EAST AFR. PROT

16785

16785

REC'D
REC'D 31 MAR 20

G.A.G. WRING	COMT 47
1920	
26th Feby.	
See previous Paper	
4749	

PAYMENTS FROM MAGADI SODA COY.

The copy opinion by acting Attorney General and judgment given by Justice Pickering in case of Ali bin Salim and B.E.A. Corpn. Considers that payments specified in sterling could only be discharged by delivery of sovereigns at rate of Rs.15 to £1 sterling.

Mr Bottomley
Mr Gillett

I would be glad of your opinion on the difference of opinion between the Crown Lawyers & the C.O.

As regards past payments & contracts payable in the East, this is a matter of law, but I am convinced that the Crown Lawyers are wrong in their view. Payments on account of debts & on contracts made in Rupees are payable in the East.

I am sure that our new arrangements apply to payments now due under old contracts, but we must make sure of that effect. At the moment, the "Pleading" is

See subsequent Paper

50581

by law fixed for Rs 8.50 per £
R. S. Phillips 22.3.19

(30059—4 b) Wt. 30659—35 50,000 12/19. H. St. G. 122/ 41.

by practice good for Rs 10 [illegible]
[illegible] E.A. [illegible] it will be good
for 10 florins. But we have [illegible] and
that it is good in E.A. for a pound
sterling. On the other hand, the sovereign
is to be delegalized: — how will Pickering J.
interpret sterling debts, when he has lost
the sovereign as a link between sterling &
the local currency?

C. C. J. 7/4/20

W. Byrne

After [illegible] we saw the Banque
of the Treasury [illegible] that matters
would have to stand over [illegible] a [illegible]
of the civil [illegible] of the judgment.

It is not [illegible] to do [illegible]
[illegible] the [illegible] by [illegible]
[illegible] (apart from the [illegible]
of [illegible] for [illegible]) [illegible]
[illegible] [illegible] the [illegible]
[illegible] [illegible] of [illegible] [illegible] the
[illegible] [illegible] of [illegible] [illegible] [illegible]
[illegible] the [illegible] 10 florins and
[illegible] the civil [illegible] [illegible]
[illegible] the [illegible] meeting [illegible]
[illegible] the C. in C.

6(3) For payments [illegible] the [illegible] pounds [illegible]
sterling after the commencement of the
Order under [illegible] contracts entered into before
or after the commencement of the Order
the florin [illegible] be legal tender

Downing Street,

April, 1920.

442

Dear Niemeyer,

Last Thursday Bushe and I saw you on a point arising out of the new currency arrangements in East Africa. I enclose a copy of a despatch from the Acting Governor of the East Africa Protectorate and its enclosure which set out the difficulty which has arisen.

I think you were agreed that it would be necessary to prevent any doubt in future as to the interpretation of "sterling" for the purpose of local payments, and we suggest that the following Article should be added to the draft Order in Council:-

"6 (3). For payments due to be made in pounds or pounds sterling after the commencement of this Order under any contract or obligation entered into before or after the commencement of this Order the florin shall be legal tender for any amount at the rate of 10 florins to the pound or pound sterling."

Will you please arrange for this to be added to the draft Order?

Yours sincerely,

(Signed)

NIEMEYER, ESQ.

[illegible]

[illegible]

[illegible] 15/4/20

Agree publicity to slight alteration.

[illegible]

A. Fb. 6/4/20

[illegible] 6.4.20

[illegible]

6/IV/20

[illegible]

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA

CONFIDENTIAL

28th February, 1920.

My Lord,

I have the honour to acknowledge the receipt of Your Lordship's Confidential despatch dated 3rd November, regarding payments made by the Magadi Soda Company and to enclose a copy of an opinion by the Acting Attorney General on this subject, together with a copy of the judgment given by Mr. Justice Pickering in the case of Ali bin Salim and British East Africa Corporation.

2. In view of the decision given by the Judge in this case, I submit that it must be considered settled law here that payments specified in sterling could only be discharged by the delivery of sovereigns or of rupees at the rate of Rs.15/- to £1 sterling, prior to the enactment of the Bank of England and Treasury Currency Notes Ordinance 1920, and that, inasmuch as this Ordinance is not retrospective in its operation

THE RIGHT HONOURABLE
VISCOUNT MILNER, P.C., G.C.B., G.C.M.G. &c. &c.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.

operation, it would appear that any sums which accrued due prior to the date of its enactment should be paid at the rate of Rs.15/- to £1 in accordance with the decision in the case above mentioned.

