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IN THE HIGH COURT AT MOMBASA.

EAST AFRICA PROTECTORATE.

August 15th 1909

436

Sir,

I have the honour to inform you that the Summons in *Civil*

Office Case No. 1 of 1909, forwarded to me with your letter dated the ¹⁷ day of ~~2-08~~ and number ~~4~~ has been duly served and is returned herewith.

I have the honour to be,

Sir,

Your most obedient servant

sd. *[Signature]*

REGISTRAR.

East Africa Protectorate.

The Registrar

H. B. M. Court

Zanzibar.

In B. M. Court of Appeal for Eastern Africa.

Civil Appeal No. 1 of 1907.

Charles Grant versus. A. T. Smart.

C/1275.

Sir,

I have the honour to forward you herewith the file of above case (in 3 parts) and 2 spare copies of judgment

Please acknowledge receipt.

Mr. Tonks pleader for the appellant applied to me for a copy of judgment which has been supplied him.

I have etc.

sd. T. W. Parkinson.

Registrar.

Registrar

B. M. Court
Zanzibar.

telegram.

102

From Mombasa.

Dated 3. 9. 1907.

To Murison Zambar.

Question of fraud not raised or argued in
appeal stop can it be raised now. Hamilton.

Telegram.

103

To Judge Hamilton, Mombasa.

Tonks maintains he argued fraud point therefore
adjourned to special sessions at Mombasa you Murison
Rarth Boat leaves thirteenth is sixteenth suitable
for hearing Lindsey Smith.

Fredrose P. DOSTOR.

Telegram.

104

From Mombasa.

Dated 5. 9. 1907.

To Judge Lindsey Smith Zanzibar.

Agree sixteenth Hamilton.

Telegram.

105

To Judge Hamilton Mombasa.

Bankruptcy case Marison arrives Thursday early. Arrange
if possible hearing for Friday thirteenth.

Lindsey Smith.

9. 9. 07.

copy.

10. 9. 1907.

The following Telegram Received at 10. 3 a.m. from
Mombasa via Eastern .

No. of words 7. dated 10 time 9.20 a.m.

To.

Judge Lindsay Smith, Zambar.

Fixed Friday Hamilton.

H. B. M. Court of Appeal for Eastern Africa.

Zanzibar, 20th September 1907.

Civil Appeal No, 1 of 1907.

Charles Grant v. A. T. Smart.

452
Sir,

I have the honour to acknowledge receipt of the file
of the above case (in 3 parts) and 2 spare copies of
Judgment sent with your ~~xxxxxxx~~ undated letter No. C/1275

I have etc.

sd. Frances P. Dector.

Registrar

Registrar

High Court

Mombasa.

High Court,

Mombasa,

25th February 1909.

C/240

Sir,

Grant v. Smart.

Appeal No. 1 of 1907.

I have the honour to request you to furnish me with a copy of the proceedings exclusive of judgment in the above case together with a copy of all the subsequent proceedings in the application for leave to appeal to the Privy Council in order that I may forward same to Government as requested.

I have etc.

ad. Thos. Haumer.

Acting Registrar.

The Registrar

V. B. M. Court

Zanzibar.

H. B. M. Court of Appeal for Eastern Africa.

Appeal No. 1 of 1907.

Grant vs. Smart.

ZANZIBAR, 2nd March 1909.

No 175.

Sir,

With reference to your request contained in your letter No. C. 240 of the 25th February 1909 to be furnished with copy of proceedings I have the honour to ask if any provision has been made for copying charges payable to the appellate Court, my orders being not to give out any copies free of charges except under very special circumstances.

I have etc.

sd. Francesco P. Doctor.

Registrar

As Acting Registrar

High Court

Zanzibar.

High Court,

110

Mombasa,

15th March 1906.

Appeal Case No. 1 of 1907.

Grant v. Smart.

Sir,

I have the honour to acknowledge receipt of your letter of the 2nd instant and to inform you that the charges for copying the above file will be paid by this Government.

I have etc.

sd. T. HANCOCK.

sg. Registrar.

The Registrar

H. B. M. Court of Appeal

Mombasa.

In H. B. M. Court of Appeal for Eastern
Africa at Zanzibar.

111

Civil appeal No. 1 of 1907 from original
Decree in Civil Bankruptcy Case No. 1 of 1906 of
The H. B. M. Court for East Africa at Mombasa.

Charles Grant Appellant

Arthur Thomas Smart Respondent

Date of hearing 2nd day of April 1907 at Mombasa

2. April 1907.

112

Tonks for appellant

Byron for Respondent.

