

1929

Kenya

No. 15506

SUBJECT

CO 533 / 383

Railway Rates

Motions by members of Leg. Cess

Question of principle raised.

Previous

Subsequent

Enclosed is a copy of a motion of which notice was given in the Legislative Council by Captain the Hon. E.M.V. Kennedy in 1921 a statement by the Governor, regarding railway rates on salt.

Two questions appear to arise:-

(i) Whether a private members' motion regarding railway rates is barred under Clause XXVIII of the Royal Instructions which provides "that no Ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, or to revoke, alter, or vary any such disposition or charge, shall be proposed, except by the Governor or with his consent."

(ii) If such a motion is not barred under this particular Clause, whether the Legislative Council are competent to discuss such matters at all.

I have not found that this point was ever taken up in the discussions etc. prior to the issue of the 1923 Transport Order in Council, but, presumably, (always provided that ~~it~~ it were not barred under Section XXVIII of the R.I.) there could be no objection to a motion that, for example, "the present railway rates on salt are not in the general interest of the Colony, and that the High Commissioner for Transport be requested to consider their alteration"; but there would then, of course, be no obligation on the High Commissioner to act in accordance with their request.

Whether, or not, the position of the High Commissioner is affected by the Report of the Hilton Young Commission, the point is likely to arise again, and there is no reason why a ruling should not be obtained.

Copy of Standing Rules & Orders
of the Hong Kong Legislative Council 3
also herewith - see No 32.

I understand that these Rules
& Orders are being framed,
although they are subject to
disallowance - R.I. XXIV - a
way in which they can be altered if after
examⁿ in C.O. there is anything
which requires amendment.
You will note the difference,
which was assumed important,
between No 32 of the S.R.O.
which speaks of "revenue arising
within the Colony" (which might
be held to include post-^{office} and
rate of Railway revenue) &
XXVIII of the R.I. which speaks
of "Our Revenue arising within
the Colony" (which excludes all
Railway revenue) of course,
the R.I. prevail as against
S.R.O.

All Partners

1871/29

This was mentioned to
Mr. Martin today. I gathered
that he agreed that (1) Capt.
Kaneley will have been in
order in making for a revenue

obtained.

To Mr. Burns for his observations.

Eastwood

7/12

I have discussed with Mr. Burns.

It is not thought that Clause XXVIII of the Royal Instructions, to which Mr. Eastwood refers, would prevent discussion of such a motion as that in question since Transport revenue is not "Our revenue" - the High Commissioner for Transport being a statutory body set up with complete control, and the revenue from railway rates is the revenue of that body which is a legal entity. It would, therefore, be necessary to find some other reason why the motion should not be discussed if such discussions are undesirable. Sir E. Grigg may have some such reasons to advance, but until he states them, it is not possible to deal with them.

The following references are relevant:-

(A) Transport Order in Council

Clause 3(1) Powers of High Commissioner

14(1) Alterations in rates

17 Procedure as to Estimates

(B) Railway Ordinance No. 15 of 1927 Section 2(1)

which confers power on the H.C. to deal with fares, freight, or other charges.

Stratton

16/1/25

H.P. 17/1

Copy of Transport Order in Council
The Hong Kong Legislative Council
also herewith - see No. 32.

I understand that these Rules
or Orders are being proposed,
although they are subject to
disallowance - R.I. XXIV - a
way in be altered if after
exam in C.O. there is any thing
to be done as then old as taken.

You will note the difference,
which now assumes importance,
between No 32 of these S.R.O.
which speaks of "revenue arising
within the Colony" (which might
be held to include part at least
rate of Railway revenue) and
XXVIII of the R.I. which speaks
of "Our Revenue arising within
the Colony" (which excludes all
Railway revenue). Of course,
the R.I. prevail as against the
S.R.O.

All Parkman

18/1/25

This was mentioned to
Mr. Martin Paddy. I gathered
that he agreed that (1) Capt.
Kennedy was never been in
order in making a reference

note on salt when the
Railway estimates were
under review in the
Leg. Committee (?) that
had the motion been
so worded as to suggest
representations being made
to the I.C. Transport in
the matter of rates on salt,
it wd. have been admissible
even though not made in conn. with the
Railway estimates
You suggested that
in present crisis it was
inconvenient to go into
the questions raised in the
Dispatch. - Mr. E. Grigg
has already mentioned the
matter to you - or rather
you mentioned it to him -
& for the present it seems
best to leave the
Dispatch unanswered,
and how the constitutional
position develops as a
result of the Miller Ham
report? All Parkinson
1. 2. 24

note B. U. fortnight

W.C.S. 1. 2. 24

B. U. as directed

London
15. 2. 24

The Hon. Mr. E. Grigg (with whom a
reply would have to be given) has
created another difficulty.