I have the honour to be,
Your Lordship's
humble, obedient servant,

ACTING GOVERNOR.

ATTORNEY GENERAL'S OFFICE,

NAIROBI,

BRITISH EAST AFRICA.

2nd January, 1920.

L.M.35/20.

The Hon'ble
Ag. Chief Secretary,
N a i r o b i.

re: Magadi Soda Company and East Africa Syndicate.

Ref. Your No.S.13229/130 of the 20th ultimo.

O P I N I O N.

I NOTE the Law Officers agree that demand may be made in Nairobi, and that the obligation is to pay in sterling, but I have considerable hesitation in assenting to the view that "the payment in rupees can be made only by arrangement and at a rate of exchange which may be agreed upon". I think I am correct when I state that payments in the past by the Companies under their respective leases, though expressed in terms of sterling, have been made in the standard coins of the Protectorate at the rate of 15 rupees to one pound without regard to fluctuations in the rates of exchange, and so far as I am aware both parties have always acted on that [illegible] payment in rupees. [illegible] the exchange value of the rupee has appreciated that the Company [illegible] the right to discharge [illegible] the present rate of exchange.

I agree that Article [illegible] makes a sovereign legal tender for sums expressed in rupees at the rate of 15 rupees to the sovereign, and does not establish the position that debts expressed in sterling must be paid at that rate, but it has been held by the Courts here that a lease reserving a yearly rent of £20 sterling, being an "express agreement to the contrary" within the meaning of the words in Article

4 (2)

Article 4 (2) of the Order-in-Council entitles the lessor to the delivery of 60 sovereigns (and/or pounds) sterling, or Rs.900 their value. For full report of the case see Judjment enclosed in Hon'ble Attorney General's memo No.M. 1133/19 of the 27th October, 1919. In face of that Judjment I find it difficult to accept the view that payment can only be arrangement mutually and at arate of exchange agreed upon. The Companies can in fact only legally discharge their obligations by delivery here of gold coins minted in accordance with the Coinage Act, 1870 - see Section 4 and the Schedule to that Act, and Article 4 (2) referred to above.

I understand that the Law Officers agree in this, but advise that as payment in sovereigns is impracticable this Government ought to accept payment in notes of the Bank of England even if it is under no obligation to do so, they express doubt as to the Protectorate's obligation and direct attention to Section 6 of the Bank of England Act 1883 (3 and 4. W.4 Ch.98).

In my humble opinion that Act has no application [illegible] but its operation would appear [illegible] only. Doubts did arise as to the extent of the enactment which were removed by two Acts, namely, an Act to regulate the issue of Bank Notes in Ireland, 1845, (8 and 9 Vict. Ch.XXXVII Sec.VI), and an Act to regulate the issue of Bank Notes in Scotland, 1845, (8 and 9 Vict.Ch.XXXVII Sec. XV). Both Acts prescribed that nothing in the Act of 1883 should extend or be construed to extend to make the tender of a note or notes ..... of the Bank of England a legal tender in Ireland or Scotland respectively, with a proviso

that

IN HIS MAJESTY'S HIGH COURT OF EAST AFRICA AT MOMBASA.

Civil Case No.145 of 1919.

Ali bin Salim .....Plaintiff.

versus

The British East Africa Corporation Ltd. .....Defendants.