Hamilton

Warison

Barth

Tonks- 1897 O in C. Art. 11.

Noorbhoy Allibhoy v. Issaji Allibhoy E.A.L.R. p.4.

Chap. XX is for benefit of debtors and not for protection of creditors.

Chap. XXX Schedule of Fees E. A. L. R. p. 131

Refer case 4/1900 Mokhumdin.

Byron- Mokhumdin is an isolated case, and does not establish a practice. If established it was not legally established.

Art. II inapplicable does not mean 'inadequate' if Bankruptcy act admitted, concurrent English Acts must all come in. Chap. 20 of the Code fully covers the application in the present case.

Art. 357 of the Code inconsistent with English Law.

Art. 360 A excludes Ch. XX from the Bankruptcy Law. who have

Tonks in reply- The real meaning of 'inapplicable' must

be 'inadequate' to the matter before the Court

Ch. XX to that extent *ousts* the Bankruptcy Law entirely.

Jt. reserved.

sq. R. W. Hamilton.

2.4.07.

In the Court of appeal for
East Africa

Civil appeal No 41905

113

Original case in Bankruptcy No 14696
re. Arthur Thomas Smart Exporter
Creditor Charles Grant

The abovenamed Charles Grant
begs to prefer an appeal against
the judgment of Mr Justice
Egine dated the 29th day of
November 1906 delivered at
Nairobi, for the following
among other grounds viz-

1. That the learned judge
was wrong in holding that
Chapter 22 of the Code of Civil
Procedure, and all common
and statute laws of England
with regard to bankruptcy and
that the English bankruptcy
acts do not apply to this
Protectorate
2. That the judgment was wrong
in law.

Ed. Chas Grant

Dated 14 Feb 1906

Ed. Edmund Fort
Solicitor for Appellant

Share

IN THE HIGH COURT FOR EAST AFRICA AT MOMBASA.

IN BANKRUPTCY.

No. 1 of 1906.

114

Re: Arthur Thomas Smart
Exparte Charles Grant a creditor

I Charles Grant of Nairobi British East Africa hereby Petition the Court that a receiving order may be made in respect of the estate of Arthur Thomas Smart of Nairobi aforesaid and lately carrying on business and residing at Nairobi aforesaid and say:-

1. That the said Arthur Thomas Smart has for the greater part of six months next preceeding the presentation of this Petition resided at Nairobi aforesaid within the Jurisdiction of this Court.

2. That the said Arthur Thomas Smart is justly and truly indebted to me in the sum of Rs.35915.6.(rupees Thirty five thousands nine hundred and fifteen annas six) the amount of the in Civil Case No. 1 of 1906 of the Nairobi District Registry of the High Court Charles Grant versus Arthur Thomas Smart.

3. That I do not nor does any person on my behalf hold any security on the said debtors estate or on any part thereof for the payment of the said sum except that a of Rs.180/- (rupees One hundred Eighty six) was paid into Court on the 19th september 1906.

4. That the said Arthur Thomas Smart within three months before the date of the presentation of this petition has committed the following acts of Bankruptcy namely:-

1. On the 18th September 1906 the said Arthur ~~Arthur~~ Thomas Smart stated in Court at Nairobi that he was not in a position to pay the decrees in Grant versus Smart.

2. That between the 13th and the 18th of September 1906 in Nairobi the said Arthur Thomas Smart made a fraudulent gift delivery or transfer of a debt of Rs.35915. 6 (rupees Thirty five thousand nine hundred and fifteen and annas six) due to him by High Chelmondely Baron Delamere under agreement dated 18th April 1906 by accepting £.50 for the said debt.

Dated this 15 day of November 1906.

(Sgd.) Chas. Grant

Signed by the Petitioner in my presence.

(Sgd.) Oswald Tenka

Mombasa

Solicitor.

This Petition having been presented to the Court on the 17th day of November 1906 it is ordered that this petition shall be heard at The High Court for East Africa at Mombasa on Thursday the 29th day of November 1906 at 9.30 a.m. in the forenoon.

And you the said Arthur Thomas Smart are to take notice that if you intend to dispute the truth of any of the statements contained in the petition you must file with the Registrar of this Court a notice showing the grounds upon which you intend to dispute the same, and send by Post a copy of the notice to the petitioner three days before the date fixed for the hearing.

Dated this 19th day of November 1906.

J. W. H. Parkinson

Ag: Registrar

High Court E.A.P.

