

1925

KENYA

366

C. D.  
19728  
1 MAY 25

To: *Letter Dunscombe + Oliver*

DATE

*30<sup>th</sup> April 1925*

RE: CIRCULATION -

Mr. *Branney*

Mr.

Mr.

and U.S. of B.

Magadi: Draft lease of port at Kilindini.

*I took 12 prints of the draft lease. Has not attempted to settle the draft, but has made a few amendments.*

Form U.S. of B.

Part U.S. of B.

Secretary of State.

Previous Paper

*O.C. 19717*

*(draft sent to all)*

MINUTES

*CA. See on 19788/25*

*? this can be handled*

*Set 5.5.25*

*(I have not been able to trace any amendments made by the colon. - except the one they mention - though I have read through the draft twice)*

*Set 6.5.25*

*Order - 9 MAY 1925 20/19/25/25  
copy encls. to Gen. 197 2 for 25/25/25*

Subsequent Paper

*CA. 19788*

SUTTON, OSMANNEY &amp; OLIVER,

E. G. OLIVER,  
H. M. OSMANNEY.

TELEGRAMS: "OSMANNEY, LONDON."

NO. 1029 } LONDON WALL,  
NO. 2312 }

3 &amp; 4, GREAT WINCHESTER STREET,

C.O.  
197/3  
LONDON, E.C.2.

30th April 1905

Dear Bottomley,

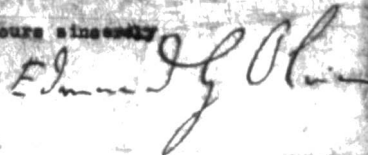
With further reference to your letter of 23rd instant I have pleasure to hand you herewith as requested -- 12 prints of the draft lease of the Nagadi Soda Company's part at Kilindini.

In accordance with the suggestions made in your letter I have not attempted to settle the draft, but have made a few amendments which I think will be obvious as going through the lease.

In clause 2 (1) I have assumed there was a typing error in your suggested marginal note, as it did not accord with clause 2 (1) of the Railway Lease.

Believe me to be,

Yours sincerely



W. C. Bottomley Esq., C.M.G.,  
Colonial Office,  
Downing Street, S.W.1.

29.4.25

COLONY AND PROTECTORATE OF KENYA.

---

Lease

OF

PORT, BRANCH RAILWAY LINE, WORKS AND PIER  
AT KILINDINI.

DATED \_\_\_\_\_ 192

SUTTON, OSMANNEY & OLIVER,  
3 & 4 Great Winchester Street,  
London, E.C.2.

## COLONY AND PROTECTORATE OF KENYA.

This Indenture made the \_\_\_\_\_ day of \_\_\_\_\_

One thousand nine hundred and twenty-\_\_\_\_\_ **Between** THE CROWN AGENTS FOR THE COLONIES (hereinafter referred to as "the Crown Agents") acting for and on behalf of the Government of the Colony and Protectorate of Kenya (hereinafter referred to as "the Government") of the one part and the MAGADI SODA COMPANY LIMITED a Company incorporated pursuant to the laws of England under the Companies Acts 1908 to 1917 and having its registered office situate at No. 19 Coleman Street in the City of London (hereinafter referred to as "the Lessees" which expression shall where the context so admits include its successors and permitted assigns) of the other part

**Whereas** by an Indenture (hereinafter called "the Magadi Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the lands known as "Lake Magadi" have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the deposits of carbonate of soda therein

Lease of Magadi,  
Soda-Deposits

**And whereas** by an Indenture (hereinafter called "the Railway Lease") bearing even date with and executed before these presents and made between the same parties as are parties hereto and in the same order the railway commencing at Magadi Junction on the Uganda Railway and thence passing to a terminus near Lake Magadi TOGETHER with all lands which have been provided by the Government for the purpose of the construction and working of the said Railway have been demised to the Lessees for a term of Ninety-nine years from the 1st day of November 1924, subject to the payment of the rent and royalties thereby reserved and the covenants on the part of the Lessees and the conditions therein contained for the purpose of working the said Railway

The Railway Lease

And whereas

And whereas the Government have agreed to grant and the Lessees have agreed to take a lease of the Magadi Pier and Depot Works now demised including the Depot Works, Shimanzi Pier and Branch Railway at Kilindini

