it is suggested that arrangements for extension of moratorium

for

for a further period of years should then be considered.

Summary ends.

Proposals have been fully discussed with Marriott and I see no reason to doubt that in present conditions Company cannot continue to work on economic basis also as at present advised and subject to your views I incline strongly to the opinion that arrangements on lines proposed offer most satisfactory solution possible in all the circumstances. I can assure you that there is no intention to close works permanently but that it is desired to re-open as soon as economically possible and there is obvious strong incentive to do so in view of large sums already found by Imperial Chemical Industries and their further liabilities under present proposals and for the redemption of debentures.

Handwritten notes:
 in Kampore regard
 this is a very strong
 argument: should all
 and here "these sums"
 will amount to
 over £20,000
 real
 I would
 all this
 of 1/2/51
 had

involved and should be treated
as strictly confidential at
any rate until Imperial Chemical
Industries have had time to
make necessary arrangements
with various interests concerned
if scheme agreed in principle.
In that case I should in due course
inform you as to time and nature
of public announcement which
could be made.

Note of discussion on 11th July, 1931, regarding
the affairs of the Magadi Soda Company.

Present:

Sir Cecil Bottomley.
Mr. Marriott (Government Director)
Sir J. Campbell
Mr. Parkinson
Mr. Allen.

Sir Cecil Bottomley pointed out that the amounts making up a sum of £10,000 mentioned in the letter from Sir Harry McGowan would not represent the total loss to the Government. There ^{was} ~~was~~ a substantial loss in wages resulting in ^{the} diminution in the proceeds from hut and poll tax and customs duties. It was agreed that this was a matter which could hardly be taken up with Imperial Chemical Industries, but it was a matter which would weigh with the Governor, who would no doubt point it out.

Mr. Marriott said that a material point was what amount Imperial Chemical Industries could pay if screwed up. He said that their original idea was a moratorium of 7, 14 or 21 years, at their discretion, but Mr. Marriott had succeeded in getting them to suggest a period of 10 years. He said that although there was no mention of the point in the letter it was left to the Government to say that while they agreed, they must have an arrangement by which operations would be resumed when times of prosperity returned and the Magadi works could be re-opened profitably.

It was agreed that it should be a condition of any agreement that Mr. Marriott should be placed and kept



kept in such a position that he is at all times able to form an opinion as to the possibility of the commencement of operations on an economic basis, and that when the Government receive a report from him to the effect that this point has been reached negotiations will be re-opened.

Mr. Marriott saw no reason to suppose that there would be any difficulty in making such an arrangement.

In reply to enquiries Mr. Marriott said that there was no idea of shutting up Magadi permanently and transferring the work here, but that the proposal to shut down was simply due to the fact that the works cannot pay under present conditions. He pointed out that Imperial Chemical Industries have already found and sunk £120,000 in the Company, they would have to find a further total of £100,000 in the ten years under the present proposals and in addition they were liable to redeem debentures at the rate of £50,000 a year gross - the whole of these liabilities would at the end of the period of ten years amount to £720,000 and it was obviously to the interest of Imperial Chemical Industries to resuscitate the Company if possible. These facts in themselves operate as a substantial automatic safeguard and in addition to the further safeguard of the powers which it was suggested should be given to Mr. Marriott there is the fact that Clause 5 (iv) of the Lease lease the Company is required, irrespective of yearly minimum working to continue to work the deposits to the best economic capacity. It is a provision that Mr. Marriott said he had used effectively in the past.



If the local Government should question the period of ten years it is thought that the answer would be to refer to these safeguards and also to point out that the period was suggested in view of the absence of any reasonable prospect of improved conditions in the early future. Further it is to be assumed that having regard to the past and prospective financial liabilities Imperial Chemical Industries would not have suggested so long a term as ten years unless they had good reasons to suppose that it would be wanted. Reference was made to the fact that apart from the existing market conditions there was little prospect of Magadi production proving economic until an effective purifying process was devised. Mr. Marriott ~~had~~ ^{has} said that although the Magadi Company ^{has} ceased experimenting Brunner Mond were actively continuing and would actively continue to experiment and he had little doubt that one of these days the chemists would stumble on the solution.


Sir Cecil Bottomley pointed out that Sir H. McGowan's letter made no reference to the provisions suggested at the previous discussion on the 9th July that three months' notice should be given before work was started and six months more notice before production reached the full rate of 50,000 tons a year, and that there should also be some provision for the dead rent to merge into the payments under the agreement when work began again. Mr. Marriott thought that it was undesirable to go into too much detail in the arrangements as ^{in six} ~~in~~ six years' time when these matters came up conditions would be so different that there would probably be mutual agreement to scrap the conditions

conditions as unsuitable to the changed consideration. It was agreed that it would be sufficient to deal with the first point, ~~the~~^{the} statement to the effect that in the event of re-opening adequate notice would be given and that there was no need to mention the second point as to the merging of the dead rent.

The point of publication was then discussed. Mr. Marriott said that it was very desirable that the whole thing should be kept strictly confidential until the Imperial Chemical Industries could make their domestic arrangements for which purpose he thought they should have a period of six months. Sir C. Bottomley referred to the difficulty of giving so long a period having regard to the fact that the Estimates which would be affected would be under consideration before then, and Mr. Marriott agreed that he would later try to endeavour to expedite matters in order to avoid this difficulty. It was agreed that the Governor would have to be warned to keep the matter confidential and be told that he would be informed later when and how much of the cat could come out of the bag.

It was also agreed that a short reply should be sent to Sir H. McGowan saying that the Secretary of State was communicating with the Governor confidentially by telegram and that a telegram should be sent to the Governor putting the whole matter before him and pressing for immediate consideration and a very early reply.

Mr. Marriott asked whether in addition to informing



informing Sir H. McGowan that this was being done he could suggest that the proposals were likely to go through. Sir C. Bottomley said however that it was quite impossible to agree to that since the matter was one which would have to go before the Secretary of State personally before any telegram could be sent and that it would be one for his decision after the Governor had furnished his views in reply.

To be regarded as copy
IMPERIAL CHEMICAL HOUSE,
LONDON, S.W.1.

79/14

FROM
SIR HARRY M. GOWAN.

TELEPHONE
VICTORIA 4444.

1705/8731 K

29th July 1931.

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

Sir,

MAGADI SODA COMPANY LIMITED

1587/8/30
(No. 32)

(14)
15/8/1931 (made)

On the 9th October last year a letter was sent to you by the Magadi Soda Co., Ltd. requesting a modification of the Magadi Leases, owing to the fact that in the then existing world economic conditions the Company was finding difficulty in maintaining an output of 50,000 tons per annum, and that they consequently regarded it as impossible to fulfil the 100,000 tons per annum minimum which the leases stipulated should be despatched as from November 1st 1931.

This matter has received the attention of the Kenya Government, but in accordance with the suggestion contained in Lord Passfield's letter to me of April 6th last, their views have not been officially communicated to the Company, pending further discussion of the matter with Mr. Marriott.

1597/1/31 (31)

Preliminary discussions between Mr. Marriott and myself have now taken place and as the position has still further changed since the Magadi Soda Co.'s letter of 9th October was despatched, I feel it is necessary for me in my joint capacity as Chairman of Imperial Chemical Industries and the Magadi Soda Co., to advise

The Under Secretary of State,
Colonial Office.

29th July 1931.

you of the position as I see it to-day, so that these altered circumstances can be taken into account in any further consideration of the subject.