J U D J M E N T.-

By a long lease dated the 6th April 1910 the Plaintiff demised to the Defendant Company certain land now in the occupation of the Company at the yearly rent of pounds sixty (£60) sterling payable in advance free from all deductions on the 6th day of April in each year. It follows that the rent due in respect of the current year became payable on the 6th April last. The rent for preceding years has [illegible] been paid in rupees, of which coin fifteen have [illegible] paid by the Defendant and accepted by the Plaintiff [illegible] equivalent to one pound sterling. The Defendants therefore paid Rs.900 each year. I have no [illegible] me as to how this figure was arrived at but [illegible] the fluctuations in the rates of exchange published [illegible] banks on the various rent days during the [illegible] term prior to 6th April last. I do not [illegible] that on each succeeding 6th April the rate of exchange quoted by the local banks was exactly 1 shilling [illegible] pence for the rupee, and I apprehend that up to this [illegible] the number of rupees paid and accepted was [illegible] was arrived at without reference to any fluctuating rate. There is evidence however that on the 6th April last the local banks were quoting that in return for 1 rupee paid to them in Mombasa they were willing to pay over in [illegible] on the presentation of a written order the sum of 1 shilling and 5½ pence sterling. The Defendants have contended that by reason of this bank quotation the payment by the Plaintiff in Mombasa of Rs.790/39 is a good discharge of their liability for the payment of the rent claimed in this suit. There is however no evidence before me showing how many rupees any of the local banks would have demanded as the price of or as the exchange value of a sovereign handed by them over the counter to [illegible] in Mombasa.

Looking at the lease schedule to the Coinage [illegible] I am satisfied that the rent provided for in the lease (viz. pounds sixty sterling) is payable by the Defendants by the delivery of gold coins minted in accordance with the provisions of the Coinage [illegible] it is further necessary for me to consider whether I should simply pass a judgment for [illegible] or should provide an [illegible] the Defendant with the judgment by fixing [illegible] payment of which shall discharge the Defendant from his liability. The parties hitherto have acted as though it had been contemplated on the 6th April 1910 that the rent should actually be paid in rupees. Articles 4 and 9 of the Order-in-Council 1905 make it clear that a judgment by this Court

Court for 60 sovereigns would be a judgment for the delivery of coins which have not been declared to be a standard coin of this Protectorate. An agreement to pay rent in pounds is an "express agreement to the contrary" within the meaning of those words in article 4 (2). Article 13 provides that where a person in this Protectorate is indebted in the amount of fifteen rupees he can discharge that liability by the payment of one sovereign. This provision however has no direct application when the liability is to pay a sovereign. In my opinion this Court could not properly sell goods under attachment for the realisation of a judgment debt of sixty sovereigns. Nor in this case could the Court enforce by other means the payment of sovereigns. An alternative form of payment in the local standard coin must be provided for in the decree. Upon this point the Plaintiff has offered no evidence. He claims the amount of Rs.900 hitherto paid. Mr. Bemister for the Defendants although pressed by me was quite unwilling to give the Court any assistance in appraising the local value of a sovereign. He urged the restrictions on the exportation of gold from the majority of the British Possessions. By bringing this fact to the notice of the Court he in my opinion emphasised the impossibility of accepting the price at which a local merchant can purchase credit in London expressed in terms of the English currency, as reliable evidence of the value of sovereigns at Gambia. The transaction before me is one of local incidence only. Having regard to the prior payments by the Defendant company and to the provisions of article 13 of the Order-in-Council 1905 the Plaintiff's alternative claim appears to me to be reasonable. I give judgment for the Plaintiff for the delivery of 60 sovereigns and [illegible] pounds sterling to the Plaintiff or Rs.900 their value.

Although the Defendant Company has not in these proceedings disputed their liability to pay rent, no defence has been established by them to the claim and the Defendant company must bear the Plaintiff's costs of this suit.

Sd - G.H.Pickering.

[illegible] 9/19. Atkinson Plaintiff.
Defendant absent.

Judgment read. Sd - G.H.Pickering.

Court for 60 sovereigns would be a judgment for the delivery of coins which have not been declared to be a standard coin of this Protectorate. An agreement to pay rent in pounds is an "express agreement to the contrary" within the meaning of those words in article 4 (2). Article 13 provides that where a person in this Protectorate is indebted in the amount of fifteen rupees he can discharge that liability by the payment of one sovereign. This provision however has no direct application when the liability is to pay a sovereign. In my opinion this Court could not properly sell goods under attachment for the realisation of a judgment debt of sixty sovereigns. Nor in this case could the Court enforce by other means the payment of sovereigns. An alternative form of payment in the local standard coin must be provided for in the decree. Upon this point the Plaintiff has offered no evidence. He claims the amount of Rs.900 hitherto paid. Mr. Bemister for the Defendants although pressed by me was quite unwilling to give the Court any assistance in appraising the local value of a sovereign. He urged the restrictions on the exportation of gold from the majority of the British Possessions. By bringing this fact to the notice of the Court he in my opinion emphasised the impossibility of accepting the price at which a local merchant can purchase credit in London expressed in terms of the English currency, as reliable evidence of the value of sovereigns at Zanzibar. The transaction before me is one of local incidence only. Having regard to the prior payments by the Defendant company and to the provisions of article 13 of the Order-in-Council 1905 the Plaintiff's alternative claim appears to me to be reasonable. I give judgment for the Plaintiff for the delivery of 60 sovereigns and/or pounds sterling to the Plaintiff or Rs.900 their value.

