

1926

KENYA

467

X-3076

30 MAR 1926

DATE

244 5th March, 1926.

W. B. DEPT. NORTHCOE

CIRCULATION

Mr.

Mr.

Mr.

Asst. U.S. of S.

Perm. U.S. of S.

Pop. U.S. of S.

Secretary of State

£10,000 DUE FROM MESSRS PARR & CO.

Encloses deed and accounts and trusts that in the circumstances explained approval will be given to the issue of a special warrant to cover the loss.

Previous Paper

MINUTES

10374/25

Mr. Seel

14

Mr. Allen

14

Mr. Bottomley

14

Subsequent Paper

1.

ca  
 This is a lamentable story; the hoers  
 seem to have been issued to the firm  
 in the first place without any further  
 caution having been shown as to the firm's  
 position - which was known to be difficult.  
 But then, as <sup>CA</sup> 1040160 etc show, the  
 Govt. had a huge quantity of these  
 hoers & didn't know what to do with  
 them.

A/ There seems no alternative but  
 to sanction the write off; but perhaps  
 we should first ask Mr Burke if he  
 has any objections from the legal aspect.

S. Bell  
 1.4.26

It scarcely seems worth while to trouble  
 Mr Burke with this; I ask at A. (Consent  
 was often superfluous)

H. Allen

4/4/26

Consent at A.

W.S.D. 1.4.26 alone

HA

1A  
9  
DOWLING STREET,

9 April, 1926. (43)

Sir,

I have the honour to acknowledge the receipt of your despatch No. 344 of the 5th of March and to convey to you my approval of the writing-off of a sum of £10,000 in respect of a debt due to the Government by Messrs. H. N. Farn and Company for beer supplied to the firm.

I have the honour to be,

Sir,

Your most obedient

Maile servant,

Whitcomb  
Allen. J.P.

£00.  
X 30%  
26 Nya.

C. D.  
R. 5 APR  
D. 9 11

- Harding.
- ey.
- Blackburn.
- andla.
- awa.
- W. J. son.
- by Gore.
- Lawson.
- ry.

And

9 April, 1926.

Sir,

I have etc. to ask.

Sfc

the recd. of your despatch

no. 244 of the 5th. of

March and to convey

to you my ~~congratulations~~

approval ~~for~~ the

writing-off of a sum

of ~~approximately~~ £10,200 in

respect of a debt due

FT.

ya  
389  
Cuss

to the Govt. by Messrs.

W. R. Paine & Co. for their  
supplied to them <sup>from</sup> ~~in~~ 1920.

I have etc.

(Signed) L. S. AMERY

KENYA.

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

No. 244



X. 3076  
30 MAR 1926

5<sup>th</sup> March, 1926.

Sir,

I have the honour to report that it has been found necessary to write off a sum of approximately £10,200 in respect of a debt due to Government by Messrs W.R.Parr and Company the partners in which were Mr. Robert William Parr and Lt.-Col. Gilbert East King.

*gn. 10374 / 25*

Deed.  
Accounts.

2. In Mr. Denham's despatch No. 155 of the 4th of February 1925, the circumstances leading to the importation and subsequent sale of a large number of hoes were explained. On the 1st of March, 1920, the Treasury entered into a contract with Messrs W.R.Parr and Company, Nairobi, for the purchase by that firm of 400,000 hoes at Shgs. 2/2 each. Under the terms of the contract the Public Works Department was to deliver hoes to Messrs Parr and Company as and when required. Payment, however, was not to be made on delivery of consignment but at stated intervals; 3, 6, 9 and 12 months from the date of the contract.

3. By the end of May, 1920, 125,285 hoes had been delivered, and under the terms of the contract Messrs Parr and Company should have paid into the Treasury the sum of £13,572-10-10, instead of which

HONOURABLE  
LIEUTENANT COLONEL L. C. M. S. SALERY, P. C., M. P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWLING STREET,  
LONDON, S. W. 1.

/only

only £3,000 was paid. By the end of July, 1920, 130,287 hoes had been delivered, and although under the terms of the contract payment was due for 200,000 hoes no further payment was made. The firm was then in difficulties, but the then Acting Treasurer recorded that he was satisfied that every endeavour was being used to take over the hoes in accordance with the terms of the contract and counselled lenient treatment.

