

1923

KENYA

50933

19 OCT 23

W'S DEPUTY
GRAM

1481

DATE

20TH SEPTEMBER 1923

CIRCULATION :-

SUBJECT

658

Mr. L. MAGADI COMPANY

Asst. U.S. of S.

Trs memo. by Railway G.M. re rates for freight and royalty on soda in event of reconstruction of Coy. Trusts any draft contract to be negotiated will be submitted for local examination before final settlement.

S. H. ...
24/9/23
F. J. Stevenson
Per U.S. of S.

Per U.S. of S.
Secretary of State.

Previous Paper

MINUTES

M. J.
49485

I have already circulated a copy of the G. M.'s memo. which Major Rhodes sent me. We now learn that the Colonial Govt have accepted his proposal for a division of the royalty part of the combined rate.

It is still not absolutely clear whether they regard the proposed new rates as cumulative or not. We shall have to get this clear.

Subsequent Paper

M. J.
51621

23
26
26

We may also have
to ask the Colony to
abrogate the abolition
importance of their
sanctity not to lose
the business and the
essential consideration
of ^{future} revision of the
rates agreed upon.

But first the whole
position must be discussed.

Oct. 20. 10. 23

Dr. J. Stevenson

The other papers
are with you. Be hope
that it will be possible
to arrange for a short
discussion to-morrow.

J. S. S.
27/10/23

KENYA.

No. 1481.



GOVERNMENT HOUSE,

NAIROBI,

KENYA.

28th September, 1923.

659

C O
50933
REF
19 OCT 23
PL

My Lord Duke

M. J.
34335

In reply to Your Grace's despatch No. 1147 of August 15th, I have the honour to transmit for Your Grace's consideration copy of a memorandum by the General Manager, Uganda Railway, regarding the revised rates for freight and royalty on Soda exported by the Magadi Soda Company in the event of its ultimate reconstruction. Mr. Felling's proposals were reviewed recently in Executive Council and their acceptance was recommended, as intimated in my telegram No. 272 of the 15th September. The conditions, on which acceptance must necessarily be contingent, in the opinion of this Government, were summarized in that cable. The following observations are to explain the attitude adopted by this Colony and the Railway Administration.

Memorandum
Dated 15-9-23.
8500
46031

2. I may state at the outset that the need for an early decision precluded any consultation by the General Manager with the Inter-Colonial Railway Council, whose advice on changes in railway tariff is required by standing instructions. The Council however is anxious to see the resumption of the industry, as communicated in Sir Charles Bowring's telegram No. 141 of the 15th May, and will not object to the proposals now contemplated, more particularly since

505
24786

HIS GRACE

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S. W.

since the Railway Administration is not prepared to offer any guarantee of transport for Magadi produce, and the suggested rates are framed on a tapering basis with relative reductions in proportion to increases in the volume of traffic.

3. In view of the emphasis laid in the past on the losses incurred by the Railway Administration on Magadi traffic my advisers agreed that it would only be equitable for both the Colony and Railway to share in the further reductions of revenue resulting from the special consolidated rate. It is considered advisable that the Colony should be content, at any rate for a short period, with lower receipts from royalties in order to afford a further opportunity to the Company to re-establish itself, and to avoid the possibility of a loss of this source of revenue or at any rate a temporary cessation of work. I feel confident that Your Grace will concur in this argument.

4. It is, however, essential, as the General Manager, Uganda Railway, points out, that Government should be satisfied that the market price figures for Soda submitted by the Company should be confirmed by specific investigation not only before any fresh commitments are entered into, but also by periodical scrutiny in the future. If the market price is confirmed, it is considered that the duration of the low rates should be for as restricted a term as practicable - two years is the period suggested - The local Administration would so avoid the possibility of the loss of legitimate revenue when low rates are no longer justified either by the operations of the Company or the ruling price of Soda. Your Grace is aware from previous correspondence that the principle

of reduced railway rates for this commodity is not advocated by the Uganda Railway authorities or the Railway Council, and is only conceded in the hope that such a temporary benefit will enable the Company to re-establish its affairs on a sound financial footing. Government's attitude on Royalties is dictated by similar influences.