38 (4)

IN THE HIGH COURT FOR EAST AFRICA AT MOMBASA.

IN BANKRUPTCY

117

No. 1. of 1906.

Re: Arthur Thomas Smart

Ex parte Charles Grant a creditor.

In the matter of a petition dated the 15th day of
November 1906.

I Clive Selwyn Longinnes make oath and say:-

1. That I did on Monday the 19th day of
November 1906 serve the abovesaid Arthur Thomas Smart
with a copy of the abovementioned petition, duly
sealed with the seal of the Court, by delivering the
same personally to the said Arthur Thomas Smart in
the Mombasa Jail before the hour of 12 noon.

2. A sealed copy of the said petition is
herewith annexed.

(Sgd.) Clive S. Long Innes

Sworn at Mombasa.

This 19th day of November 1906 before me

(Sgd.) J. W. H. Parkinson

Ag: Registrar.

39 (5)

IN THE HIGH COURT FOR EAST AFRICA AT MOMBASA.

IN BANKRUPTCY

No. of 1906.

Re: Arthur Thomas Smart

Ex parte Charles Grant a creditor.

I Charles Grant the Petitioner named in the petition
herewith annexed make oath and say:

1. That the several statements in the said petition
are within my own knowledge true.

~~Subscribed~~

(Sgd.) Chas. Grant.

Subscribed and sworn to on the 16 day of Aug 1906

Before me

(Sgd.) J. H. Parkin
By Registrar

40/6

Mombasa

27/11/06. 119

Sir,

With reference to the bankruptcy petition served on me on the 19th November I beg to state as follows:-

1. I deny that the High Court at Mombasa has any jurisdiction in bankruptcy and say that the procedure in the case of insolvent judgment debtors, must be taken under Chapter 20 of the Indian Code of Civil Procedure.

2. That provision having been made under the Indian Code of Civil Procedure for insolvent Judgment Debtors that Code replaces the English Law of Bankruptcy, in the Protectorate.

3. That I wholly deny the second act of Bankruptcy alleged in your petition, namely, that I made a fraudulent gift, or delivery, or transfer of a debt of Rs.38915. 6. to Lord Delamere for £.80.

4. I say that the settlement I effected with Lord Delamere, was Bona Fide, and for the best consideration procurable, and that I was perfectly justified in making such a settlement at the time.

Yours faithfully,

(Sgd.) Arthur T. Smart

H. Parkinson Esq.

Registrar

High Court M.A.P.

41 ②
IN H. M. COURT FOR EAST AFRICA AT MOMBASA.

IN BANKRUPTCY.

Case No. 1 of 1906.

Re: Arthur Thomas Smart.

120

Emparte the creditor Charles Grant.

29. 11. 06.

Tenks for applicant.

Gimi for respondent.

Tenks for jurisdiction in Bankruptcy.
Gimi against jurisdiction.
Tonks replies.

JUDGMENT:-

The ^{law} in force at this time here is that applied by Section 11 of the Order in Council of 1897 and this includes the Indian Code of Civil Procedure. It is contended that the Code of Civil Procedure has not all the provisions of the English Bankruptcy Acts and that therefore these shall apply. I am of opinion that where an applied Indian Act deals with any matter it must be held to deal wholly with that matter and a larger English Statute cannot be brought in. It is possible under the Code of Civil Procedure for a creditor to get a decree and afterwards proceed to make the debtor an insolvent - this is not the same as English Bankruptcy but it appears to be in substitution for it and therefore as the law stands now hold that the Code of Civil Procedure susts all common and statute Law of England with regard to Bankruptcy.

The petition is dismissed with costs.

(Sgd.) A. T. B. Carter

29, 11, 06.

IN THE EAST AFRICA PROTECTORATE HIGH COURT AT MOMBASA

Insolvency Suit No. 1 of 1906.

121

In re Arthur Thomas Smart.

versus

Ex parte the creditor Charles Grant.

Whereas Charles Grant Petitioner in the above case has been ordered to find security for costs in the sum of Rs. 750/- on filing of appeal for an appeal to the Eastern Africa Court, I Duncan Mackinnon do hereby bind myself as security for the above named Petitioner in the sum of Rs. 750/- and do hereby undertake, if called on by H. M. Judge, East Africa Protectorate, to pay into the Protectorate Court, Mombasa, that amount or such less sum as the Petitioner may be ordered by the High Court to pay.

Dated this

day of February 1907.

Witness.

sd. Duncan Mackinnon.

sd. J. H. Lindley.