Although the Defendant Company has not in these proceedings disputed their liability to pay rent, no defence has been established by them to the claim and the Defendant company must bear the Plaintiff's costs of this suit.

Sd - G.H.Pickering.

[illegible] Atkinson Plaintiff.
Defendant absent.

Judgment read. Sd - G.H.Pickering.

PUBLIC RECORD OFFICE

CO533/230

END

TOTAL EXPOSURES ⇨ 9311

PUBLIC RECORD OFFICE

THE PAGES IN THIS VOLUME
TIGHTLY BOUND OR ALL WORD
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VOL. 1

DESP NO	DATE	SUBJECT
d	1 Mar	Currency
	3	Railway Co. [illegible]
	4	Loan of Surveyor to Zanzibar
	4	Defence Force Personnel
221	5	Lancashire Fusiliers troop [illegible]
223		Late Private Little's fund
4	8	Deputation fr E.A. Indian Congress
230		Registration of Titles Act 1917
236		Ocean Cable of Kilindini
238		Checking of Small Stamp & Customs Dept
d	6	Y. Hawkins purchase of farm
		Money due from Niagara Sand Co
		arrears 1920 21
242		Powell v. Cross Process
d	8	H.E. & B. Company
245		Appointment East African Bankers
246		Late C.E. Hodge appln for pension
d	9	Dept. of Public Works, Nyasaland
		Reg. Bill [illegible]
conf		Position of Inspector
d	10	Currency [illegible]
		Currency
		Official Members [illegible]
251		Sec. to Mod. Offs. Lost Mortgage [illegible]
conf		[illegible] Land in Nyasaland
		Reg. & Exec. Bills [illegible]
d	11	Uganda - Gulu Railway
conf	12	Position of Inspector
d	13	Currency Material from Salvage
		Currency
255		Lost A/c with E.A. Pay Bank

East African Protectorate

VOL. 3

FILE NO.	DATE		SUBJECT
Tel	15	Mar	Estimates for Govt & Public Employment
256	"	"	Govt &c [illegible] & other Registration B.A.K.
257	"	"	Mr J Lovenidge
258	"	"	Position of Indians
Conf	"	"	" "
Tel	16	"	Currency
"	"	"	Railway Rates
259	"	"	Mr B J Bloche Treatment by Govt
262	"	"	Capt H. M. B. Riddell
Tel	17	"	Magadi Soda traffic
263	"	"	Transfer of N. Kavirondo District to B
264	"	"	Dr G Maugunk appt
Tel	18	"	House & Office accommodation
269	"	"	Earnest of Kenya
Tel	19	"	Levy for Police 2th master Tanganyika
"	20	"	Sale of Plots Nairobi
287	"	"	B C M Disabled Officers Military fee
Tel	22	"	Police vacancies
"	"	"	vacancies for Asst Chemical Ch
"	23	"	Nairobi Municipality
290	"	"	Late Dames w/ Mr S Green
292	"	"	Criminal Procedure Codes 1914
293	"	"	Development of Plan Immigration
295	"	"	G H Bartholomew
Conf	"	"	Capt S. Drummond
Tel	24	"	Commutation of Leave
301	"	"	Commutation of Cattle
Tel	25	"	Estimates 1920 21
302	"	"	E.A. Med & Sanitary Report 1919
Conf	"	"	Payment of Currency Note of Currency
Tel	26	"	Sale of Nairobi Plots