5. I am glad to note that at the interview in the Colonial Office Mr. Chester/^{Beatty} accepted the view that the provision of transport would be a matter of arrangement between the Company and Railway. The General Manager, Uganda Railway, points out under Head (2) in his memorandum that on economic grounds any differential guarantee of rolling stock and locomotives in favour of the Company is inadvisable even to the extent of the present commitment, but that all reasonable endeavours to meet the Company's requirements in motive power will be undertaken on equal terms with other consignors of traffic, provided that accurate forecasts of output are submitted. The Company need be under no apprehension that the rolling stock which they may require will not be forthcoming. It is in the interest of all concerned that they should be afforded all possible facilities.

6. It is essential under the accepted accounting arrangements that the Magadi Branch should be worked by the Railway Administration as an integral portion of the Uganda Railway and its ancillary services.

7. I trust that it will be possible for any draft contract which is negotiated to be submitted before final settlement for examination by this Government and the Railway authorities.

I have the honour to be,
My Lord Duke,
Your Grace's most devoted
and most obedient servant,

J. H. Enham

GOVERNOR'S DEPUTY.
(Draft approved by Governor).

15th September

C. 22/73

file with Nairobi papers
 In 1973

The Hon. the Colonial Secretary,
 Colony and Protectorate of Kenya,
 Nairobi.

Proposed reconstruction of the Nairobi Soda Company.
Ref. your No. 1/1.254/3/73 dated 8th September 1973.

The Company now proposes a rate, including royalty, on a taper decreasing according to traffic. In that respect the offer is much sounder than before.

The actual offer is not very clear, but the intention would appear to be

	Offer	Less Royalty	Railway Rate
Up to 50,000 tons	18/-	3/-	15/-
Up to 150,000 tons	17/-	3/-	14/-
Up to 200,000 tons or over	16/6	3/-	13/6

as compared with

id. rate	15/10s
Freight rate	17/10s

The proposition is not too attractive for the Railway, but the Government is in a different position, the royalty being clear profit.

I suggest that to enable the Railway to accept the rates offered the Government royalty included be

		Leaving the Railway
Up to 50,000 tons	1/8	16/8
Up to 100,000 tons	2/-	15/-
Up to 200,000 tons	3/-	13/6

This means that in the earlier stages of renewed production the Railway loss would be reduced, and the Government would get a royalty it might otherwise lose. With increased production the Railway share would decrease. Increased traffic would justify this. On the other hand, the Government revenue would increase.

I make the foregoing recommendation on the assumption that the market value of the soda as given by the Company is correct. The Colonial Office should have this verified, and, I take it, will not be misled by the Japanese contract which the Company is said to have been trying to cancel.

The new rates and royalties should be on a fairly short period contract, but subject to continuation if justified by the figures of the Company. If the Government meets the Company it is entitled to ask for the right to examine the books from time to time. I cannot help feeling that the Company has not yet disclosed everything.

In connection with the other points I would observe:-

- (1) The claim made by Mr. Chester Beatty that the advantages derived from return traffic in the case of soda are greater than in the case of maize is altogether untenable. The maize producers are farmers spread over a fairly large area, and every ton of maize produced by them means increased business throughout the country. So far as soda is concerned, the inward traffic is negligible, and the

only money really left in the country by the Company, apart from royalty and low railway rate, is the sum spent by them in wages (mainly native) at the Magadi Lake and at the Port.

The profits from maize remain in the country, and are re-employed in further production; the profits from soda leave the country.

(2) I am afraid I cannot accept the view of the Colonial Office in this matter of engine power and truck supply. The point made by Major Rhodes, on my instructions, is vital to this Railway. When the Company undertook to produce soda up to certain specified quantities, the Railway, under the contract, had to incur necessary capital expenditure in the provision of engines and rolling stock. For some time much of that capital was idle, but to-day, while many engines are spare, trucks are fully occupied with export traffic, and as the country develops all the engines and rolling stock will be useful for agricultural and other products.

The Railway, under any new arrangements, would undertake to do its best to handle expeditiously any soda output from the lake, but it is unreasonable to expect the Railway to always have in reserve locomotives and wagons, even up to the 160,000 tons provided for in previous arrangements. In any new arrangement the Company must understand that the Railway cannot have engines and rolling stock standing idle awaiting traffic which may not materialize. On the other hand, if the Company proves, by its future methods of working, that it can be relied upon for the

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traffic it says it will produce, then the Railway will see to it that reasonable motive power is provided.