IN H. B. M. COURT OF APPEAL FOR EASTERN AFRICA.

Civil Bankruptcy Appeal No. 1 of 1907.

The 22nd day of April 1907.

From Original Decree in Bankruptcy Case No. 1 of
of 1906 of the High Court for East Africa.

To
The Registrar
High Court

Mombasa.

Upon reading the petition of Appeal of the appellant
Civil Appeal No 1 of 1907.

Charles Grant.....Appellant
versus
Arthur Thomas Smart.Respondent.

named in the margin and
upon hearing O Tenks on his
behalf and R. M. Byron for

the respondent the Court of Appeal has made the following
order on the 22nd April 1907. The Court for the reasons
stated in the accompanying judgments dismisses the appeal
with Costs.

sd. R. W. Hamilton.

sd. J. W. Murison.

sd. J. W. Harth.

Mombasa

IN H. B. M.'s COURT OF APPEAL FOR EASTEN AFRICA AT ZANZIBAR.

Appeal No. / of 1907 from Original Decree.

Bankruptcy Suit No. / of 1906 of the *H. B. M. High Court of*
the Arthur Thomas Smart - East Africa at Mombasa
against the creditor Charles Grant
Charles Grant Appellant.

(Original Applicant)

versus.

Arthur Thomas Smart Respondent.

(Original Respondent)

To *Arthur Thomas Smart*

residing at *Farole's a. Protection*

Take notice that an appeal from the decree of the Judge of *the*

High Court for East Africa at Mombasa has been presented by
Charles Grant and admitted and registered

in this Court; and it is ordered by this Court that the hearing of the said appeal
will take place on the *second* day of *April* 1907 or on any
subsequent day which to this Court may seem convenient.

If no appearance is made on your behalf by yourself, your pleaders or by
some one by law authorized to act for you in this appeal it will be heard and
decided *ex parte* in your absence.

Given under my hand and the seal of this Court this *9th* day of

March 1907

W. Seymour P. Doctor
Registrar.

IN H. B. M's. COURT OF APPEAL FOR EASTEN AFRICA AT ~~ZANZIBAR~~ ^{Mombasa}

Civil Appeal No. 1 of 1907 from Original Decree.

~~Bankruptcy~~ Suit No. 1 of 1906 of the H. B. M's. High Court of East Africa at Mombasa

Arthur Thomas Sweet -
vs
Charles Grant

Appellant.

(Original Applicant)

versus.

Arthur Thomas Sweet Respondent.

(Original Respondent)

To Charles Grant

residing at Mombasa, E. Africa Protectorate

Take notice that an appeal from the decree of the Judge of the High Court for East Africa at Mombasa has been presented by you and admitted and registered in this Court; and it is ordered by this Court that the hearing of the said appeal will take place on the 2nd day of April 1907 or on any subsequent day which to this Court may seem convenient.

If no appearance is made on your behalf by yourself your pleaders or by some one by law authorized to act for you in this appeal it will be heard and decided ex parte in your absence.

Given under my hand and the seal of this Court this 11th day of March 1907

s.d. Frankrose P. Dexter
Registrar.

IN H. B. M. COURT OF APPEAL FOR EASTERN AFRICA.

at Zanzibar.

Civil Appeal No. 1 of 1907.

Charles Grant.....Appellant.

versus

Arthur Thomas Smart.....Respondent.

Take notice that a petition for leave to appeal to the Judicial Committee of His Majesty's Most Honourable Privy Council, having been preferred by the above appellant through his Counsel Mr. H. Lascari, the hearing of the said petition is fixed for Saturday the 3rd day of August 1907 at 10 a.m. in the forenoon or any subsequent day which to this Honourable Court may seem convenient.

Given under my hand and the seal of the Court this 23rd day of July 1907.

sd. Francesco P. Dector.

Registrar.

sd. Arthur Thomas Smart.

The Respondent.

IN H. B. N. COURT OF APPEAL FOR EASTERN AFRICA.

ZANZIBAR, 6th August 1907

Civil Appeal No. 1 of 1907.

Charles Grant.....Appellant.

versus.

Arthur Thomas Smart.....Respondent.

Take notice that the hearing of the application of the above applicant for leave to appeal to the Privy Council originally fixed for 3rd August 1907, has been adjourned and will be heard on Monday the 2nd day of September 1907 at ten in the forenoon or on any subsequent day which to this Court may seem convenient.

Given under my hand and the seal of the Court this 6th day of August 1907.

ed. Frances p. Sactor

Registrar.

ed. A. T. Smart.