And whereas it has been agreed that the same shall be in the form of these presents and shall contain such covenants and provisions as hereinafter contained

Now this Indenture witnesseth and it is hereby agreed and declared as follows —

1. In these presents, the following expressions or terms shall have the following meanings respectively —

(A) "The Colony" means the Colony and Protectorate of Kenya

- (B) "The Government" means the Government for the time being of the Colony.
- (C) "The Governor" means the Governor for the time being of the Colony or the person for the time being acting as such.
- (D) "The Uganda Railway Administration" means the Administration or authority for the time being working or managing the Uganda Railway.
- (E) "The General Manager" means the General Manager for the time being of the Uganda Railway.
- (F) "The Lessees' Manager" means the person appointed by the Lessees to manage their business in the Colony.
- (G) "The Magadi Lease" means the first before recited Lease of even date herewith.
- (H) "The Railway Lease" means the second before recited lease of even date herewith.
- (I) "Month" means calendar month.
- (J) "The Magadi Pier and Depot Works" means the site hereby demised together with Depot Works, Shimanzi Pier and the Branch Railway Line and all works apparatus and conveniences in connection herewith.

2. The Crown Agents for and on behalf of the Government hereby grant and demise to the Lessees all that Depot Works situate at Kilindini known as <sup>Demise of Depot Works, Shimanzi Pier, Branch Railway Line and Conveniences to Lessees</sup> and the pier adjacent and known as Shimanzi Pier and the Branch Railway Line leading from the Uganda Railway at Kilindini to the said Depot Works together with all appurtenances

and all the land held therewith the boundaries of which are and the site thereof is delineated on the plan in <sup>and is thereon coloured</sup> and more particularly described in Schedule attached.

Excepting nevertheless out of the demise hereby made and reserving unto the Crown Agents for and on behalf of the Government as follows — <sup>Exceptions.</sup>

- (i) All mines minerals and mineral substances including precious stones and all coins treasure relics antiquities and <sup>All other minerals, precious stones, etc.</sup>

other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the Crown Agents and the Government and their Lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the same and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised premises as shall be necessary or convenient.

To have full and free right and liberty

(ii) Full and free right and liberty for the Government in any case of State urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the whole or any part of the demised premises and any rolling stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the same and to use the same for its own purposes paying nevertheless therefor reasonable compensation to the Lessees.

To have full and free right and liberty

(iii) The full right of passage for any Government or public use of railway traffic over the said Branch Railway Line to and from the Uganda Railway to the Government Pier at Kilindini now under construction. And the full right to divert, take up, relay or in any way alter the said Branch Railway provided that the rights of the Lessees under the lease to the use of the Branch Railway shall not be altered or reduced by reason of any diversion, taking up, relaying or altering of the Branch Railway. And the full right of passage and if and when required the right to construct and maintain a public road of a width of 50 feet between the Depot Works and the foreshore, the said passage and road to pass over or under any structure built and used by the Lessees between the Depot Works and the Shimanzi Pier as the Lessors may decide.

To hold unto the Lessees as from the 1st day of November 1924, for a term of 99 years, at a yearly rental of Two hundred and eighty pounds two shillings and sixty-six cents, of a shilling payable on the 1st day of November every year, and subject to a premium of One thousand one hundred and sixty-seven pounds to be paid on the execution of these presents.

other similar things lying in on or under the demised premises other than carbonate of soda with full and free right and liberty for the Crown Agents and the Government and their Lessees and persons authorised by them to search for sink to work get raise carry away and dispose of the same and for such purposes to sink drive erect make and use all such pits shafts drifts roads tunnels airways watercourses railways tramways and other roads through across or under the demised premises as shall be necessary or convenient.

To use of urgency  
to take possession

- (iii) Full and free right and liberty for the Government in any case of State urgency (as to the existence of which the Government shall be the sole judge) at any time or times without any consent of or notice to the Lessees to take temporary possession of the whole or any part of the demised premises and any rolling stock telegraphs telephones buildings and other things of every description belonging to the Lessees in connection with the same and to use the same for its own purposes paying nevertheless therefor reasonable compensation to the Lessees.