W.C.S. 2 months

W.C.S. 18. 2. 24

(See also 11307/22)

The new Standing Rules & Orders
are sent on in file 11307/22.
There is no reason why the question
of disallowance of those R & O.
should be disposed of without
further notice.

W.C.S.

So far as this paper is
concerned, it will suffice
for R.G. to note it in the
list of papers for possible
discussion with Mr. E. Grigg
before he returns.

Noted on list
11/4/75

de Parkinson
27. 2. 24

W.C.S. 27. 2. 24

P.T.

Mr. Biltmore

(i) You spoke about this yesterday with Sir Edward Grigg. You gave him the gist of the minutes on this paper, and he agreed that if Captain Kenealy had framed a motion in quite general terms, as to ^{to} the prejudice ^{to} the interests of industry in Kenya owing to the high cost of salt, the motion would have been in order, and he would have had to allow it to be debated, if pressed.

(ii) Sir Edward Grigg's objections to allowing discussion in the Legislative Council of any matter affecting the railways, except of course, the Railway Estimates, as provided for in Section 17 of the Kenya and Uganda (Transport) Order-in-Council 1925, are :-

(1) If a railway matter is raised in the Legislative Council of Kenya, the General Manager must be there to deal with it, when his time is ^{almost} fully occupied with his normal duties. Moreover, discussion of such a matter in the Legislative Council of Kenya almost certainly leads to discussion of ^{the same} ~~some~~ matter in the Legislative Council of Uganda, with the result that the General Manager has to rush off to Uganda, and waste time in dealing with the question raised in the Legislative Council of that Territory.

(2) Having succeeded in getting the railway administration removed from the political atmosphere which prevails in the Legislative Council of Kenya, Sir Edward Grigg is most anxious to avoid anything which will import again political considerations. Therefore he would wish to do everything pos-

add: "Not discussion in the Railway Council; private: transfer from the Union to the Kenya Council"

sible to avoid discussion of railway matters in the Legislative Council, except in connection with the Railway Estimates as provided for in the Order-in-Council.

(3) Apart from the political question, discussion in the Legislative Council of Kenya or the Legislative Council of Uganda, is unsatisfactory because it is limited to one Territory, whereas if such matters can be discussed in the Railway Council, where representatives of Kenya and Uganda meet, there is an opportunity for a proper exchange of views between those representatives, and any divergence of view can be satisfactorily ^{dealt} ~~disposed~~ ^X.

(iv) Sir E. Grigg also said that he was able under the six months rule to avoid discussion in the Legislative Council on railway matters up to a point, and he had in fact taken this line in the past but he could not resist a motion on this ground more than 6 months after the Railway Estimates had been discussed in Council.

(v) Sir Edward Grigg pressed that for the present no new precedent should be allowed; see his reply to Captain Kenealy enclosed in No. 1; and he hoped that the Secretary of State would be able to reply to the despatch in No. 1 in quite general terms to the effect that he agreed that, pending a decision as to the future of the Railways in connection with the Report on Closer Union, it would be desirable not to depart from the procedure hitherto followed.

(vi) The position is not altogether satisfactory, but you thought that as an interim measure it might be possible to deal with the matter in the way suggested by Sir Edward Grigg.

Reply by despatch to the U.K.G. according to

deBarrow

The position is not satisfactory, and

I think that the proper course is
to make that subject not
purposely to interfere with
railway administration or future
may be freely accepted and
debated. Also, the problem
will not disappear ^{if} when the
High Commissioner's Council is
established, but it may be possible to
avoid its inconvenience by removing
the General Manager from the
legislative council, and having
some spokesman on railway matters
in that Council who will - as in
the House of Commons - not have any
executive railway position.

Let us have a draft for
consideration.

W.S. 27 6 29, alone

To Gov. 550. 1 and

I.15505/29 Kenya

2

Mr. Parkinson

Mr.

Mr.

Downing Street,

22 July 1929.

X Mr. Bottomley

9.7.29

C. D.
R 18 JUL
D 22

Mr. J. Shackleton

Mr. J. Shackleton

Mr. G. G. G. G.

Mr. G. G. G.

X Sir S. Wilson

for review

Mr. G. G. G.

Mr. G. G. G.

Mr. G. G. G.

DRAFT

KENYA

NO. 550

G.A.G.

Sir,

I have the honour to refer to Sir Edward Grigg's despatch No. 577 of the 30th November 1928 relative to a motion of which notice was given in the Legislative Council by Captain the Honourable E.M.V. Kenealy, in regard to rates on salt carried over the Kenya-Uganda Railway

2. I am inclined to think that ~~General~~ motions relating to railway matters, provided that they do not purport to interfere with railway administration or finance, would be admissible for debate in the Legislative Council at any time, subject to the rules which govern the introduction of motions generally; but that motions which purport to interfere with

railway

railway administration or finance would be inconsistent with the intention of the Kenya and Uganda Transport Orders in Council 1925 and 1927, except, of course, at the time when the Railway Estimates are being submitted to the Legislative Council in accordance with the procedure laid down in Article 17 of the 1925 Order in Council.