Unfortunately, the Railway's experience in this respect has been unsatisfactory in the past. Over and over again the Company has submitted estimated requirements which have turned out to be hopelessly inaccurate and unreliable.

(3) In the new contract all question of separate accounts for the Magadi Branch must disappear. The Company must agree to the branch being worked as an integral portion of the Uganda Railway.

The present contract was based on the assumption that there would be a profit on the line. Apart from the first year, there has always been a loss, and, on the basis of a mileage division of the new low rates, there will probably continue to be paper losses on the branch for years to come. We have had to carry these losses, and it is ridiculous to go to the expense of separate accounts. Certainly no profit should ever be handed over until past losses are deducted.

(4) The ultimate contract, if any, on reconstruction should be sent here for scrutiny, but I cannot see why an elaborate contract is necessary. It should be as simple as possible.

As far as practicable the Magadi Company should be in the same position as other consignors of traffic, paying the rates agreed upon, and receiving a fair share of the rolling stock available for its conveyance ^{the} of its traffic.

065

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The notes,

The really important provisions would be the working
of the branch line by the Uganda Railway and the con-
finement of the pier to the Company's own traffic.

C.L.N.Felling.

General Manager,
Uganda Railway.

CTD/CLNF/AGH

yesterday

Lord Southborough called ^{yesterday} this morning in regard to our letter to Captain Samuel on 46031. He told me that Captain Samuel had shown him the letter which he proposed to send in reply, and that, as he (Lord Southborough) considered that it would do more harm than good, he persuaded Captain Samuel not to send it until he had been in communication with us. Lord Southborough showed me a copy of the proposed letter, and I asked him to let me keep it as showing (without prejudice to the discussion) what was in Captain Samuel's mind. The copy is attached.

The following references are to the paragraphs of the proposed letter

Paragraph 2. The rate of 18/6 was a blunder of mine in drafting on 46031. 18/- is right. As regards the rates proposed being for the whole of the year's output and are not cumulative, - there has been no doubt in our minds. The words "up to " in the Governor's telegram are certainly ambiguous; but there is no reason to suppose, in view of Captain Samuel's letter of the 25th July, that the Governor really means (e.g.) that with an output of 100,000 tons a year the rate should be 18/- for the first 50,000 tons and 17/- for the second 50,000 tons).

Perhaps

Perhaps the rest of this paragraph of our letter was too much condensed. The intention was to say that at the discussion it was said that the Soda was only worth £3.15 a ton at Kilindini, and that in writing to the Governor we had made it clear that the consideration of the question must be governed by this statement. The Governor on his side has said that he will accept the statement if it is proved. As regards proof, I do not think we can accept anything more than the Accountant's certificate. Of course there are no sales f.o.b. Kilindini, and all we can expect is a value based on the Company's accounts, equivalent to f.o.b. Kilindini price.

Paragraph 3. The objection I anticipated to a railway rate based on selling price was that we should be told that the selling price must vary for each contract, which would be secured on the best terms available, not only on the particular date, but also for the particular place. Captain Samuel's view is rather that the selling price will have to depend on the railway rate, and no doubt this is equally tenable.

Lord Southborough, however laid greater stress on the two years' period, which he said was far too short, as forward contracts are almost invariably

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Lord Southborough, however laid greater stress on the two years' period, which he said was far too short, as forward contracts are almost invariably

invariably made on the basis of three years. I pointed out on this particular point, as well as generally, that the Colony's position in the matter was peculiar; that while they seemed to attach more importance than I had anticipated to keeping the Magadi business alive, the value of the Magadi traffic today, whatever it may amount to, must be regarded as temporary. In two years, or whatever time is necessary to develop vegetable production to the utmost, the Soda traffic will be a nuisance.

This question of two years is primarily one for discussion; but Lord Southborough quite agreed that the Kenya Government could not be expected to take on an everlasting bad bargain. He had his own idea as to getting over the difficulty, but he was so anxious that it should not be produced as emanating from him, that I hesitate to record it. As regards Captain Samuel's last point, I still think that it would take a very long time to get a completely new instrument drafted and agreed, providing for the proposed temporary terms subject to reconsideration at a later date, and that there should be no insuperable difficulty in the reconstructed Company accepting the 1922 lease with temporary modifications. After all, the old Company accepted the lease of 1922 and they have not yet

about that there is anything in it which will be less practicable in e.g., 1925, than when they accepted it.