4. The Director of Public Works addressed Messrs Parr and Company on the 16th of October, 1920, suggesting that they should make an immediate payment of the balance due on account of actual deliveries, but no settlement was obtained. Interviews took place between the Treasurer, the Director of Public Works and the firm, and towards the end of the year the Treasury endeavoured to retrieve a number of hoes that were then in the hands of Messrs Parr and Company but in the meantime the firm went into liquidation and recovery could not be effected.

5. A Deed of Assignment a copy of which is enclosed was signed on the 23rd of December, 1920, by representatives of the Treasury, the Trustee for the creditors and the firm itself; and a claim for £11,114-16-1 was submitted to the Trustee by the Treasury on the 15th of January, 1921. The deed by clause 2 (b) provided for the payment of all claims which would be payable in priority as if the debtors had been adjudicated bankrupts, in accordance

/with

with the locally applied Indian Provincial Insolvency Act, 1907, Section 33 (1).

6. Following the submission of the claim the firm's solicitors Messrs Shapley and Schwartz were asked for an assurance that the debt would have priority and when payment might be expected. The solicitors disputed Government's claim to priority and advised that, while payment would be made as soon as possible, the realisation of the assets was proving difficult. In July, 1921, the matter was placed in the hands of the Attorney General.

7. The claim was forthwith pressed by the Attorney General but the solicitors continued to dispute the claim of priority and advised the Attorney General on 19th August, 1921 that as the debtors had assets in London, Germany, Uganda, Zanzibar, Tanganyika and Kenya realisation would occupy at least a year and that it would not be advantageous to press for an immediate settlement. They stated that the assets were estimated to yield about Fls. 200,000.

8. Following further pressure by the Attorney General the solicitors for the Trustee in March, 1922, advised him that practically all the hoes had been sent to Uganda. They then stated for the first time that in their opinion the Deed of Assignment did not apply in Uganda on the ground, given in a subsequent communication, that the deed had not been registered under the Uganda Bankruptcy



Laws. It was further contended that the deed applied only to assets in Kenya.

9. On 10th December, 1921, a Trustee had been appointed under a deed of arrangement in Uganda on behalf of the Uganda creditors of W.R.Parr and Company's Uganda Branch. This trustee advertised for claims to be sent in by 31st January, 1922. The Attorney General was not informed of this until April, 1922, by the Kenya trustee, who had himself forwarded a claim for Fls.1000 to the Uganda Trustee in respect of cash advances made by him, out of Kenya assets, to the Kampala branch prior to the appointment of the Uganda Trustee.

10. The Uganda deed of assignment follows the same form as that of Kenya, being an assignment by the debtors of their properties of "whatsoever nature and wheresoever situate". (It is difficult to understand what assignable interest remained in the debtors at that date).

11. In consequence of the above facts the Attorney General in November, 1922, requested that an account be prepared by the trustee. This was finally delivered in April, 1923, and a copy is enclosed.

12. From the account it appears inter alia that, in addition to the Fls.1000 advanced by the Trustee to the Kampala branch, the trustee had paid out sums to employees of Parr and Company in Tanga and Zanzibar and realised the sum of over Engs.3000/- in respect of the sale of a lease in Zanzibar.

13. In May, 1925, a trustee's realization account was prepared by the trustee showing a balance in hand of Shgs.4,973.92 and the Attorney General called upon the trustee to pay over this balance to the Government. In reply the solicitors for the trustee reiterated their contention that the Government had no preferential claim. This attitude was maintained until September, 1925, but when the Attorney General prepared a Stated Case for the opinion of the Court on this point the solicitors for the trustee admitted Government's right to priority and promised to pay over all assets in the trustee's hands.

14. In October, 1925, the sum of Shgs.5643/79 was received from the trustee being the amount in his hands at that date after deducting legal charges and trustee's remuneration. The only other assets were stated to be a Share Certificate for three one shilling shares in Kibos Limited estimated to produce approximately £500, and a debt of Shgs.6,660/- due from a Mr. Archibald Hogg; it was arranged that the shares should be transferred and the debt assigned to the Government. An indenture indemnifying the trustee from claims consequent on his paying the Government as a preferential creditor was signed by the Treasurer on the 18th December, 1925, but the Trustee has not yet signed.