Since last year conditions have become even less propitious for the maintenance of a steady economic output from Magadi, and Imperial Chemical Industries Ltd., as the ordinary shareholders and present controllers of the Magadi Co., are unable to view the future of the Magadi Co. otherwise than with serious concern.

Not only has the potential market for Magadi Ash contracted still further but price levels are now far less remunerative than they were, with the result that were it not for the support given to the Magadi Co. by I.C.I. there is little doubt that the former could not pay its way, even at the present time. As, therefore, there is no prospect in sight of any improvement in market conditions, it will be clear to you that a situation of this kind can hardly continue indefinitely.

I and my colleagues on the Board of I.C.I. have naturally given the position the most careful attention, and the main object of this letter is to acquaint you with the foregoing facts, and to lay before you, for your own consideration and that of the Kenya Government, a scheme we have in mind which we believe would largely circumvent the difficulties now confronting the Magadi undertaking.

The Under Secretary of State,
Colonial Office.

29th July 1931.

In the correspondence which the late Lord Melchett and I have had with Lord Passfield and the Rt. Hon. J.H. Thomas, attention was drawn to the fact that to attempt, even if it were economically possible, to force Magadi output up to the minimum tonnages stipulated by the leases would not only adversely affect the interest of the Magadi Co. but would also increase unemployment in the Alkali industry, in this country.

Having examined all the circumstances with due regard to the interests involved, we have reached the conclusion that the Magadi output should for the present be discontinued and the supply of the Magadi markets transferred to English works, and accordingly we now propose to you a plan devised for the purpose of making this view effective.

There are two considerations which immediately arise namely:-

- (a) That the effect of this proposal on the interests of the Magadi Debenture Holders and Shareholders should be suitably adjusted and
- (b) That agreement should be reached with the Kenya Government whereby financial provision would be made towards meeting the loss to the Colony consequent upon the cessation of Magadi operations.

These two factors are inter-dependent, but so long as you can be satisfied that mutually agreeable arrangements can be made between I.C.I. and the Magadi Debenture and Shareholders, there is no need to trouble you further as regards (a).

-4-

The Under Secretary of State,
Colonial Office.

28th July 1931.

This letter accordingly concerns itself principally with the second consideration, namely the conditions under which the Kenya Government would agree to a stoppage of output at Magadi.

At the present time the Colony's sources of income from Magadi may be classified as follows:-

1. Railage rates on inward and outward traffic
2. Royalties
3. Port dues
4. Customs duties.

So far as item 1 is concerned it has recently been demonstrated that Magadi traffic is being carried at no profit to the Railway. From the figures that were collected by the representatives of the Magadi Soda Co. who were in Kenya last year in connection with the railage rates negotiations, it appears that soda is actually being carried at a loss to the Railway and that little or no profit remains even after including the profit on inward traffic (i.e. stores, bags, oil, etc.) Prima facie therefore it would seem that a cessation of Magadi traffic would actually be to the Colony's advantage in this respect.

In arriving at the amount which the Kenya Government might reasonably expect to receive under the suggested agreement, it follows that items 2, 3 and 4 would be the charges principally concerned. If all these sources of revenue, including the railage rates, are calculated on a maximum tonnage at present in

The Under Secretary of State,
Colonial Office.

29th July 1931.

sight of 50,000 tons per annum, we consider that a sum of £10,000 per annum should amply cover any loss which the Colony may sustain under our scheme.

As regards giving practical effect to the scheme, it is clear that as a cessation of output would directly contravene the provisions of the leases, it is necessary that these provisions should be suspended. This we believe could best be done by a moratorium, and for a period of ten years.

We make this suggestion because there is in our opinion no reasonable prospect of an improvement in conditions in the near future sufficient to justify a reopening of the Magadi Soda Works on an economic productive basis, having regard to the quality and the cost of the finished product. The very rapid progress in indigenous production in Japan, China and India - all of which incidentally are important Magadi markets - is leading to increasing acute competitive conditions, which could be more effectively met (owing to lower cost and better quality) by shipments from this country's surplus productive capacity.

If the moratorium be agreed and assuming that the conditions above mentioned had not within two years of the expiry of the period improved sufficiently to justify the reopening of the Magadi Works, it is suggested that the terms for an extension of the moratorium for a further period of years should then be considered.

3 orig. (6) 1/11
suppl

The Under Secretary of State,
Colonial Office.

29th July 1931

The above is only a brief outline of the proposals suggested as it is impossible to go into them exhaustively in a letter of this description, and if you will advise us of any points upon which you require further enlightenment we shall be pleased to assist in clearing them up. We feel sure that we can demonstrate the reasonableness of our inferences from the facts now available and that the proposed scheme is a rational and mutually satisfactory means of avoiding the difficulties now before us.

We would emphasize at this stage that the scheme is put forward without prejudice in view of the many interests involved, and we would also point out that it is only made possible by the fact that there is available an alternative place at which the Magadi tonnage can be made at a cheaper cost and of better quality, namely in the English alkali works.

It is moreover a means by which in our opinion the Kenya Government can be assured of a return on this property, and due consideration can be given to the other interests involved.

We submit that the merits of the scheme are evident and that it should not be difficult to arrive at an early decision. We trust therefore that you will give it your early consideration, as the greater the delay the greater the difficulty of carrying on the whole undertaking and the greater the potential loss to all concerned.

I have the honour to be, Sir,

Your obedient servant,

Richard Lawrence

NOTE OF A MEETING IN SIR C. BOTTOMLEY'S ROOM HELD ON
THURSDAY, 9TH JULY, TO CONSIDER THE POSITION OF THE
KENYA GOVERNMENT VIS-A-VIS THE MAGADI SODA COMPANY.

PRESENT:-

Sir C. Bottomley.

Mr. Marriott.

Sir J. Campbell.

Mr. Parkinson.

Mr. Eastwood.

Mr. Marriott explained further the proposals set out in his private letter to Sir C. Bottomley of the 8th July.

It was not possible for the Company to ^{dispute} produce as much as 50,000 tons of soda in a year, far less to extend their production, as provided in the agreement, up to 100,000 tons. The reasons for this were the prevailing economic depression and the severe competition met with in the markets on which the Company had been used to sell the Magadi products; this competition came chiefly from America, Russia and Japan, the Japanese industry being heavily subsidised.

With the exception of soda from a small lake in California Magadi soda was the only soda on the market which was not synthetic. The synthetic product was always pure, whereas the Magadi soda contained always considerable impurities. Experiments had been made to discover some means of removing the impurities but no-one had, so far, succeeded in discovering a means of removing them that would be commercially feasible.

- (i) royalty;
- (ii) fuel oil rates, and
- (iii) freight rates for soda,

which had come into force on November 1st, 1929, had involved an increase in the cost of production of nearly 5/- a ton. The Kenya Government had been within its right in making these revised arrangements, but nevertheless they pressed very hardly on the Company.

Imperial Chemical Industries had sunk a great deal of capital in the Company, and for this reason it was not thought that the danger which had been feared some years ago now existed - namely, that the I.C.I. would shut up the works merely in order that they should not compete with their synthetic product. Mr. Marriott said that apart from the large amount of capital sunk by I.C.I., the Magadi works were valuable to them as they provided a source of supply not likely to be interrupted by strikes, etc.

The present exceptional circumstances made it impossible for the Magadi Soda Company to go on working the deposit at the moment, nor would the I.C.I. assist them to do so. The I.C.I. were, however, prepared to put the Government in the same position as they would have been in had the deposit been worked. With this object in view, the proposals made were that the I.C.I. should pay to the Kenya Government annually a sum to be agreed upon to cover:-

- (1) the loss, if any, in dues at the port;
- (2) the loss occasioned to the railway administration by the cessation of Magadi traffic over their lines;
- (3) the amount now received by the Kenya Government by way of royalty on 50,000 tons a year now due to be sent over the railway under contract.