The point of the Government's liability to provide transport for the soda, has been raised because of the large output which the Company hope to get ultimately. If their traffic were never to exceed the 150,000 tons annually for which we were liable to provide (and have provided) means of transport, there need be no trouble; but I should be inclined to stand out against accepting any absolute liability to carry more.

Captain Samuel has no doubt in mind clause 22 of the 1922 lease, which provides that the Company's traffic over the Branch shall not be prejudicially affected by other traffic over the Branch. It does not seem to mean that all traffic on the system as a whole shall be held up for the soda.

In any case the Company cannot both throw over the 1922 lease and take exception to a departure from those terms, and, if the Colonial Government is to nurse this extremely unpromising infant, it has at least the right to claim that its other charges shall not be neglected.

Paragraph 5. As regards the desire to avoid undue delay, Lord Southborough was satisfied that there

can

can now be no question of rushing the matter through and that protracted negotiation is unavoidable.

Paragraph 6. As regards the shareholders, Lord Southborough did not see how they could very well be brought into the discussion of terms. If a scheme is agreed upon between the reconstructors and the Government, it will be the duty of the Receiver to bring the matter before the shareholders, and it will be for them to appoint either him, or someone else, as a liquidator of the old Company, prior to re-construction. Each individual shareholder will have to decide, when the terms are put before him, whether he is prepared to put up more money towards the capital of the new Company, or whether he will refuse on the ground that he will be throwing good money after bad. To the extent that there are refusals, a call will be made on the underwriters. Lord Southborough's point was that there could be no reconstruction without liquidation, and that there could be no liquidation without a scheme on which the Receiver could discharge his obligations as Receiver.

The question of bringing in the shareholders arose in our discussion with Sir James Stevenson which led to his minute on 30900/25. The only way

in

in which we could do anything more would apparently be to insist that the shareholders should convene a meeting among themselves, in order to appoint a representative who will be present at future negotiations. It is very doubtful whether such a proposal could be made to them without some indication of the terms proposed, and it is by no means certain that we should not get a representative who is thoroughly suitable for the purpose.

Paragraph 7. Captain Samuel agrees that the outstanding liabilities of the old Company shall be discharged as a part of the scheme of reconstruction.

I think that there can be no doubt that the conclusion is correct that there must be another meeting; but I suggested to Lord Southborough that it might be necessary for us to wait until Sir James Stevenson's preoccupations made it possible for him to be present.

He suggested that we should write fixing a definite date and hour for the discussion. Apparently in Samuel

Samuel is at The Hague every other week, and this week is one of the weeks when he goes over.

I suggest that this minute should go forward to Sir James Stevenson in the hope that he will be willing to assist us in this matter, if he can fix an appointment. We could then, I think, telegraph at once to the Governor clearing up the point under (2) as to the rates being non-cumulative, and say that at present we see no chance of obtaining acceptance of the condition of revision after so short a period as two years, or of the railway rate being based simply on the selling price of soda.

WCS 9.10.23.

Sir J. Stevenson
 We are now coming to close quarters with this question & I think that it is very desirable that you should preside at the next meeting with the view of the Co. I must confess that I do not at present see much prospect of our arriving at

at an agreement which will
be really satisfactory from the
Kanga's point of view.

H. J. R.

10/2/23

- 2 -

carried per annum and are not cumulative. We do not quite understand what is meant by the conditional acceptance on proof by the Company of present low value of Soda, nor the reference to the despatch sent to Kanga. We presume this despatch to be one of yours of which we have not had a copy.

As regards the proof of present low value, we are anxious to furnish an accountant's certificate that it does not exceed £12.0 with f.o.b. Kilindini if that will be accepted as usual practice. It is difficult to see how else to be done for Soda.

I would like to point out that it is quite impossible to reconstruct the Company on the basis of an agreed rate for two years only, and I am rather surprised that such a condition should be made in view of the facts that were put before the Government at the meeting at the Colonial Office. In its present form your suggestion appears to be

is ordered by the Courts. At the same time I am sure the
Secretary of State will understand that it is quite impossible
to go to the meeting unless the scheme is agreed beforehand
with the Secretary of State subject to the approval of that
meeting.

Enclosed I understand that the reconstruction scheme
includes the project of...