15. The share certificate was handed over by the trustee on the 15th January, 1926; a transfer

- 6 -

certificate has not yet been received, but in due course the assignment will without doubt be obtained.

16. It is highly improbable that anything more will be received from the assets of the partnership. Proceedings against the trustee personally have been considered by the Attorney General, but difficulty has been felt in considering how far legal negligence could be proved having regard to the wording of the deed of arrangement and also with regard to the difficulty of proving the actual damage, which such negligence may have occasioned. It is also doubtful whether any judgment against Mr. Johnson would be of value.

17. The claim will be pressed if an opportunity offers of obtaining any portion of the outstanding amount but the contingency is remote and I do not consider that the amount should be shown any longer as an asset in the Colony's balance sheet. I have signed a special warrant for £10,200 to cover the loss and trust that your approval will be received in due course.

I have the honour to be,

Sir,

Your most obedient, humble servant,



G O V E R N O R ' S  
D E P U T Y .

THIS INDENTURE made the Twenty second day of December One thousand nine hundred and twenty BETWEEN WILLIAM ROBERT FARR and GILBERT A. DE KING trading in partnership under the style of "WILLIAM R. FARR AND COMPANY" at Nairobi Kenya and elsewhere in East Africa Merchants (hereinafter called the Debtors) of the one part FERCY HAROLD JOHNSON of the firm of "GILL AND JOHNSON" of Nairobi in the Colony of Kenya Chartered Accountant (hereinafter called the Trustee) of the second part and the several persons firms and companies whose names and seals and the amounts of whose debts are subscribed affixed and entered in the Schedule hereto and all other the creditors of the debtors who shall in writing or otherwise signify their assent to these presents (hereinafter called the Creditors) of the third part WHEREAS that in consideration of the release hereinafter contained the Debtors as Beneficial Owners hereby assign unto the Trustee Firstly ALL THAT the leasehold properties assets good-will stock furniture book-cables and other the partnership property of the debtors and Secondly ALL THAT the separate estate of the Debtors of whatsoever nature and wheresoever situate TO HOLD the said property hereby assigned unto the Trustee upon and subject to the trusts and conditions hereinafter contained.

1. The Trustee shall as soon as possible call in and collect and if necessary sell and convert the said property into money but in such a way and by such means and at such times as the Trustee may in his absolute discretion deem best with power however to divide in specie according to its estimated value any property which in the opinion of the Trustee cannot be readily or advantageously sold.

2. The Trustee shall stand possessed of the net proceeds collected and realized and arising from such sale and conversion (hereinafter referred to as the Trust Fund) in trust to pay and apply the same as follows:-

- (a) In payment of all costs charges and expenses of and incidental

incidental to the preparation execution registration and carrying out of these presents and of the investigation of the debtors affairs and realization of the said property including therein the out of pocket expenses and fair charges of the Trustee but provided that such charges and remuneration shall not exceed in all a sum equal to One per centum on the amount realized by the sale and conversion of the Debtors' estate and the salary or the remuneration of such person or persons as the Trustee may think fit to employ to assist him in the realization of the Debtors' estate.

(b) In payment of all claims and demands which would be payable in priority as preferential claims if the Debtors had been adjudicated bankrupts.

(c) In payment to the Creditors by such dividends and at such times as the Trustee shall deem expedient of all such debts and claims of the Creditors as would by law of Bankruptcy be entitled to rank for dividend upon the estate of the Debtors and in such priorities and in accordance with such rules as would be applicable under the said law of bankruptcy and after such payments as aforesaid to pay over the surplus (if any) to the Debtors their executors administrators or assigns.

3. The Trustee may in the case of any debt not exceeding Florins One hundred in his discretion pay in full or settle or compound for at a higher rate than the other Creditors or give security in respect of or otherwise deal with the debt of any creditor or creditors who shall stand out and refuse to take the benefit of these presents.