IN H. B. W. COURT OF APPEAL FOR EASTERN AFRICA.

ZAMBIA, 6th August 1907

Civil Appeal No. 1 of 1907.

Charles Grant.....Appellant.

versus.

Arthur Thomas Smart.....Respondent.

Take notice that the hearing of the application of the above applicant for leave to appeal to the Privy Council originally fixed for 3rd August 1907, has been adjourned and will be heard on Monday the 2nd day of September 1907 at ten in the forenoon or on any subsequent day which to this Court may seem convenient.

Given under my hand and the seal of the Court this 6th day of August 1907.

sd. Frances P. Doctor

Registrar.

sd. A. T. Smart.

No. 2.

just.

IN THE *District Registry* ^{*High*} COURT
AT *Nairobi*

EAST AFRICA PROTECTORATE.

CIVIL CASE No. *5* of 1906.*Charles Grant*

Plaintiff.

versus

Arthur Thomas Smart

Defendant.

Issue *12th June* 1906. Date of hearing *2nd July* 1906.

IN THE DISTRICT REGISTRY OF THE HIGH COURT AT NAIROBI.

Civil Case No. 5 of 1906.

Charles Grant Plaintiff.

versus

Arthur Thomas Smart Defendant.

ADJOURNED to 10th July for written statement.

8. 7. 06. (Sgd.) N. R. LOGAN.

16. 7. 06.

Mr. Buckland for Plaintiff.

Mr. Allen for Defendant.

MR. BUCKLAND asks for Judgment in default on ground written statement was not filed before or at first hearing.

REFUSE Judgment on ground that according to practice of Court this is first hearing for purposes of Code.

ADJOURN to 2.0 p.m.

(Sgd.) J. W. BARTH.

Pleadings read.

ISSUES:-

- (1) Was the Defendant entitled under the provisions of the contract of the 5th February 1906 to annul the same?
- (2) If so did the defendant annul the contract?

MR. BUCKLAND opens for Plaintiff :-

GRANT, CHARLES, Christian, sworn, Settler :-

I am the Plaintiff in this suit.

About January 15th 1906 I heard Smart say he had not sold the 500 acres to Lord Delamere. About January 26th I asked Smart if he wished to sell the land and if he would accept an offer from me.

During two or three days negotiations Smart said

several statements regarding the land.

He said he had arranged a verbal sale to Lord Delamere about 2 or 3 years before.

That he had not accepted Rs.1 from Lord Delamere as payment and had not put his pen to paper.

He stated that two or three weeks previously he had told Marcus Lord Delamere's agent that the sale was off as Lord Delamere had not paid the money.

He stated that he had borrowed £.100 from Lord Delamere at 10% interest for which he had given a promissory note or some other acknowledgment he was not sure what and said he would sell me the land £.1750.

The price was fixed on February 1st but he would not close the matter then.

On February 2nd he again refused to close without giving any reason.

On February 3rd he accepted £.1 as part payment and signed a receipt which decided the conditions of the sale (receipt put in)

Ex.1.

On February 5th I saw Mr. Burn and asked him to prepare a regular agreement of sale.

Immediately after I went to Mr. Allen's office with an order from Smart to shew me his deeds for the purpose of getting a copy of the plan attached for the use of the surveyor.

Allen stated deed was property of Lord Delamere who had purchased the land from Smart and that he had a conveyance or agreement of sale for the same.

That was the first intimation I had that there was anything of the nature of an agreement for sale in relation to the land.

I returned to Mr. Burn's office and repeated to him

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what Mr. Allen said and told him Mr. Allen had stated he would not deliver the deed to Smart.

This was before Mr. Burn had completed the agreement between Smart and myself regarding the land.

I went to Smart and repeated Allen's conversation.

From Smart's statements he appeared to be dubious about the wording of the acknowledgment of the £.100 he received from Lord Delamere.

He stated that he believed Mr. Allen to be bluffing.

I asked him if anyone was present when he informed Marcus the sale was off owing to his not having paid. He stated that his brother W. H. Smart was present at the time.

That evening or the following day I asked W. H. Smart if he was present.

W. H. Smart said he was present and corroborated what his brother stated.

On Monday February 12th Mr. Smart showed me a copy of an agreement between himself and Lord Delamere regarding the £.100.

Mr. Smart stated that he had secured that copy the previous day.

Every day during the week previous he repeatedly stated he had forgotten the wording of the agreement. That he had failed to take a copy of it and did not know what it contained until he had secured the copy on February 11.