FILE NO.	DATE		SUBJECT
304	26	Mar	Mr Ramy Des Fabrication Coast
308	27	"	Land Tax Bill
309	"	"	Income " "
318	29	"	Thika Railway Extension
320	"	"	Magadi Soda Co, Increase of traffic
Tel	31	"	New Legislative Council
321	"	"	European Defence & Territorial Forces
323	"	"	Salvage Commission Motor transport
326	"	"	Statistics Grace 1920
327	"	"	Indians, Acquisition of land
329	"	"	E.A. Local Forces, Mentions & Decorations
330	"	"	Coal for Railway
331	"	"	Nationality for Mombasa Islands
332	"	"	Gold & Silver Protection Order
333	"	"	Canal Navigation Order 1920
334	"	"	National Summoned by Governor Govt
336	"	"	Vagrancy Order 1920
337	"	"	Non Officers Conditions of Service
338	"	"	Native Authority Order 1920
339	"	"	Pensions Pay & Col Debt
340	"	"	Lt Col K Kennedy
Conf	"	"	Pass for [illegible] [illegible]

TELEGRAM from the Officer Administering the Government of the East Africa Protectorate to the Secretary of State for the Colonies.

(Dated 1st March Received Colonial Office 10.50.p.m. 3rd March, 1920.)

C.O. 11645

---

108 priority March 1st

Sa 11512

My telegram 28th February shortage of currency banks represent that matter most urgent. Should be glad to hear immediately of your concurrence.

Sa 990 Uga

Proposals contained in your telegram 25th February do not assist. Rupees unsaleable at 2/4 as prices here are to be reduced later on.

BOWRING.

5

TELEGRAM

ELECTRIC HOUSE

REPLIES SHOULD BE ADDRESSED

via Eastern

TELEGRAPH COMPANY
ELECTRIC
MAR 3
HOUSE
E.A. CENTRAL STATION

HALLEY

3 MAR 20

[illegible]

TELEGRAM from the Officer Administering the Government of the East Africa Protectorate to the Secretary of State for the Colonies.

(Dated 3rd March)

(Received Colonial Office 11.20 a.m. 7th March, 1920.)

---

120 March 3rd

Estimated amount due from War Office to Protectorate at date £400,000 please arrange for early settlement with Crown Agents where East African Protectorate presumably incurring interest charges in connection with overdraft.

BOWRING.

SIGNALLY, AVE ... 1652 LONDON WALL

TELEGRAM

8

ISSUED FROM CHIEF CABLE STATION ELECTRA HOUSE VICTORIA EMBANKMENT

REPLIES SHOULD BE ORDERED

Via Eastern

Examples PW 3.45 p.m.
HL 6.55 p.m.

Clerk's Name ... Time ...

MAR 7

Recd 10 am

LA 143 C NAIROBI 26 3 MV GVT

March 3 CHAPELRIES LN -

120 HANGIONING ESTIMATED Amount due from ~~ABSORIOUS~~ ~~TIRATRICE~~ W.O.

TO Rodriguez PROPRIETARY AT DATE £400 REQUEST PLEASE

ARRANGE EARLY ~~SANCTIONS~~ WITH ~~COUNCIL~~ C.A. ~~WHERE GAGLET~~ E.A.Pd.

PRESUMABLY INCURRING [INTERES] ~~DETERMINED~~ OVERDRAFT
in claim

DURING .

Send 110 F
12/3/20

DRAFT. Tel (Code)

Governor
Nairobi

mandatory
12 March

MINUTE.

Mr. Acct 11/3/20

Mr. Arthur 12.3.20

Mr.

Mr. Grindle

Sir H. Lambert

Sir H. Read

Sir G. Fiddes.

Col. Amery

Lord Milner

Govn tel 5 March No 120
unofficial
have requested W.O.
for full grant
pay £100,000
Treasury
to E.A. for detailed
memorandum
statement must be
provided
prompt. The capital of Kenya
Rangatira

[illegible]

~~2. Have to represent that~~

2. A telegram ~~[illegible]~~ is being sent to the acting Governor asking for a detailed statement to be forwarded as early as possible; but in the meantime there is reason that [illegible] move the A.G. [illegible] representations for the payment of a sum of £400,000 to C.A. Pelletier Ltd.

[illegible] Protectorate [illegible] The matter is of urgent importance to the Port, [illegible] interest is now being paid on a large overdraft due to the ~~[illegible]~~ suspension of the monthly payments of £50000 referred to in the letter quoted above.

(Signed) H. J. READE