Your obedient servant,

RECORDED OFFICE LONDON

G,911/L.

13th September 1923.

The Hon. The Colonial Secretary,
Colony and Protectorate of Kenya,
Nairobi.

Proposed re-arrangement of the Ugadi Soda Company
Ref. L.C.S. No. 2343/71 dated 8th September 1923.

The Company now proposes a rate, including royalty, on a taper decreasing according to traffic. In that respect the offer is much sounder than before.

The actual offer is not very clear, but the intention would appear to be

	Offer	Less Royalty	Railway Rate
Up to 50,000 tons	18/-	3/-	15/-
Up to 150,000 tons	17/-	3/-	14/-
Up to 200,000 tons or over	16/6	3/-	13/6

as compared with

Id. rate	15/10 $\frac{1}{2}$
Present rate	17/10 $\frac{1}{2}$

The proposition is not too attractive for the Railway, but the Government is in a different position, the royalty being clear profit.

I suggest that to enable the Railway to accept the rates offered the Government royalty included be

	Offer	Less Royalty	Leaving the Railway
Up to 50,000 tons	18/-	3/-	15/6
Up to 150,000 tons	17/-	3/-	14/6
Up to 200,000 tons	16/6	3/-	13/6

This means that in the earlier stages of resumed production the Railway loss would be reduced, and the Government would get a royalty. As production increases the loss would decrease. With increased traffic the railway loss would decrease. Increased Government revenue would increase.

I base the foregoing recommendation on the assumption that the correct value of the soda is given by the Company's offer. The Colonial Office should have this verified, and I hope it will not be argued by the Japanese contract which the company is said to have been trying to secure.

The new rates and royalties should be on a fairly short period contract, but subject to continuation if approved by the Board of the Company. If the Government should be obliged to sell for the right to sell the soda free for a time, I suggest half feeling that the company has not disclosed everything.

In connection with the other points I would observe:-

(1) The claim made by Mr. Chester Hearty that the advantages derived from return traffic in the case of soda are greater than in the case of maize is altogether unreasonable. The maize producers are farmers spread over a fairly large area, and every ton of maize produced by them means increased business throughout the country. As far as soda is concerned, the inward traffic is negligible, and the only money really left in the country by the Company, apart from royalty and low railway rates, is the sum spent by them in wages (mainly native) at the Magadi Lake and at the Port.

The profits from maize remain in the country, and are re-employed in further production; the profits from soda leaves the country.

(2) I am afraid I cannot accept the view of the Colonial Office in the matter of engine and truck supply. The point made by Major Gaudes, on the instructions, is vital to this Railway. When the Company undertook to produce soda up to certain specified quantities, the Railway, under the contract, had to incur necessary capital expenditure in the purchase of engines and rolling stock. For some time much of that capital was idle, but to-day, while many engines are spare, trucks are fully occupied with export traffic, and as the country develops all the engines and rolling stock will be useful for agricultural and other purposes.

The Railway, under the new arrangements, would undertake to do its best to enable conditionally any soda output from the lake, but it is unreasonable to expect the Railway to supply new in reserve locomotives and wagons, even up to the £50,000 limit provided for in previous arrangements. In any new arrangement the Company must understand that the Railway cannot have engines and rolling stock standing idle awaiting traffic which may not materialize. On the other hand, if the Company proves, by its future methods of working, that it can be relied upon for the traffic it says it will produce, then the Railway will see to it that reasonable motive power is provided.

Unfortunately, the Railway's experience in this respect has been unsatisfactory in the past. Over and over again the Company has submitted estimated requirements which have turned out to be hopelessly inaccurate and unreliable.

(3) In the new contract all question of separate accounts for the Magadi Branch must disappear. The Company must agree to the branch being worked as an integral portion of the Uganda Railway.

The present contract was based on the assumption that there would be a profit on the line, apart from the first year, there has always been a loss, and, on the basis of a mileage division of the new low rates, there will probably continue to be a loss on the branch for years to come. We are not to carry these losses, and it is ridiculous to go to the expense of separate accounts. Certainly no profit should ever be handed over until past losses are deducted.

(4) The ultimate contract, if any, on reconstruction

should be sent here for solution, but I cannot see why an elaborate contract is necessary. It should be as simple as possible.