Access to  
the pier

- (iv) The full right of passage for any Government <sup>and</sup> public user of railway traffic over the said Branch Railway Line to and from the Uganda Railway to the Government Pier at Kilindini now under construction. And the full right to divert, take up, relay or in any way alter the said Branch Railway provided that the rights of the Lessees under the lease to the use of the Branch Railway shall not be altered or reduced by reason of any diversion, taking up, relaying or altering of the Branch Railway. And the full right of passage and if and when required the right to construct and maintain a public road of a width of 50 feet between the Depot Works and the foreshore, the said passage <sup>and</sup> road to pass over or under any structure built <sup>and</sup> used by the Lessees between the Depot Works and the Shimanzi Pier as the Lessors may decide.

To hold unto the Lessees as from the 1st day of November 1924, for a term of 99 years, at a yearly rental of Two hundred and eighty pounds two shillings and sixty-six cents of a shilling payable on the 1st day of November every year, and subject to a premium of One thousand one hundred and sixty-seven pounds to be paid on the execution of these presents.

3.—If the Magadi Lease shall be determined in any manner whatsoever then this Lease shall *ipso facto* determine also but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained.

Lessee to determine  
if Magadi Lease  
determined

4.—Provided always and it is hereby declared that if and whenever the said rent or any part thereof shall be in arrear for the space of 60 days next after the day when the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of reconstruction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a Corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in their former estate. And thereupon this Lease (and the liberties hereby granted) shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to a proviso for re-entry contained in leases of similar property in England.

Proviso for re-entry

5.—The Lessees for themselves their successors and assigns hereby covenant with the Crown Agents and also as a separate covenant with the Government as follows:—

LESSEES  
COVENANTS

- (i) The Lessees will pay the rent hereinbefore reserved at the times and in the manner aforesaid.

To pay rent

- (m) The Lessees during the said term will not use nor suffer to be used the said Port of Kiltodini and the Depot Works, Pier and Branch Railway now demised save and except for purposes directly connected with the concession of the Lessees of the Lake Magadi. In particular that the Lessees will not use nor suffer to be used the said Branch Railway for traffic other than the transportation from and to Shimanzi Pier of things incidental to the exporting of the said soda products nor will use nor suffer to be used the Pier save for the loading of vessels with the said soda products of Lake Magadi and the loading and unloading of coal and oil and other articles required for and incidental to the working of the concession of Lake Magadi and the supplying the said vessels with water and requirements incidental to the loading of the said soda products provided that thereby no harbour dues or other lawful charges are evaded, nor will in any way enter or attempt to enter into competition with the Government Piers.
- (n) The Lessees will at the expiration or sooner determination of the term hereby granted deliver up to the Government the demised premises with all buildings and fixtures thereon except such fixtures and things as the Lessees are by law entitled to remove in such state and condition in all respects as shall be consistent with the due performance and observance of the provisions herein contained and in proper order for the future working of the Railway.
- (o) The Lessees shall not assign underlet or part with the possession of the demised premises or any part thereof (except to the Uganda Railway Administration in accordance with the provisions hereof) or suffer any corporation (other than the Lessees) or any person to occupy the demised premises or any part thereof as a licensee without the previous consent in writing of the Crown Agents but such consent shall not be unreasonably withheld.
- (p) Provided always that the Crown Agents may withhold such consent if the proposed transaction does not form part of a larger transaction which includes as well the premises demised by the Magadi Lease or unless the Lessees shall before the assignment or underlease or any agreement for the same shall be executed deliver to the Crown Agents an Indenture to be prepared by the Solicitors for the time being of the Crown Agents at the cost of the Lessees containing a covenant by the intended assignee or underlessee

with the Crown Agents and also separately with the Government to perform and observe during the term assigned or granted to him the covenants by the Lessees and conditions in these presents contained in the same manner as if such covenants and conditions were therein repeated with the substitution of the name of the intended assignee or underlessee for the name of the Lessees and with such other alterations as the circumstances shall render necessary and also containing a provision determining the term thereby assigned or granted on breach of any of the said covenants by the intended assignee or underlessee.

(c) Provided also that upon any assignment of the demised premises or any part thereof being made in accordance with these presents if such Indenture as hereinbefore in this clause mentioned shall have been duly executed by the assignee and delivered to the Crown Agents then the Lessees making the assignment shall thereupon cease to be personally liable under any of the covenants or obligations of these presents so far as the same relate to the premises comprised in such assignment but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of such covenants or obligations.