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As regards (1), Mr. Marriott, said that he did not think the loss in dues at the port would be very considerable.

As regards (2), the railway administration had always tried to make out that the Magadi traffic resulted in a loss to them. Mr. Marriott thought, however, that it would be possible for the railway to show a small profit.

As regards (3), the royalty now received on 50,000 tons at 1/6d a ton was £3,750. The proposals took no account of the fact that the Company were under obligation to raise the output to 100,000 tons.

Mr. Marriott said that his impression was that the I.C.I. were prepared to pay up to a total of £10,000 a year, but not more.

He considers it important that the payments should be made by the I.C.I., and not by the Magadi Soda Company.

After discussion, it was decided that in the proposals to be put forward officially by the Company, there should be provision
notice
(1) that three months/should be given before work was re-started, and six months more notice before production reached the full rate of 50,000 tons a year. There should also be some provision for the dead rent to merge into the payments due under the agreement, when work began again.

(2) ^{15d} Mr. Marriott should have an absolute right to be kept fully informed as to all I.C.I. and Brunner Mond sales of soda throughout the world.

(3) That the payments should continue for three years and the position should then be reconsidered.

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It was arranged that the Company should now write officially to the Colonial Office, and no action be taken pending receipt of their letter. Mr. Marriott pointed out that it was important that the matter should be regarded as strictly confidential.

Conf. Sec. 13
89

NOTE OF A MEETING IN SIR C. BOTTOMLEY'S ROOM HELD ON THURSDAY, 9TH JULY, TO CONSIDER THE POSITION OF THE KENYA GOVERNMENT VIS-A-VIS THE MAGADI SODA COMPANY.

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Mr. Marriott said that the device recently tried for getting rid of the impurities had failed, when tested on a large scale. See

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As regards (1), Mr. Marriott said that he did not think the loss in dues at the port would be very considerable. *possibly nothing at all.*

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Sir J. Campbell:

I have been informed ^{by} ~~by~~ telephone that Mr. Marriott is coming back at 5 o'clock to-day. You will wish to read his letter before the meeting.

Various points which arise:-

- (1) He knows that the I.C.I. will be very ready to pay forfeit to the extent of £10,000 a year. How this will compare with the itemised ^{statement} ~~claim~~ which he suggests Kenya should make remains to be seen.
- (2) The Company would maintain the buildings. The Government would have to maintain the railway. - For more than half its length there might be administrative or other reasons for keeping the line going, but Kenya may wish to make a charge in respect of the maintenance of the whole or the remainder.
- (3) He is emphatic that if the arrangement is accepted it should be the I.C.I., and not the Magadi Soda Company, that makes the payments. This is reasonable not only because the payments will have to come out of the I.C.I. pocket in any case, but also because they derive whatever benefit there may be through the Magadi product being taken off the market.
- (4) The I.C.I. is already incurring an annual burden

in respect of Magadi to the extent of

£30,000	Debenture interest
say <u>£20,000</u>	Working loss
<u>£50,000.</u>	

In addition, there is a charge, say, of £45,000 a year for dividends. These are cumulative and would come up for payment ^{some time} unless the Magadi Soda Company went into liquidation altogether.

Hugh F. Marriott, M. Inst. M.M. (Inst. Pres.) M. Inst. C.E., A.R.S.M., A.R.C.S. &
Consulting Engineer.

TELEPHONE GORMANS BUILDING
LIMBETH S.E.21

Strictly confidential

94 12
14 WATERLOO PLACE,
LONDON, S.W.1.

8th July 1931

Sir Cecil Bottomley, K.C.M.G., C.M.,
Colonial Office,
S. W. 1.

My dear Bottomley,
Magadi Soda Company.

I have to-day had an interview with Sir Harry McGowan, Chairman of the Magadi Soda Company and Chairman of Imperial Chemical Industries, and Lord Reading, Director of Imperial Chemical Industries, which was arranged in order that we might come to finality on the questions that had been pending for some time regarding this property.

Sir Harry stated that he and his colleagues had definitely come to the conclusion that it was best, in the interests of all concerned, to close-down the operations on the Magadi Lake until a change took place in the markets of the world and it again became possible to sell the Company's products to an extent which would render it a profitable business.

In his view there were three parties interested in this decision : -

- (A) The Kenya Government
- (B) The Magadi Soda Company, both Debenture and shareholders of various classes,
- (C) The I.C.I.

He said that the I.C.I. would benefit in that they would not have to go on increasing their loans to the Magadi Company which have already reached a very high figure; that it would free the markets in the world where Magadi Soda is now sold at the expense of the I.C.I. products and would enable the I.C.I., by replacing the lower grade Magadi ash with their higher class synthetic product to combat more successfully the competition by foreign interests particularly in the Far East.

It would also assist the Home Factories in increasing their output and the labour required for the same.

The Magadi Company would benefit in that it would put a stop to their increasing indebtedness to the I.C.I. These loans are already attaining a

size which is seriously diminishing the outlook for profits for some years to come.

It will give the Company a rest from the at present hopeless task of trying to sell an inferior brand of Soda in markets where even the highest class brands cannot find purchasers for their products to the extent they are designed to supply them.

From the point of view of the Kenya Government it will release native workers for other occupations where there ^{maybe} is now a labour shortage.

It will relieve the Railway of the losses they are incurring owing to the Company not being able to increase its tonnage over the railway lines to the extent that was estimated when operations were recommenced under the present Company.

The proposal of the I.C.⁴ Directors is that in return for permission to shut down the works at Magadi and Kiiindini until such time as the product can again be sold in sufficient quantities

to make a profit on the Company's transactions, the I.C.I. will pay to the Kenya Government annually a sum to be agreed upon to cover : -

1. The loss, if any, in dues at the port.
2. The loss occasioned to the Railway Administration by the cessation of Magadi traffic over their lines.
3. The amount now received by the Kenya Government by way of Royalty on 50,000 tons a year now due to be sent over the railway under contract.

This view of the situation seems to me largely to bear out the facts of the case and the decision arrived at by the Board of the I.C.I. has much in its favour.

It is a sheer impossibility at the present time to increase the sales of Magadi soda and consequently the output from the lake.

The world does not want the normal supplies from the factories which were producing before Magadi came on the market and the Magadi product has only a very limited number of consumers for special purposes owing to its defects in quality as compared with the manufactured products.

Japan, the chief Magadi market, is continually increasing the output from its own factories.

America is fighting for her share in the Far East. Russia is dumping and China and India are affected by the general reduction in consumption.

I think that the Kenya Government will do well to agree to this proposal for the cessation of production until we can see better times ahead.

It can be made a stipulation that I shall be kept posted with statements showing the position from time to time in those markets where Magadi soda has hitherto been sold and so get security that the recommencement of operations will not be delayed any longer than is necessary.

If the Kenya Government could be cabled to giving the heads of these proposals and at the same time asked to cable a statement under the different headings of : -

- (1) Port dues
- (2) Railway balance of profit and loss
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equitable under the circumstances,
 I think we should soon arrive at an arrangement
 with the Board of Imperial Chemical Industries
 which would enable the necessary procedure to be
 commenced by the Magadi Company with regard to
 its Debenture and shareholders and also enable
 an early readjustment of the selling operations
 of British products in the markets where Brunner
 Mond Soda and Magadi Soda have hitherto been sold
 side by side.