3. Apart from any constitutional question, there is a practical difficulty in admitting frequent debates in the Legislative Council upon matters affecting the Railway. Normally the General Manager is very fully occupied with important departmental duties. Attendance in the Legislative Council if required of him at frequent intervals, in addition to attendance at meetings of the Railway Advisory Council, might well prove a serious embarrassment to him. Moreover, if railway matters were made the subject of frequent debate in the Legislative Council of Kenya, this would probably lead to similar action in the Legislative Council of

Uganda, and further calls would thus be made upon the time of the General Manager. The difficulty is a real one, and I have no doubt that members of the Legislative Council will be the first to recognise it; at the same time the General Manager must ^{viably} meet demands of this kind, which are made upon his time, provided ^{that} they are reasonable, even at the expense of personal inconvenience, and objection on this ground to increasing the opportunities for debate on railway administration and finance in the Legislative Council, obviously cannot be pressed very far.

4. As at present advised, I am disposed to take the view that if after the Railway Estimates have been dealt with by the Legislative Council, members of the Council are unwilling to await the

next year's Estimates before debating
again in the Council questions of a Railway
Railway administration and finance,
the most convenient course would be
to ~~take power to enable~~ ^{allow} such discussion
to be held on a given day or days
during a session of the Council, approxi-
mately six months after the Railway Estimates
for the year have left the Council. It does
not, however, seem convenient to take a
decision at this juncture, as it is possible
that changes will be made ~~shortly~~ in the
administration of the Railway, if action is
taken upon the Report of the Commission on
Closer Union of the Dependencies of Eastern
and Central Africa; and in the circumstances
I do not propose to give any ruling on the
point raised in the despatch under reference.
I understand that Sir Edward Gigg, with
whom the question has been discussed here,
agrees that it is preferable to leave the
matter ^{open} thus for the present.

I have

etc.



KENYA

GOVERNMENT HOUSE

NAIROBI

KENYA

November 1928.

No. 677

Sir,

I have the honour to enclose copies of a motion of which notice was given in Legislative Council by Captain the Hon. M.M.V. Kenealy, European elected member for West Kenya, and of a statement which I ~~subsequently~~ made in Legislative Council on the subject. Captain Kenealy subsequently came to see me privately, and I then informed him that I was not prepared to sanction any discussion of specific railway rates in the Legislative Council; but undertook to submit the matter to you at his request.

2. The matter raises an important constitutional question regarding the relations of the High Commissioner for Transport with the Legislative Council both in Kenya and Uganda which I shall take an opportunity of discussing with you in connection with the Hilton-Young Report.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Edward Gigg

G O V E R N O R

The RIGHT HONOURABLE
LIEUT. COLONEL L.S. AMERY, P.C., M.P.
SECRETARY OF STATE FOR THE COLONIES.
LONDON.

Cliff 550-

RAILWAY RATES ON SALT.

Capt. The Hon. E.M.V. Kenealy: Your Excellency, on a point of order, during the last session of Council I submitted a motion which read: "that in the general interests of both the pastoral and agricultural industries, the railway rates on salt be reduced". That is a proposal not to vary the revenues of the country in any way because if the motion is adopted and put into effect in a proper manner it will entail no alterations whatever upon the revenues of the country.

That motion, Sir, according to the Rules we have adopted should have been discussed on a day which was to be set aside for the discussion of motions by private members. I have been given no opportunity of raising this motion and I should like a ruling on this particular point.

HIS EXCELLENCY: The hon. and gallant Member is seeking to set a precedent of the kind which has not been created yet, and that is the raising of a motion in this Council which gravely affects, or may gravely affect, the revenues of the Railways, which is an Inter-Colonial Organisation. I am very doubtful whether it would be in the interests of this Colony to set that precedent at all. I am not aware when he gave notice of that motion - was it at the end of last Session?

CAPT. THE HON. E.M.V. KENEALY: Yes, Sir.

HIS EXCELLENCY: My attention has not been drawn to it, and I am afraid that the fact that he gave notice of it had slipped my memory, but I will go very carefully into the matter and I will speak about the matter privately with him if he wishes me to do so.

1929

Kenya

No. 15506

SUBJECT

C.O. 533/383

1. Cost of Selling Commission

Sugar Enquiry

2. Sugar cane growing.

Previous

X 15425/28

See 10412/27

Subsequent

15749/29
(Rhy. rails)