As far as practicable the Uganda Company should be in the same position as other consignees of traffic, paying the rates agreed upon, and receiving a fair share of the rolling stock available for the conveyance of its traffic.

The really important provisions would be the rates, the working of the branch line by the Uganda Railway and the confinement of the pier to the Company's own traffic.

29 October, 1923.

Dear Colonel Spence,

I have your letter of the 29th, but I am afraid that I do not know anyone at the French Embassy to whom we could give you a letter of introduction.

Are you sure that there is no deserving engineering firm here that could supply you? We got Diesel engines for the ^{Langley} ~~Langley~~ Electricity Works in 1918, when Esen was even rarer than it is to-day.

Yours truly,

LWS

[X With great affection, my "Langley"
was dear enough. LWS]

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the Langite installation
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was even made for it
in today.

Yours truly



Order Sent
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MINUTE

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24.10.23

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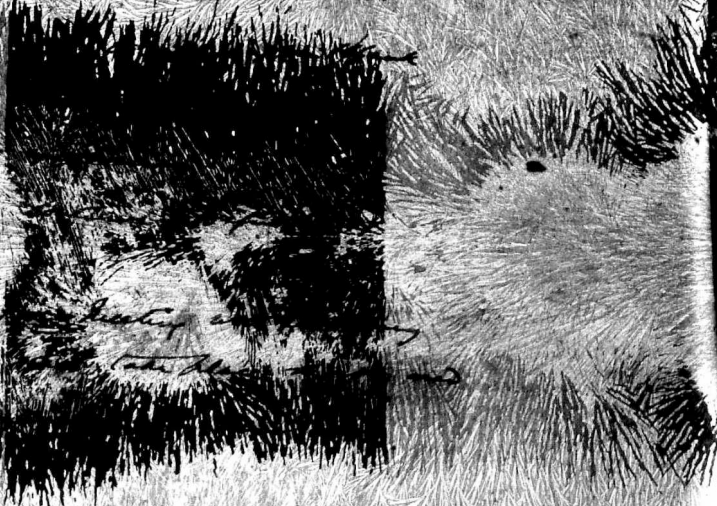
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24.10.23
Date of Receipt
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after discussion with
 Sir J. Thomson

1883
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Oct. Report

By C. J. Co. Oct. Report
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After discussion with
S. J. Thomson

1922

VOL. 7

(18930B) Wk 17741(42) 2,000 12/22 H. J. F. & L. Ltd. Cb 112

DESP. NO.	DATE	SUBJECT
1500	1 Oct	R. & C. O. G.
1502		Rep. Envs. Dept.
1507	2	Alienation of Crown Lands
1508		Athman Bin Jaffer - Gratuity
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ORDER NO.

East India Railways - West India - also, London
 Imperial Economic Conference
 United States of America 1922

Audit
 Education - Dept. of Transp. & Works
 Dept. of Public Works - Public Works Dept.

Indian Question - Foundation of New Leg. C. Bd.
 Railway Admin. - Finances
 Improvement of Native Conditions

J. B. Store - Timber Commission
 £3,000,000 Loan
 Allowances for Quarters - Allowances for Pension Purposes

J. A. Ribeiro & L. B. Fernandes - Pension
 First Supplementary Estimates 1922
 Map of Native Reserves

Legislative Council
 Marge Grading
 Railway Quarters Dept. - Lease Rules

DESP. NO.	DATE	SUBJECT
1615	25. Dec.	Mohamed Ben Ali Fumo. <i>Gratuity</i>
1616	29 -	Sabun <i>Nature Number of Resumes</i>
1617	-	Leandro de Mello - <i>Person</i>
1622	-	Registration of <i>Native</i> <i>Ordre</i>
Del	30 -	Voie - <i>16 km</i> <i>Railway</i>
		Manga
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		Leg <i>Ordre</i> <i>Ordre</i>
1653	2	Sheikh Ashwa Bin Ambar (<i>Gratuity</i>). <i>Ordre</i> of <i>Res. Gratuity</i>
1654	-	H. Luthero <i>Person</i>
Conf	-	Railway <i>Staff</i> <i>Financial</i> <i>Instructions</i>
	5	<i>Estimate</i> <i>1924</i>
Del	7	<i>General</i> <i>Instructions</i>
1680	8	<i>Annual</i> <i>Report</i> <i>1923</i>
Del	10	<i>Railway</i> <i>Amateur</i> <i>Staff</i> <i>Gratuity</i>
		Voie <i>16 km</i> <i>Railway</i> <i>Gratuity</i>
		Gratuity <i>16 km</i> <i>Railway</i> <i>Gratuity</i> <i>Staff</i> <i>Gratuity</i>
1681	12	Sheikh Hassan Bin Abdulla - <i>Gratuity</i>
Del	14	<i>New</i> <i>Railway</i> <i>Gratuity</i>