I have asked Sir Harry McGowan not
 to send in a formal letter embodying the above
 proposals until I have ascertained that these are
 acceptable to you, and I am at your disposal for
 further discussions of the business at any time
 you desire.

Yours sincerely,

ALD Harris

Royalty Recd } ready 2/ for den
Transf } 3/ " "

Recovery
93 miles

Capital scheme

Authorized £ 850,000

Issued £ 797,141

Paid-up £ 397,141

Paid up

£ 20,000 (2/ for scheme)

5% of Prof. sum: £ 219,094

£ 1.

5% 2nd time Prof. £ 325,047

Prof. Ord 12 1/2% non-cum: £ 30,000

£ 597,141

Residuals
auto-handling

£ 426,500 6%

Royalty say £ 2000. 3750 @ 1/6 now

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Note of discussion on 11th June 1931
regarding the affairs of the
Magadi Soda Company.

PRESENT:

Sir C. Bottomley.

Mr. Marriott (Govt. Director)

Mr. H. T. Allen.

Mr. Marriott explained that, in consequence of Lord Melchett's death, the affairs of Imperial Chemical Industry^{Co} were in the melting pot, ^{of which} plans being discussed. Sir Harry McGowan^{was} was taking stock of the position generally and had called upon the technical advisers for a complete report. When that was received he had promised to send for Mr. Marriott and talk the Magadi position over with him. Mr. Marriott understood that the report had been received but that Sir Harry McGowan^{was} wished to defer the discussion for a few days longer. When the discussion had taken place Mr. Marriott would come to see Sir C. Bottomley again.

General conversation took place in the course of which Mr. Marriott reiterated his view that it was impossible for the Company to carry out its obligation to increase production to 100,000 tons in November next and that it could not even carry out the existing obligation of 50,000 tons. There was simply no market.

Sir C. Bottomley suggested that Mr. Marriott might tell Sir H. McGowan^{was}, if the point arose, that he had heard from the Colonial Office that Kenya was not doing well and could not afford to give up anything: also that the Government was not in a position to

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make



make things easy for the Company since it had had to refuse to do so for others.

It was understood however that Mr. Marriott would propose to listen to Sir H. McGowan and not to express any views on the basis of the present discussion; but rather leave it that he would have to consult the Colonial Office after hearing what Sir H. McGowan had to say.

11

THE MAGADI SODA COMPANY

REVIEW OF THE PAST FIVE YEARS' WORK

AID OF IMPERIAL CHEMICAL INDUSTRIES

IMPROVED OVERSEAS MARKETING

NEED OF MODIFICATION OF LEASES

KENYA GOVERNMENT APPROACHED

SIR HARRY MCGOWAN'S SPEECH

The SIXTH ORDINARY GENERAL MEETING of the Magadi Soda Company, Limited, was held yesterday at the Central Hall, Westminster, London, S.W.

SM HARRY MCGOWAN, K.B.E. (the chairman), presided.

The SECRETARY, (Mr. A. E. Gawler) having read the notice convening the meeting and the report of the auditors,

The CHAIRMAN, in moving the adoption of the report and accounts, opened with a sympathetic reference to the death of his predecessor in the chair, the late Lord Melchett.

After alluding to the fact that the company had not escaped the effects of general trade depression, he explained that he proposed to take advantage of that opportunity to review the work of the past five years and the present position of the company.

First, he pointed out that, with the help of the overseas marketing organizations of Imperial Chemical Industries, regular markets had been established in Japan, China, India, Australia, South America, and South Africa, and that of these the most important was Japan, which in 1928 had taken as much as 60 per cent. of the total output of the Magadi Company.

THE COMPANY'S OUTPUT

Proceeding, he said:—As regards actual production, according to the best of my information the highest output achieved by the former Magadi Soda Company was about 46,000 tons in the year 1922. During 1923 and 1924, when the old company was in liquidation, this figure was reduced considerably. From 1925 onwards—that is to say, since the present company has been in operation—the output has been as follows:—

Year	Tons
1925	46,610
1926	18,231
1927	59,832
1928	75,740
1929	61,302
1930	45,142

Except for the year 1926, when there was a contraction owing to the fact that sales were not able to keep pace with the 1925 output, added to the heavy stocks taken over from the old company, a steady expansion was shown up to and including the year 1928. Since that time a decline has set in, and as this is the most important factor affecting the trading results I propose to devote a little time to explaining the reason for it.

EXTREME NATIONALISM AN ADVERSE FACTOR

First of all there is the general economic depression to which I have already referred, but there is a still more important reason—namely, that in the markets in which Magadi Soda sales are principally located, Japan, India, and China, the prevailing sentiment of extreme nationalism has led to a rapid development of indigenous production of soda ash. In the case of India and China this development is still in the initial stage, but its effects are already beginning to be felt. In Japan, on the other hand, local production has reached very considerable dimensions, and the producers, in addition to receiving the benefit of tariff protection, are at present in receipt of a substantial subsidy from the Japanese Government for every ton produced.

Besides this the production of soda from natural deposits in other parts of the world has recently made considerable headway. The pro-

duction is unfortunately that it coincided with a period of great difficulty in other directions. For the reasons already given your directors anticipate that these results will be improved upon as the result of economies now being introduced, and I may add that these economies will also apply to the head office charges.

I would also ask you to observe that for the year under review the charge for central services—i.e., a payment for rent and office charges to Imperial Chemical Industries, Limited—has been remitted.

THE BALANCE-SHEET

With regard to the balance-sheet you will observe that we have, up to the closing date of these accounts, redeemed £73,460 (pounds) of Debentures. This money, in accordance with the agreement reached with the trustees, has been provided out of the cash resources of the company, but, owing to adverse trading conditions latterly, part of this expenditure has been met by a loan from Imperial Chemical Industries, Limited, which is included in the figure of £29,997 l. 11s. 11d. shown as due to them in the balance-sheet.

With regard to obsolescence reserve you will observe that there is a balance outstanding of £48,022 l. 6s., and in view of the fact that very considerable amounts are spent annually on repairs to plant and machinery and buildings, whereby these are all kept in first-class condition, your directors consider that the amount reserved is on a conservative basis.

Here I may draw attention to the fact that the sum expended by the company in capital additions to its physical assets has amounted since 1925 to approximately £112,000, of which about £31,000 represents additions to works buildings and machinery, and about £80,000 represents improved housing, accommodation and amenities for the European, Indian, and African staff.

On the assets side it is only necessary for me to refer to the items of preliminary expenses and stamp duties on the East African leases amounting to £18,283 l. 4s. These are assets which your directors would like to see eliminated, and some £5,500 odd has in fact been written off the preliminary expenses. Further reduction must, however, await better trading results, and in the meantime the stamp duties can be regarded as the value of the company's leases of its property in Kenya Colony.

RELATIONS WITH THE KENYA GOVERNMENT

With regard to the company's relations with the Kenya Government, the Chairman said:—Under these leases the company holds its property in Kenya Colony for 99 years as from November 1, 1924, and the company receives a special railage rate for its product, which compares favourably with the standard tariff rates on general commodities. This railage rate is, however, subject to revision from time to time, and in addition the company became liable to a royalty of 3s. a ton on manufactured soda ash as from November 1, 1929. On the same date railage rates on soda ash were increased by 1s. 6d. a ton, but, owing to the representations which the company was able to make, the Government agreed to remit the royalty payable, by a like amount, for the following five-yearly period. At the same time, however, the company became liable for increased railage rates on its fuel oil, amounting to a little under 2s. a ton on soda ash produced, and the cumulative effect of these increases has therefore been an increase in the cost of manufacture of a little under 6p. per ton, which further explains the reduced accounts for the year which appears in the

I should also mention here that we have certain obligations under our leases as to minimum output, and while we have so far been able, with a certain amount of difficulty, to fulfil our obligations in this respect, we should have, if the leases are strictly interpreted, to provide for a very much enhanced output in the near future.