4. The Trustee shall be entitled in his absolute discretion to require any creditor although he may have executed or assented to these presents and his name and the amount of his debt may appear in the Schedule hereto to furnish him with detailed particulars of his debt and in case the Trustee shall think necessary to prove his debt and the amount thereof and the consideration therefor to the satisfaction of the Trustee

by statutory declaration or otherwise PROVIDED that if the Trustee and any creditor cannot agree as to claim of such creditor to prove or as to the amount of such proof the same shall be submitted to Mr. F. S. Dunn or any arbitrator nominated by him. The said Arbitrator shall be supplied by the Trustee and by the Creditor respectively with a concise statement in writing of their case and with all documents and writings in relation thereto within one week and the said Arbitrator shall give his award which shall be final within one month of his appointment and without summoning the parties or taking any further evidence unless he shall think fit to do so and the costs of such arbitration shall be in the discretion of such Arbitrator who shall award a lump sum for the same. Any costs so awarded against a creditor shall be payable by him to the Trustee forthwith and any costs awarded against the Trustee shall be payable out of the Trust Fund.

5. The Trustee shall have full power to give time for payment of any debts due to the debtors and to compound compromise release and abandon any such debts or to accept payment for the same in kind or by instalments or by bills notes or other negotiable instruments or in any other way which he may deem most advantageous for the Debtors' estate and likewise to bring or defend and compromise or refer to arbitration all actions proceedings or matters arising out of or in relation to or in respect of the Debtors' estate.

6. The Debtors hereby covenant with the Trustee and the Creditors and each of them that they will at all times give the Trustee all the information and assistance in their power in order to enable him to get in and realise the Debtors' estate and for that purpose will execute and do all such assurances and things as may be required by the Trustee.

7. The Debtors hereby appoint the Trustee to be their Attorney on their behalf and in their name or otherwise to make execute and sign any deed or document or other instrument which he may think necessary for more effectually carrying into execution these presents.

8. In consideration of the assignment hereinbefore contained the Creditors do and each of them doth hereby release and discharge the Debtors and each of them from all debts due from the Debtors to them/<sup>the</sup> Creditors or any of them and from all actions suits claims demands or other proceedings whatsoever in respect thereof.
9. The foregoing release shall be entirely without prejudice to the rights of the Creditors against third persons and all rights and remedies of the Creditors against any surety or sureties for the said debts are hereby expressly reserved and nothing herein contained shall operate to hinder or prevent the Creditors or any of them from enforcing or otherwise obtaining the full benefit of any mortgage lien charge or other security which they now hold on any property credits or effects of the Debtors.
10. Any creditor who may have any such mortgage charge lien or other security as aforesaid on or against the property of the Debtors shall be entitled to vote and receive dividends hereunder on or in respect of the balance of his claim only after realizing or allowing for or valuing and deducting the value of such mortgage charge lien or other security and any creditor who shall neglect to realize or value such mortgage charge lien or other security prior to voting or receiving dividends hereunder shall be taken to have abandoned such mortgage charge lien or other security and the same shall be forfeited to the Trustee and become part of the Trust Fund.
11. In case the Trustee shall resign or leave Kenya Colony or become bankrupt or die or shall refuse to act or from any cause whatsoever become unfit to act or incapable of acting in the premises or in case the Creditors shall desire to remove the Trustee the Creditors shall have power to appoint a new Trustee of these presents in his place by a majority in value of Creditors present at a meeting convened by the Trustee in Nairobi by a seven days' notice sent by letter to all Creditors at their last known address or if there be no record of such address by advertisement in any local newspaper and in either case the

costs shall be paid out of the Trust Fund.

IN WITNESS whereof the Debtors and the Trustees have hereunto set their hands and seals the day and year first hereinbefore written and the Creditors have hereunto set their hands and seals the day stated opposite their respective seals in the said Schedule.

SIGNED SEALED AND DELIVERED by the said WILLIAM ROBERT FARR in the presence of:-  
(sd) W. R. Farr  
by his attorney  
L. S.  
S. East King  
(sd) H. R. Shatt,  
Clerk,  
Nairobi.

SIGNED SEALED AND DELIVERED by the said GILBERT EAST KING in the presence of:-  
(sd) G. East King  
L. S.  
(sd) H. R. Shatt,  
Clerk,  
Nairobi.

SIGNED SEALED AND DELIVERED by the said HENRY MAROLD JOHNSON in the presence of:-  
(sd) H. R. Shatt,  
Clerk,  
Nairobi.  
(sd) P. E. Johnson  
L. S.