There appears to be something of a dilemma in the case. Either the Board has no legal claim, in which case half the amount of the bond is due upon the occurrence for the period treatment to be extended from it to the other holders of "moral obligations" or the Board is liable to prefer to other creditors. The whole thing could be re-presented in a most unfavourable light.

W. J. P. 2/11/23

H. J. P. 2/11/23

KENYA.
No. 1500.



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GOVERNMENT HOUSE,
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October 1st, 1923.,

My Lord Duke,

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With reference to Your Grace's telegram of the 5th September, on the subject of the British East Africa Disabled Officers' Colony, Limited, I have the honour to inform Your Grace that the legal aspect of the position which would be created between this Government and the National Bank of South Africa, Limited, by the failure of the Bank to establish its case for forfeiture and by the failure of the Bank to prove its claim of an equitable mortgage, was not considered until the receipt of Your Grace's telegram of the 31st July last.

2. The Acting Government Attorney General advised that the Bank would have "failed in its action" against this Government if it had failed in the proceedings for forfeiture or if the Bank failed to establish its claim to an equitable mortgage or registered lien. The facts which led the Acting Attorney General to this conclusion are briefly as follows:-

The first title issued to the Company in July 1921 contained no restriction in any shape or form against a legal charge as permitted by the Registration of Titles Ordinance, 1919, Part VIII. It is established that Major Dymott handed this title to the Bank in 1921 as security against an overdraft

of

S GRACE

THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.,

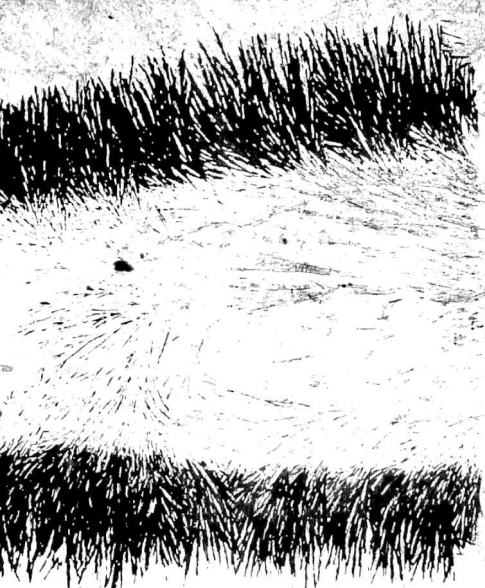
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of £8,000 extended by agreement to £10,000 - see page 8 of the Memorandum by Mr. Ismail Grant transmitted with Kenya despatch No. 164 of January 29th last.

The Bank however did not register a Memorandum of equitable mortgage but it had the power so to do while the deed remained in its possession; and though equity will not enforce a charge which does not comply with the Statute - in this case, registering a Memorandum of equitable mortgage - yet in the events which have actually happened the next fact of non-registration does not afford Government a ground of complaint. On 22 December 1921 when the Bank came to a junction and secured its position the Bank represented to Mr. Helm and Mr. Morris at an interview arranged at the instance of Sir Edward Northey that he could not make further advances to the British East Africa Disabled Officers' Colony and must press for the immediate payment of the debt. When however it was intimated to him that Government proposed to waive the Stand Premium which stood as a prior charge on the title deeds, the Manager agreed to render further financial assistance up to a total of approximately £10,000 inasmuch as the Bank's Security would be improved by this action of Government.

The proposal to waive the Stand Premium was reported to Your Grace's predecessor and was approved in his telegram of January 13th, 1922. Thereupon a new grant was drawn containing a condition that trustees should be appointed by Government to superintend generally the premises of the grant whose consent should be necessary to the raising of loans or the incurring of Bank overdrafts. It was understood that the trustees would readily give consent to a total overdraft of approximately £10,000 and part of the arrangements with the

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