For reasons which I have already outlined, any considerable increase in output for some years to come appears to be an economic impossibility, and it has accordingly been necessary for us to approach the Kenya Government recently with a request for a modification of our leases in this respect.

It is too early for me to do more than report this circumstance, and I and my colleagues hope that an arrangement satisfactory to all parties will ultimately be reached. I mention it now, however, because the outcome of these discussions has a vital bearing upon the future of the company, and it is only right that the shareholders should be made aware of this.

TRANSPORT FACILITIES

As regards the provision of rolling stock for carrying our product difficulties still arise from time to time owing to the heavy seasonal requirements of the Colony's other products, but thanks to the

wards—that is to say, since the present company has been in operation—the output has been as follows:—

	Tons.
1925	46,810
1926	15,221
1927	59,822
1928	72,740
1929	61,302
1930	43,142

Except for the year 1926, when there was a contraction owing to the fact that sales were not able to keep pace with the 1925 output, added to the heavy stocks taken over from the old company, a steady expansion was shown up to and including the year 1928. Since that time a decline has set in, and as this is the most important factor affecting the trading results I propose to devote a little time to explaining the reason for it.

EXTREME NATIONALISM AN ADVERSE FACTOR

First of all there is the general economic depression to which I have already referred, but there is a still more important reason—namely, that in the markets in which Magadi Soda sales are principally located, Japan, India, and China, the prevailing sentiment of extreme Nationalism has led to a rapid development of indigenous production of soda ash. In the case of India and China this development is still in the initial stage, but its effects are already beginning to be felt. In Japan, on the other hand, local production has reached very considerable dimensions, and the producers, in addition to receiving the benefit of tariff protection, are at present in receipt of a substantial subsidy from the Japanese Government for every ton produced.

Besides this the production of soda from natural deposits in other parts of the world has recently made considerable headway. The product, which compares closely with ours in quality, has found its way in increasing quantities into the Far Eastern markets, and this has had a further depressing effect on price and tonnage sold.

In these circumstances it was inevitable that severe competition would be met with, and when it is remembered that owing to the economic depression the total requirements of these markets are contracting instead of gradually expanding I think a full and sufficient answer is provided to any question as to the reasons for the reduction in our output. These conditions unfortunately still hold, and it is difficult at present to foresee any stabilization of even the present position. It is consequently impossible for me to make any encouraging forecast as to the prospects of the near future. There is no doubt however, that no appreciable increase in output can be anticipated for the present, but this does not necessarily mean that we shall be faced with a repetition of results as unsatisfactory as those for 1930.

DIRECTOR'S AND SECRETARY'S VISIT TO THE PROPERTY

My reasons for saying this are that, as the result of the visit of Mr. Lutyens and the secretary to Lake Magadi, which is referred to in the directors' report, we hope to achieve a substantial improvement in the costs of manufacturing soda ash, and we have also been able to secure some reduction in the cost of sea freights. In addition, certain obligations to former agents, which we took over from the old company and which have had a very important bearing on the trading results, will lapse in the course of the next two years.

On the other hand, we may shortly be faced with further technical difficulties which arise from the fact that the area of high test trona is limited, and it is likely that we may sooner or later have to fall back upon trona supplies which contain a larger proportion of impurities. This, as you will at once see, may lead to difficulties in maintaining our present quality of soda and a consequent reduction of sales, and this question is at present receiving the careful attention of our technical department. Thus, while there are reasons for anticipating improvements in some directions, there are balancing factors, the value of which it is at present impossible to estimate.

THE TRADING PROFITS

Turning now to the balance-sheet and profit and loss account, I would draw your attention first to the trading profits, amounting to £23,016 8s. 4d., as against £52,402 1s. 9d. for the previous year. This reduction is entirely due to a falling off in the tonnage sold, the reasons for which I have already mentioned, a lower all-round realization, and an increase in per ton manufacturing costs consequent upon reduced output and the technical difficulties already mentioned, increased rail freights, and the payment of royalty to the Kenya Government.

Further, we have also had to cope with phenomenal climatic conditions of manufacture at Lake Magadi, as in 1930 the rains were of unprecedented severity. In consequence the soda surface was for many months under several feet of water, and as it was not until nearly the end of the year that the flood-water subsided sufficiently to make normal working possible, the effect on the cost of production was severely felt.

I should explain that we expect a certain amount of flood-water on the lake every year, but so long as its incidence is of the normal short duration we are fully equipped to meet it. Last year, however, gave the heaviest rainfall which has been known in the Colony

royalty payable, by a like amount, for the following five-yearly period. At the same time, however, the company became liable for increased rail rates on its fuel oil, amounting to a little under 2s. a ton on soda ash produced, and the cumulative effect of these increases has therefore been an increase in the cost of manufacture of a little under 5s. a ton, which further explains the reduced profit for the year which appears in the accounts.

I should also mention here that we have certain obligations under our leases as to minimum output, and while we have so far been able, with a certain amount of difficulty, to fulfil our obligations in this respect, we should have, if the leases are strictly interpreted, to provide for a very much enhanced output in the near future.

For reasons which I have already outlined, any considerable increase in output for some years to come appears to be an economic impossibility, and it has accordingly been necessary for us to approach the Kenya Government recently with a request for a modification of our leases in this respect.

It is too early for me to discuss them, but I report this circumstance, and I and my colleagues hope that an arrangement satisfactory to all parties will ultimately be reached. I mention it now, however, because the outcome of these discussions has a vital bearing upon the future of the company, and it is only right that the shareholders should be made aware of this.

TRANSPORT FACILITIES

As regards the provision of rolling stock for carrying our product difficulties still arise from time to time owing to the heavy seasonal requirements of the Colony's other products, but thanks to the arrangements which we have been able to make with the Railway Administration, mainly through the good offices of Mr. Marriot, we are now able to say that, generally speaking, the supply of trucks is adequate to our needs, and that our staff in Kenya are continually in close cooperation with the railway in this matter.

With regard to labour, I am glad to say that we are experiencing no difficulties. Our European staff in Kenya Colony now numbers some 35 individuals, and during the past five years their housing conditions and amenities have been vastly improved. In addition we have a staff of about 50 to 60 Indians, some of whom occupy clerical positions and the remainder constitute the main source of artisan labour, as the African is not yet entirely suitable for this class of work. For the rest we have an African staff of some 425, all of whom are recruited from tribes inhabiting different areas in Kenya Colony and whose conditions of service are as good as any in the Colony. Much progress has been made in recent years in improving their housing accommodation and sanitary and health arrangements generally, and the experience of our officials on the spot has been that most of our African workers are always ready and willing to return to Lake Magadi when their original contracts have expired.