- (5) If and whenever any excepted mineral (that is to say any mine mineral or mineral substance precious stone coin treasure relic antiquity or other similar thing excepted out of the demise hereby made) shall be found in or upon the demised premises the Lessees shall forthwith give notice thereof to the Government and take all reasonable steps for the safe preservation thereof.
- (vi) The Lessees shall comply with all obligations which may be imposed on them by any General Ordinance for the time being in force in the Colony.
- (vii) In everything done hereunder the Lessees shall interfere with public and private conveniences and rights as little as possible and shall take all such precautions and provide and maintain all such temporary and permanent accommodation works as shall be reasonably required for the prevention of damage or injury to any property or person or for the due preservation or maintenance of any public right or property.
- (viii) The Lessees shall be solely responsible for and shall indemnify and keep indemnified the Government against all

To give notice of finding of any excepted minerals

To comply with Ordinances

Not to interfere with public or private rights

To indemnify Government against claims

accidents damages claims and losses which may occur or be incurred or claimed in or by reason of anything done upon the demised premises or any part thereof and if the Government shall by reason of the default of the Lessees make any payment in respect of such damages claims or losses then and in every such case the Lessees shall repay to the Government on demand the amount of the money so paid and of the costs incurred therein by the Government but this clause shall not extend to any accident damage claim or loss which may occur or be incurred or claimed in or by reason of the working of any Railway by the Administration or authority for the time being and from time to time working or managing the Uganda Railway unless the same shall have arisen from some neglect or default of the Lessees

- (ix) The Lessees shall at all times provide and maintain a suitable office at some place on the demised premises where notices may be left for or addressed to the Lessees.
- (x) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any arms or ammunition of any description to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees.
- (xi) The Lessees shall not at any time during the term hereby granted sell give barter or otherwise dispose of any spirituous liquor to any native or permit or suffer any such sale gift barter or other disposition to be made by any employee or agent of the Lessees or import or authorise the importation of any spirituous liquor into the Colony except for the use of the European agents or employees of the Lessees and in accordance with and subject to such rules as may from time to time be made by the Governor in that behalf.
- (xii) If the Government shall at any time during the term hereby granted incur any expenditure in erecting or maintaining any sanitary works or regulations upon or in the neighbourhood of the Lessees works the Lessees shall so far as such expenditure is rendered necessary or increased by the operations of the Lessees or by the presence of the agents or workmen of the Lessees pay to the Government on demand as a contribution towards the said expenditure such proportion as shall be just and equitable in the circumstances such proportion in case of difference to be settled by the Governor.

(xiii) The Lessees shall at all times during the term hereby granted comply with all such requirements and make all such arrangements as may be made or directed by the Government to secure the suitable treatment of native labourers or workmen.

6.—The Crown Agents hereby covenant with the Lessees that the Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

7.—The Branch Railway shall be maintained in working order by the Lessees at their own expense as from the 1st day of November 1924, and the General Manager or officers deputed by him shall have the right to inspect the Railway at any time

8. Provided always and these presents are upon the express conditions following

- (i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's Dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such company or corporation as aforesaid shall at all times be and remain British subjects.
- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British Company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman

and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

At the end of 99 years term the Railway and all assets to belong to the Government

9 At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Magadi Pier and Depot Works including the Shimanzi Pier and Branch Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works shall immediately on the expiration of the said term and free from all payment be and become the property of the Government

Option to Government to purchase or recover determination

10 If this lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Magadi Pier and Depot Works and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month after the determination of the Lease

Option to Government to purchase at any time

11 (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Magadi Pier and Depot Works and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Magadi Pier and Depot Works and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

If option exercised the Lessees to have certain rights

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:

- (A) The right to use and work any lines of electric telegraphs and telephone on the Magadi Pier and Depot Works without making any payment in respect thereof.

- (b) The right to have the same facilities over the Branch Railway line as though the same were still in their possession.
(c) The right to use the Shimanzi Pier and Works for loading and unloading in connection with the soda products of Lake Magadi as though the same were still in their possession.

