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of £6,000 extended by agreement to £10,000 - see page 6 of the Memorandum by Mr. Iqbal Grant transmitted with Kenya despatch No. 124 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 mere fact of non-registration does not afford Government a sound defence. For, in December 1911 when the Bank could have registered a Memorandum and secured its position the Manager of the Bank represented to Mr. Yeom and Mr. Martin 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, 1902. 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

of £8,000 extended by agreement to £10,000 - see page 6 of the Memorandum by Mr. Ismail Grant transmitted with Kenya despatch No. 184 of January 20th last.

The Bank however did not register a Memorandum of equitable mortgage but it had the power so to do while the title 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 mere fact of non-registration does not afford Government a sound defence. For, in December 1911 when the Bank could have registered a Memorandum and secured its position the Manager of the Bank represented to Mr. Yohn and Mr. Martin 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, 1908. 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

the Bank was that this new title would be handed to the Bank to secure its position. The Bank registered a lien on this deed under the Registration of Titles Ordinance 1919 and then applied for the consent of the Trustees. It happened that at this time the Manager of the Bank and Mr. Holt were both on leave and that ^{the} Acting Manager was unable to satisfy Mr. Harrison who was acting for Mr. Holt that the Bank had a right to a mortgage. Mr. Harrison therefore refused his consent. Had consent been given the Bank could have registered a formal legal mortgage and it is clear from the previous negotiations above referred to that consent should have been given. The Bank thus gave good consideration for this arrangement or promise namely, its forbearance to sue or to press for immediate payment of the debt due in December 1921: this forbearance was induced by Government and affords the Bank a cause of action. The cases cited by the Acting Attorney General in support of this conclusion are - Calisher versus Bishoffschheim (1870) L.R.3 Q.B.449, Wade versus Simeon 15 L.J.C.P. 114.

3. It was fully realized that the proposed arrangement with the Liquidator reported in Kenya despatch No. 873 of June 7th was open to objection but it was endorsed in Executive Council as offering the most acceptable solution in the circumstances and if it were disapproved by the Court then nothing more could be done. But until the Court's disapproval ^{is so} recorded I venture to urge that Your Grace should approve that proposal even though, notwithstanding the facts recited in paragraph 3 above, Your Grace's legal advisers differ from mine. For I feel that where doubt exists on the legal question of Government's liability I should be permitted to do all that is possible to safeguard this Government's

Government's interests.

4. I would wish also again to emphasize the fact that a guarantee of £15,000 would not involve Government in a payment of a sum greater than it originally contemplated under the proposals of Sir S. S. Hewitt's Committee which were approved by Your Grace - vide the Report enclosed with Kenya despatch No. 104 of January 29th last. In the 8th paragraph of that Report it was recommended that an approximate sum of £5,000, which would remain after the bank had been paid, should be utilized in satisfying the claims of other creditors. The declaration of a guarantee instead of an intention is required by the liquidator but the financial obligation of Government remains unaffected.

5. Your Grace will I think agree after perusal of all the correspondence especially Colonial Office telegram of 11th March 1922 that a measure of responsibility for the affairs of this Company was assumed by this Government on the direct advocacy of Your Grace's predecessor and as it is possible that the rejection of the liquidator's proposals may result in a successful action by the Bank against Government for a sum of £10,000 for which Government would have to cover in the likely event of its failure to obtain forfeiture, I venture with the greatest respect to ask for a reconsideration of the decisions announced in Your Grace's telegram under reference ^{and} of the 11th July and for Your Grace's approval of the proposals submitted in Kenya despatch No. 673 of June 7th. In the meantime, I have directed the Acting Attorney General to file the suit for forfeiture and I trust that a telegraphic reply may be sent to this despatch.

I have

I have the honour to be,

My Lord Duke,

Your Grace's most devoted
and most obedient servant,

A. Hamilton

GOVERNOR'S DEPUTY.

Gov. 22899 Kenya.



10/11/23
Coded & sent to London
7/11/23
Hester
PP-DC

8c

6 November, 1923.

DRAFT CODE TELEGRAM.

GOVERNOR,

NAIROBI.

Amend
11/30
24

MINUTE.

- *Richardt G.II.
- *Bucke G.II.
- *Pottanley. 11/23
- Mr C. ...
- Mr B. ...
- Mr W. ...
- Mr J. ...
- Mr ...
- Date of ...

Conson.

Your despatch of 1st October 1923 my legal advisers after consulting Lyall Grant are of opinion that on facts stated no course of action by the Bank against the Government is disclosed and advise that any claim by the Bank should be firmly resisted. My objections to the proposed arrangement are independent of a possible claim by the Bank. The proposal seems to involve joint arrangement by Governor and Liquidator under which action for forfeiture not defended and £15000 the consideration for Liquidator not defending to be used (i) to buy off possible claim by Bank against Government and

Do not see how proposed
could be thought better
most - not so - would not
be - as to the future - something
of a total - it would be
to be - to be - to be -

DRAFT

MINUTE

- 1. ...
- 2. ...
- 3. ...
- 4. ...
- 5. ...
- 6. ...
- 7. ...
- 8. ...
- 9. ...
- 10. ...

to the interests of the
 proposed officers to make
 a complete list of the
 names of the officers of the
 board of the bank in the
 binding of the proceedings
 to be reported. It appears to
 have certain evidence of the
 expense of this. It seems
 there is proposed the benefit
 of a security to the officers
 but called the resolution not
 proposed will have cause of
 complaint of the directors of
 their interest. I consider
 the fact that but in order
 to avoid a claim by the
 bank ^{against} the officers
 thought to effect a bond
 on the subject of a similar
 bond made from the bank
 proceedings. I cannot
 address it.