THE DIVIDEND POSITION

At the statutory meeting in 1925 you were told that it was hoped that the company would earn at least its Debenture interest and the 6 per cent dividends on the First and Second Preference shares. At the same time it was pointed out that Preferred Ordinary shares, as their rate of interest indicated, were of a more speculative nature, and that while all the efforts of the directors would be bent on securing a return on these investments, it was not then possible to make any statement of the dividend prospect of the shares. Since that time we have been able to pay dividends on these shares for the year 1928, and it is the failure to do so for the two subsequent years that has rendered the presence of the Preferred Ordinary shareholders at this meeting possible. On this occasion I am again not prepared to prophesy as to the future prospects of a return on these shares, particularly as the dividends on the First and Second Preference shares are now also in arrear. I have already outlined to you the conditions under which the undertaking is being carried on and can only repeat that the efforts of the directors will be unsparingly applied to make the company achieve the best possible results. We are, however, at the mercy of many economic factors over which we have no control, and much planning and constant vigilance are necessary in order to direct the policy of this company into those channels through which it is likely to achieve the best results.

There are difficult times ahead, but I ask you to believe that these difficulties will be met by all the resources at our command. Hence my request to you at the outset of this speech to give us your sympathy and confidence in the undertaking which we are carrying on on your behalf.

I have now to move the following resolution: "That the report of the directors and the balance-sheet of the company as at December 31, 1930, be adopted, and that the decision of the directors that no dividends be paid on any class of shares be confirmed."

Sir ERNEST K. ALLEN, C.B.E., seconded the resolution, which was unanimously adopted. The retiring directors, Sir Harry McIlwain and Mr. C. G. Saunders, were re-elected; and the auditors, Messrs. Price, Waterhouse and Co., having been reappointed the proceedings



NOTE OF DISCUSSION ON 6TH MAY, 1931, REGARDING THE AFFAIRS OF THE MAGADI SODA COMPANY.

Present:

Sir C. Bottomley.

Mr. Marriott (Government Director).

Mr. Allen.

The points made by Mr. Marriott were as follows:-

If the concessions already made by the Railway had not been given, the crisis would have come before. It is entirely due to lack of demand, and when later demand improves, as it should, the Company would be able to carry on. The question previously discussed with regard to purifying the product must now be washed out, and the extra capital amount required for this purpose would be from ~~£300,000~~ ^{£300,000 & £50,000}, and there is no prospect of demand ^{that} being forthcoming from any source. The Company cannot at present guarantee even the existing requirements of an output of 50,000 tons ~~anyway~~, and it is quite impossible to expect them to meet the increased output of 100,000 tons annually which they are required to do as from the 1st November next, since even if that amount were turned out, it could not be sold, even at a loss.

Under the agreement the Company will become liable on the present basis of output ^{a fine of} to ~~find~~ over £50,000, and if the carrying out of the requirement were insisted upon, they would no doubt let the whole thing go in order to cut the loss. In that case, if the debenture holders took over they could not sell as there would be no buyer, except possibly Japanese.

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Mr.



Mr. Marriott said he was kept very fully informed of all aspects of the matter, and he was quite satisfied that the Company was doing its utmost to meet the requirements. Put briefly, he wanted the Government of Kenya to relieve the Company until further notice of all obligations as to the amount of output, drawing attention, however, to the clause which requires them to work to the best of their ability.

As Sir C. Bottomley had another engagement, the matter was not carried further, but it was explained to Mr. Marriott that it would have to be put before Sir John Campbell, the Financial Adviser, here, and that it was quite possible that Sir John Campbell would wish to see him.

Mr. Marriott was sceptical about the figures of railway losses. He said that such figures were commonly presented without regard to the benefit of spreading out overhead charges.

He pointed out that if the C^o turned over from oil fuel to coal, as was intended, the Railway would have an upward bias for the remaining 800 wagons.

X.17058/31-Kenya.

- Mr. Allen *29/4*
- Mr. Parkinson *28.4.31*
- Mr.
- Mr. Tomlinson.

As Ch. Sturges's
For Mr. Parkinson's signature.

X Sir C. Bottinley *30.4.31*

- Sir J. Shuckburgh.
- Sir G. Grindle.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

Downing Street,
2 MAY 1931

April, 1931.

Plot
 O. D.
 R 30 APR
 D. 1 May

My dear Marriott

DRAFT.

H F. MARRIOTT, ESQ.
 Waterloo Place,
 S.W.1.)

26
18778/30

In my letter of the 16th

October, 1930, I sent you a copy of the
 despatch to the Officer Administering
 the Government of Kenya, on the subject
 of the representations of the Magadi Soda
 Company regarding the stipulations, as to
 minimum production and despatch, in
 their leases.

Cas. v. minute

The Governor of Kenya has now

replied in a despatch which reached us
 on the 30th of March. Prior to the
 receipt of that despatch Sir Harry McGowan
 wrote to the Secretary of State enquiring
 when the Magadi Soda Company ^{might} ~~may~~ expect
 to receive the views of the Government of
 Kenya and the Colonial Office. When the

despatch

(8)

despatch came in Lord Passfield wrote to
Sir Harry McGowan saying that it had been
received, and that it showed that neither
the Government of Kenya nor the Transport
Administration is disposed to agree to any
modification of the existing agreements at
the present time; but that His Lordship
thought it would be desirable before
any ~~final~~ ^{official} communication is made to the
Company, that the matter should be discussed
with you at the Colonial Office. Lord
Passfield added that he understood that you
would not be returning to this country
until the end of April, but that a discus-
sion would be arranged as soon as possible
after your arrival. I should therefore
be much obliged if you could arrange to
come here for a talk at your earliest
convenience.

Yrs Sincerely,

(Signed) W. C. BOTTOMLEY.

S. Please telephone first as I am
rather full of engagements

O. O.

10/17/20
Kenya

106
E

Mr. W. Allen 2/4
Mr. Falkner 2/27
Mr. W. Sweeney S.F.S.

Mr. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Sir G. Grindle.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

For Govt's signature

6 Apr 1921

DRAFT. Cars:

r. merits

Harry McEwan
K.A.F.

(5)

In continuation of
my letter of 16 Feb I am
writing to say that I have
now recd a despatch from
the Gov: Kenya regarding
the representations made by
the Uganda Soda Co.
as the despatch shows
that neither the Government
Kenya nor the
Transit Administration
is disposed to agree

circulate 6 Apr 21

any modifications of the
existing agreements at the
present time: but I
think it would be desirable
before any official communication
is made to the Company, that
the matter should be discussed ^{at the Board Office} with
Mr. H. F. Hammett, the Past
Director, I understand ~~however~~
that he is not intending to
leave until the end
of this month; but the discussion
will be arranged as soon as
possible after his arrival.

KENYA.

No. 24

CONFIDENTIAL.



1072
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
30 MAR 1931
COL. OFFICE

11-
4 March, 1931.

My Lord,

With reference to correspondence
No. 14 terminating with Mr. Moore's telegram No. 47 of
the 13th February, 1931, relative to the
representations of the Magadi Soda Company,
Limited, I have the honour to state that these
representations appear to be tantamount to a
request to be released from all contractual
liabilities, if and when the Company default.

2. The history of the Company since 1924
in so far as the Colony and the Transport
Administration is concerned is as follows:-

(a) In the early months of 1923 the old Company,
to whom the Lake Magadi and other lands in
Kenya, the Magadi Branch Railway and the Pier
and works at Kilindini were leased under the
Agreement of 1911, went into liquidation and
the soda industry was temporarily suspended.

(b)

THE RIGHT HONOURABLE

LORD PASSFIELD, P.C.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.1.

KENYA.

No. 24

CONFIDENTIAL.



107
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LORD PASSFIELD, P.C.,

SECRETARY OF STATE FOR THE COLONIES,

DOWLING STREET,

LONDON, S.W.1.