12.—The price payable by the Government upon a purchase under the exercise of either of the aforesaid rights shall be the aggregate of the two following sums, namely:—

- (A) The sum of £ being agreed amount of the capital outlay made by the Lessees on the construction of the Magadi Pier and Depot Works of the part thereof purchased prior to the date hereof.
(B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon extraordinary repairs and renewals properly attributable to capital expenditure

Provided that in determining the price payable by the Government at the beginning of any year there shall be deducted in respect of depreciation a sum equal to one per centum of the price payable by the Government at the beginning of the previous year.

Limit on options to purchase

13.—The option of purchase conferred by Clauses 10 and 11 hereof shall not extend to any land which may have been acquired by the Lessees under Clause 15 (iii) of the Railway Lease other than that which is at the date of notice being given to exercise the said option being used for the purposes of the Magadi Pier and Depot Works.

Rights of purchase not to prejudice other rights

14.—The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other rights of the Crown Agents or the Government under or by virtue of these presents.

Provision as to debentures

15.—In the event of Government purchasing the Magadi Pier and Depot Works or any part of it any sum for the time being outstanding on account of any loans, debentures or debenture stock and the interest thereon shall as from the date when the Government pay the Company the said purchase price cease to be a charge upon the Magadi Pier and Depot Works and shall thenceforth be a charge on the sum payable by the Government to the Lessees and every

Redemption debenture stock and debentures

certificate of debenture stock and every debenture purporting to create or be secured by a charge upon the Magadi Pier and Depot Works shall bear an endorsement to this effect and as to the Government power of purchase hereunder.

Members or Officers of Government not to be personally liable

16.—No member or officer of the Government or the Crown Agents shall be in any way bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificate of the Governor

17.—A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices have to be given to Lessees

18.—Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall in accordance with circumstances either be delivered to and left for the Lessees at their office (if any) or at the address above mentioned or other the registered address of the Lessees for the time being in England or at their principal or last known place of business in the Colony.

Force majeure

19.—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 hereunder 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 expressed or implied if it be shewn to the reasonable satisfaction of the Governor that the default has arisen from 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 *ejusdem 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 shall be delayed by any such cause such specified time shall be proportionately extended.

20.—In case and so often as any dispute difference or question shall arise between the parties hereto or any Government, Corporation, Company or person claiming through or under them respectively or between any of such parties, Governments, Corporations, Companies or persons concerning or relating to the subject matter of these presents or any part thereof (respectively) or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government, Corporation, Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute, difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of three arbitrators one to be appointed by each party to the reference, and the third by the two arbitrators to be so appointed or (if such two arbitrators fail for one month after their appointment to appoint such third arbitrator) by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrator or of any two of such arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute, difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be final and binding upon all parties and all the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

Provision for arbitration

21.—The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

Arbitration may make partial awards

22.—The arbitrators and umpire shall have full power to proceed in the absence of both or either parties after giving to such parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

May proceed in party

May inspect books  
and accounts and  
examine on oath

23.—The arbitrators and umpire shall have full power to inspect the books, documents and accounts of both parties and examine on oath or affirmation or on statutory declaration in lieu of oath the officers, agents, servants and witnesses of the parties respectively.

And provide for  
costs

24.—The costs of the reference and award shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

Marginal notes

25.—The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In Witness whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their common seal to be hereunto affixed the day and year first above written.

Signed Sealed and Delivered by  
one of the Crown Agents for the  
Colonies in the presence of

The Common Seal of the Magadi  
Soda Company Limited was hereunto  
affixed in the presence of

May inspect books  
and accounts and  
examine on oath

23.—The arbitrators and umpire shall have full power to inspect the books, documents and accounts of both parties and examine on oath or affirmation or on statutory declaration in lieu of oath the officers, agents, servants and witnesses of the parties respectively.

And provide for  
costs

24.—The costs of the reference and award shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

Marginal notes

25.—The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

**In Witness** whereof one of the Crown Agents has hereunto set his hand and seal and the Lessees have caused their common seal to be hereunto affixed the day and year first above written.

**Signed** Sealed and Delivered by  
one of the Crown Agents for the  
Colonies in the presence of

**The Common Seal of the Magadi  
Soda Company Limited** was hereunto  
affixed in the presence of