THE SCHEDULE above-referred to

Name of Creditor	Amount	Signature and seal.	Date.
The Government of the Colony and Protectorate of Kenya.		H. Fickwood Ag. for Treasurer.	6th Jan'y 1921.
The Standard Bank of South Africa, Ltd.,		For the Standard Bank of South Africa, Ltd., Nairobi Branch. P. Barry Manager.	14.2.21

Stamp Duty Rs. 1/-  
C. B. No. 5 Felie  
133/1.  
Sd. Leslie Lea.  
Collector.

Stamp Registration of Documents Department. 23 Dec. 1920 Nairobi, K.A.P.

Stamp Registration of Documents Department. 23 Dec. 1920 Nairobi, K.A.P.

Stamp Registration of Documents Department. 23 Dec. 1920 Nairobi, K.A.P.

The Indian Stamp Act, 1899 Sec. 35. I certify that the full duty of Rs. 15/- hereon under Art. 64 has been duly paid

Fee Rs. 1/-  
Sd. Leslie Lea.  
Registrar of Crown Lands.  
Collector.  
23-12-1920.



## RECEIPTS

STOCKS REALISED	62,698.80	
LESS Purchases to complete Contracts	2,055.44	59,638.36
SUNDRY DEBTORS COLLECTED		55,060.18
FURNITURE, MOTOR CARS, ETC. REALISED		22,005.62
HIDES, HIDE PRESSES & SCALMS REALISED		2,214.00
RENTS RECEIVED		8,140.07
ZANZIBAR LEASE REALISED		3,066.32
SUNDRY RECEIPTS		370.82
		151,495.30
KILINDINI ENGINEERING WORKS Profit on working		7,072.86
KILINDINI ENGINEERING WORK REALISED Paid under lien to National Bank of India, Zanzibar	24,000.00	24,000.00
CASH DISBURSEMENTS DUE TO TRUSTEE		1,490.46

Total 160,068.62

ACCOUNT.

14TH FEBRUARY, 1922.

PAYMENTS

OFFICE, GODOWN, RENTS & RATES	53,389.86	
ELECTRIC LIGHT, WATER CONSERVANCY	798.24	54,188.
WAGES AND SALARIES		72,095.1
INTEREST ON MORTGAGE		9,700.0
GENERAL EXPENSES		6,588.4
TRAVELLING EXPENSES		2,136.4
LEASE COMPENSATIONS		4,770.3
LEGAL EXPENSES		3,161.8
LIQUIDATOR, KAMPALA - ADVANCES		2,515.0
EVALUATION OF STOCK EXPENSES		1,442.3
INSURANCE		1,413.4
CABLES & TELEGRAMS		971.2
SUPPLY REPAIRS		752.8
DEFRAYING BILLOW EXPENSE		200.00
CLEARING & BORTARDING		102.96
ADVERTISING NAIROBI HOUSE		60.00
BANK CHARGES		20.02
	Shgs.	160,050.62

Sd/- P. H. JOHNSON.

TRUSTEE.

ACCOUNT

15TH FEBRUARY, 1923.

PAYMENTS

<u>OFFICE, GODOWN, RENTS &amp; RATES</u>	52,389.86	
<u>ELECTRIC LIGHT, WATER CONSERVANCY</u>	798.24	54,188.10
<u>WAGES AND SALARIES</u>		72,095.70
<u>INTEREST ON MORTGAGE</u>		9,700.00
<u>GENERAL EXPENSES</u>		6,528.40
<u>TRAVELLING EXPENSES</u>		2,136.40
<u>LEASE COMPENSATIONS</u>		4,770.30
<u>LEGAL EXPENSES</u>		3,161.80
<u>LIQUIDATOR, KAMPALA - ADVANCES</u>		2,515.00
<u>REALISATION OF STOCK EXPENSES</u>		1,442.36
<u>INSURANCE</u>		1,413.46
<u>CABLES &amp; TELEGRAMS</u>		971.24
<u>SUNDRY REPAIRS</u>		752.84
<u>RE-HANDLING BILLS OF EXCHANGE</u>		200.00
<u>CLEANING &amp; PORTLANDING</u>		102.96
<u>ADVERTISING NAIROBI HOUSE</u>		60.00
<u>BANK CHARGES</u>		20.02
		<hr/>
	Shgs.	160,050.62

84/- P. H. JOHNSON.

TRUSTEE.