(b) The Railway Administration was then confronted with the position that it had incurred very considerable capital expenditure in anticipation of the substantial traffic which had been promised but which traffic never materialised; £300,000 had been spent on Rolling Stock alone. The result was that the finances of the Railway had been seriously affected. Not unnaturally, therefore, the Railway urged that in any new arrangements to be entered into to enable the Soda business to be resumed its interests, together with those of the Colony, should be properly safeguarded by guarantees and penalties.

(c) Two alternative propositions for the reconstruction of the Magadi Company were, in the first place, put forward, which were known as:-

- (a) The Original Scheme;
- (b) The Brunner Mond Scheme.

After protracted discussions and consideration, both in London and in the Colony, it was decided that the "Original Scheme" was the most favourable to the Colony and the Railway, because it ensured definite guarantees of an output each year or payment in default thereof at rates, inclusive of royalty, acceptable to the Administration. This was a fundamental consideration.

consideration so far as the Railway was concerned. The "Brunner Mond Scheme" was in this respect not so favourable.

- (d) An Agreement for the reconstruction of the Company on the foregoing lines to all intents and purposes had been reached in March, 1924, when, without notice, the reconstruction scheme, to which the Government of Kenya had given its approval, was withdrawn. Messrs. Brunner Mond came forward with fresh proposals for the formation of a new Company, in which they would have a controlling interest under proposals, so far as the Railway was concerned, which were more or less similar to those embodied in the "Original Scheme".

These proposals, subject to certain minor alterations, were subsequently embodied in the several Covenants, entered into with the reconstructed Company, and form the Leases which became operative from the 1st November, 1924, although the documents were only completed in March, 1923.

- (e) It is desirable, at this stage, to stress the following points:-
- (1) The original Company, under the 1911 Lease, had never fulfilled its obligations to either the Colony or the Railway.
 - (2) The Railway Administration had incurred over £300,000 capital expenditure which had been more or less wasted by the failure

failure of the traffic, for which it was expended, to materialise;

(3) The Colony and the Railway, guided by previous experience, while making certain valuable concessions to enable reconstructions to be effected, had arrived at an agreement in regard to the "Original Scheme" for reconstruction which would have afforded reasonable guarantees for the future;

(4) Messrs. Brunner Mond themselves came forward with an alternative proposal on the lines of the "Original Scheme", with a full knowledge of what obligations their proposal involved and, presumably, with a proper sense of the fact that those obligations would have to be fulfilled in all circumstances;

(5) These alternative proposals were accepted, subject to a definite Covenant which gave this firm large concessions and in turn placed upon them reasonably substantial liabilities, which it was expected they would fulfil.

(f) I now turn to the terms of the 1928 Agreement (applicable as from the 1st November, 1924), remarking at the outset that a significant relative to warning, the possibility of furthering the sale of synthetic soda at the expense of

Magadi

not be taken as part of the tonnage stipulated for the latter year.

A further proviso gives to the Lessees the right of making good any breach (not due to force majeure) on or before the 1st April next following the date of such breach, by paying to the High Commissioner the amount which would have been payable for freight for the period in respect of which such breach shall have occurred if the Lessees had duly performed their obligations.

The last proviso in regard to the Company's liabilities provides that nothing in the Lease contained shall prevent the High Commissioner (except in the circumstances provided for in Clause 29), at his option, from electing to sue the Company for any unpaid freight and from ~~having~~ satisfaction for any judgment by attachment of any of the Lessees' property.

3. It will be seen that in respect of the very valuable concession granted to the Company the Lessees undertook:-

- (a) To despatch by rail not less than 50,000 tons per annum during the period 1924-1931;
- (b) From 1st November, 1931, and thereafter annually until the 31st October, 2023, the Lessees undertook to despatch by rail not less than 100,000 tons per annum;

(c)

(c) That in the event of failure (except under force majeure) the Lessees agreed to pay the difference between the railrage actually ^{paid during} any one year and what the total railrage would have been had they fulfilled their obligations

The terms of Clause 29 of the Lease reads as follows:-

"29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein, contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shown to the reasonable satisfaction of the Governor that the default has arisen from force majeure that is to say any of the following causes namely: the act of God insurrection riots war strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether ajusdem generis with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time be delayed by any such cause such specified time shall be proportionately extended".

From the foregoing it is clear that the circumstances now confronting the Company do not come within the meaning of the term "force majeure". Those conditions are such as confront every commercial undertaking from time to time and presumably the Company made (and at any rate it should

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-8-

should have made) provision to meet a period of depression such as now exists. This Colony and its Transport Administration certainly has to face such a situation. It has, at all times, carried out its part of the Contract with the Company; it has met them from time to time in a more than generous manner; and, having performed its side of the contract, it has now to consider whether the time has not arrived when it should insist that the Concessionaires should honour their Covenants.

4. In so far as the Colony is concerned the Agreement provides that royalties shall be paid at the rate of Sns.3/- per ton in respect of manufactured soda and of Sns.2/- per ton for raw soda. In fact only Sns.1/50 per ton has been charged throughout in respect of manufactured soda and as the total tonnage produced is approximately 339,600 tons the Colony has waived revenue to the extent of £25,470.

The foregoing contention, in so far as the Railway Administration is concerned, is established as follows:-

- (a) That the Railway Administration agreed to concede extremely low preferential rates for the conveyance of soda to the Coast for export; and
- (b) That, when it could have insisted on arrears in respect of railage on oil fuel, it agreed to forego approximately £40,000 to help the Company;

(c)

- (c) That the Administration has levied no wharfage or other charges on all soda shipments, thus depriving the Port (which has for some years been worked at a loss, borne by the Railway) of considerable revenue;
- (d) That it has at all times given the Magadi Company preferential treatment in regard to engine and truck supply, sometimes at the direct instigation of the Secretary of State.

5. It is provided in the Lease that during the first 5 years the Lessees shall pay the following rates (which include the royalty payable to Government):-

<u>Total weight carried in each year ending 31st October.</u>	<u>Rate per ton.</u>	
(a) Not exceeding 50,000 tons.	Shs. 18/-) subject to freight when 50,000 tons & 150,000 tons
(b) Exceeding 50,000 tons but not exceeding 150,000 tons.	Shs. 17/-) exceeded not being less than as for
(c) Exceeding 150,000 tons.	Shs. 16/50) 50,000 or 150,000 as case may be.

of which 1/6, 2/6, and 3/- respectively would represent royalty payable to Government.

The Agreement also provided that the Company should pay the ordinary public rate for fuel oil and coal.

The foregoing special rates for soda were applied, although the Agreement had not been completed, as from the 1st November, 1924. The ordinary public rate for the conveyance of the Company's oil fuel (coal is not used) was not, however, applied pending the completion of the Agreement.

Agreement. The ordinary oil fuel rate from Kilindini to the Lake is Shs.62/05 per ton, plus a siding's charge from Shimanzi to Kilindini of Shs.12 per vehicle.

The rate actually charged the Company was Shs.17/86 per ton (the rate provided for in the old 1911 Agreement); consequently, when the Agreement was duly completed, an amount of £37,181.19.64 became due to the Transport Administration, representing the arrears on freight on this traffic.

6. The first period of 5 years under the new Agreement expired on the 31st October, 1929. Under the provisions of the Lease, the General Manager had the right to increase the rate for soda up to Shs.20/- per ton, if the tonnage conveyed did not exceed 150,000 tons per annum, provided due notice was given and with due regard to the cost of working the traffic and the selling price of soda goods.

The Transport Administration's statistics showed that the Railway rate of Shs.17/- per ton, which it received for conveying the soda to the Coast, was not a remunerative one; that, in fact, on the tonnage then being produced, the maximum rate of Shs.20/- per ton provided in the Agreement, would not yield a profit. The Railway therefore supplied the Company with the necessary data and gave notice of its intention to increase the soda rate, on from 1st November, 1929, to Shs.20/- per ton.

During the period that separate statistics calculated as laid down in the Lease, in respect of the working of the Ugadi Line were compiled, it was established that the results of working were as follows:-

<u>Year.</u>			
1915 - 1916	Profit £1,829	(half to Company half to Railway)	
1916 - 1917	Loss £ 7,491	} Borne by Railway	
1917 - 1918	Loss £10,504		
1918 - 1919	Loss £22,321		
1919 - 1920	Loss £11,450		
1920 - 1921	Loss £13,495		
1921	Loss £21,650		
1922	Loss £25,877		
1923	Loss £19,138		
1924	Loss £12,417		
1925	Loss £12,761		
1926	Loss £10,712		
	<hr/>		
	TOTAL	£ 157,816	
Less profit 1915-1916.		915	
	<hr/>		
	NET LOSS	£ 156,901	Borne by Railway.

7. The Company, as was their right, proposed to proceed to arbitration, but, pending the appointment of an arbitrator or arbitrators, further protracted negotiations took place which culminated eventually in the Transport Administration agreeing:-

- (a) To waive its claim for the arrears of charges in respect of fuel oil, amounting to £37,181.19.64;
- (b) That, with effect from the 1st November, 1929, the Company should pay to the Colony a royalty of only Shs.1/50 per ton, instead of the royalty

royalty due from that date of Shs.3/- per ton and, in addition, the rate payable for the conveyance of soda ash to the Coast should be Shs.18/50 per ton.

It will be seen that in effect the Colony and the Railway agreed to forego in equal shares the increase of Shs.3/- per ton due from the Company;

- (c) That the public rates for fuel oil should apply from the 1st November, 1929.

8. In submitting its case for further assistance to the Company, the Lessees stated:-

"It has long been recognised that it will be quite impossible, so long as the present product alone is manufactured, to fulfil the ultimate obligations imposed by the Leases. Research has, therefore, been carried out for the past two or three years in order to discover an economically workable process for converting the Lake raw material into a product sufficiently pure to hold its own with the highest grade of synthetic soda ash. It is believed that such a process has now been found and semi-large scale trials have yielded very encouraging results. The cost of the necessary plant to work this new process is estimated at about £250,000, and it is obvious that the effect of a premature increase in railage costs would be to prejudice the Company's prospects to such an extent

extent as to make the provision of new capital a matter of considerable difficulty. In any case all estimates of the profit-earning capacity of the new plant would have to be revised if railrage rates are to be increased at this juncture.

Thus, in addition to embarrassing the Company's present undertaking, there is the added danger that increased railrage rates would seriously hamper new enterprise.

9. The representations now made by the Company suggest that in the apparent probability of the Company defaulting by failing by the 1st November, 1931, to despatch soda to the Coast at the rate of 100,000 tons per annum, it will claim force majeure.

The definition of the term is clearly laid down in Clause 29 of the Lease which has already been cited and the legal advice at my disposal indicates that such a claim cannot be substantiated under force majeure, but that the Governor may, after consideration of the points raised under the latter part of the Clause, grant the Company relief.

It is obvious the Company will, on default, appeal on general grounds for the terms of the Lease to be waived, so leaving them free to work, or to neglect, the soda deposit to the extent which they alone consider profitable to them.

The wheel has thus turned full circle and the prediction contained in Mr. Thomas' despatch, at the time Messrs. Brunner Mond's proposals were under consideration, has been fulfilled. Having secured the acceptance of their original proposals, the Lessees subsequently failed in their obligations at the expiry of the first period of 5 years; now, faced with another crisis, they demand that they should be relieved of the contractual penalties which are:-

- (a) That Government should have the right to re-enter the area demised; and
- (b) That the Railway have the right to enforce payment of the railage charges in respect of any tonnage by which the Company defaults.

It will be evident from a perusal of Clause 29 that, should the Company fail to produce the traffic stipulated in the Agreements, they will claim exemption under that part of the Clause which reads as follows:-

"..... or any other circumstances whether ejusdem generis with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees"

on the grounds that they had no control over the reduction of sales and that the exploitation of the Magadi deposits has not been sacrificed in order to protect the sales of synthetic soda.

10. Your Lordship will agree that the history of the Colony and the Railway in regard to the soda industry does not justify consideration of

any

any further concessions. The opinion of the Railway Council, which considered this matter on the 15th December, 1930, is recorded in the following resolution:-

"612. Council, having considered the representations of the Magadi Soda Company, as set forth in the correspondence circulated, are not prepared to consider at the present time any question of the revision of the terms of the Company's Agreement and support the recommendation made by the Railway Administration that no alteration should be contemplated and that the question of action being taken on default should be held over until default has occurred".

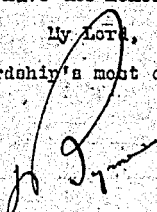
From the standpoint of both the Colony and the Transport Administration, I am in complete agreement with this recommendation.

In view of the foregoing, I trust Your Lordship will inform the Company that neither the Colony nor the Transport Administration are prepared to agree to any further modification of the existing Agreements at the present time.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,



BRIGADIER GENERAL,
GOVERNOR.

DECODE

RECEIVED
113 FEB 1931
COL. OFFICE

Telegram from the Officer Administering the
Government of Kenya to the Secretary of State for
the Colonies

Dated 11 February. Received 8.52 a.m. 13 February
1931.

15/2/31
McGowan - 16/2/31
McGowan
10
No 3 No. 47. Your telegram No. 38² Magadi. In my
capacity of High Commissioner I am awaiting
comments of railway Advisory Council on Magadi
Beda Company representation. Railway Council
meets 24th February and my views can be expected
about the end of this month.

123

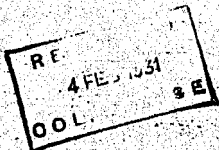
IMPERIAL CHEMICAL INDUSTRIES LIMITED.

FROM: THE CHAIRMAN.
(SIR HARRY MCGOWAN, K.B.E.)

MILLBANK,

LONDON, S.W.1.

2nd February 1931.



My dear Lord Passfield,

The Magadi Soda Company Limited.

On 23rd July last, arising out of a conversation in regard to the unemployment position in this country, the late Lord Melchett wrote to the Secretary for the Dominions in regard to the above Company (which is one of our associated Companies) and, particularly, the bearing which the Company's obligation to produce certain minimum quantities of natural soda in Kenya had upon the employment position in this country. The Secretary for the Dominions informed Lord Melchett that he would speak to you about the matter.

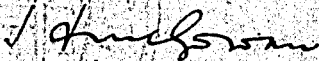
No. 32 on
15918/30

On the 9th October last, The Magadi Soda Company Limited itself, through its Secretary, wrote a formal letter to you setting out very fully the difficulties the Company was faced with in increasing its output and even (in view of the altered conditions in its chief markets) in maintaining its existing rate of output to comply with the terms of

15948/30
the lease under which the concession is held. This letter was acknowledged by a letter from your office dated 16th October last, in which it was stated that the Company's letter was being referred to the Officer Administering the Government of Kenya. The Company has not heard anything further.

The questions involved are becoming very urgent, and I shall be very glad if you can give me some indication as to the time when the Company may expect to receive the views of the Colonial Office and the Government of Kenya upon the matter.

Yours sincerely,



Chairman.

The Right Hon. Lord Passfield, P.C.,
Colonial Office,
Downing Street, S.W.1.