Until Monday February 12th I did not know the sense of the agreement though I had discussed the matter with Allen and Marcus both refused to state what the agreement was and Smart did not know.

I signed the agreement on the 7th February. Agreement

Ex.2.

of February 3rd put in and marked Ex.2.

Smart signed it on February 6th or 7th I think not later than 7th.

That agreement has not been carried out. Because Smart refused to do so.

He has transferred the property to Delamere. I was not served with writ in case No. 14 of 1906. I was present in Court and gave an undertaking to do nothing with land before the case came on for hearing before the High Court. On morning the case was to be heard. I heard that Smart had settled it with Lord Delamere.

Burn applied to make me a co-defendant when he heard of settlement it was refused by Judge Hamilton.

On February 6th I received a letter from Mr. Allen warning me to do nothing with the land as it belonged to Lord Delamere (letter put in and marked Ex. 3)

Ex.3.

In February 3rd I knew nothing about agreement with Lord Delamere for sale of land.

I believed like Mr. Smart that it was bluff and that there was no agreement in existence.

On February 3rd no one knew about the transaction. I consulted no one with the exception of Mr. Mashinman.

There was no understanding regarding preventing Lord Delamere from obtaining the land.

On 6th or 8th February I gave instructions to Frow to survey the land and divide it into town plots. He did so.

I instructed S. C. Pichat to draw up articles of Association for a Town Site Company.

The capital of the Company was to be 400 £.10 shares.

The day before the injunction in case No. 1 was served the articles of Association etc. were ready for printing

and all but about 38 of the necessary shares to pay for the property had been applied for. ^{the balance} I intended retaining 51% at least. The Rs.1000 has not been repaid.

The Rs.2000 damages are for expenses in connection with survey, articles of incorporation, incorporation and fees for legal advice.

The survey was under Rs.200.

The legal charges were Rs.350 to 300.

I made an agreement with Mr. Fiehat for 5% commission on 50% of the capital.

I had offers for the land.

One property² offer £.20 per acre for 10 acres. My scheme was to lay the property out in building plots and to dispose of hereafter at best advantage.

X XN:-

In June 1904 I think I was in this country.

I was in both Nairobi and Mombasa in June 1904. I stopped at Rayne's Hotel.

Delamere and G. Cole were there too.

The matter of the sale of the 500 acres by Smart to Delamere was discussed.

The price was considered fair.

I remember the fire in Victoria Street. I remember some months before the fire Defendant was ill with rheumatism.

W. H. Smart was working for Atkinson at Elburgon.

W. H. Smart came down to Nairobi also with rheumatism. They were ill together in same room. When they were convalescent I do not remember a conversation with W. H. Smart as to sale to Lord Delamere.

I was good friends with Defendant. I am still.

I know Frank Knowles late barman of Rayne's Hotel.

I deny I have discussed sale of this land to Delamere

with Smart in the bar of Rayne's Hotel in presence of Knowles.

I never heard Smart grumble till January, that he had sold the land and had not received the money.

I know Marcus.

I have had very little conversation with Marcus none regarding the land.

About January 15th I heard that Marcus was concerned with sale of land to Lord Delamere.

The negotiations began by me approaching Smart asking him if he would sell the land if he were in a position to do so.

This was in Smart's butcher's shop. I do not think Smart wilfully deceived me.

Smart told me the sale was a verbal one.

I was under the impression from Smart's statements that there was no verbal sale. ^{valid}

Smart appeared to think so too.

It was a large transaction for me. Up to February 5th I did not take Burn's advice to the best of my knowledge. To the best of my knowledge I did not consult Fichat until sale was completed. I think I consulted him before Ex. A was signed.

I believe he (Fichat) occupies part of his time doing conveyancing work.

I don't think Fichat made any suggestion as to seeing title deeds. Burn asked where title deeds were. Smart said they were in Tonks & Allen's office. I believe it was on 3rd Smart said documents were in Tonks & Allen's office.

I don't remember if that was before or after giving £.1 and signing of receipt.

I asked Smart for a written order for the deeds or to let me see them. I got the order on 5th February.

I did not want to see the document.

I accepted Smart's statement.

When Burn asked where title deeds were I had Smart's order to the best of my knowledge.

I probably went across to get the deeds from Tonks & Allen's office.

It would be about 9.30 or 10 a.m.

I remember what took place in ^{the} that office.

I don't believe Marcus was in Tonks & Allen's office on Monday.

I remember a bet of £.2 that was several days after the 5th. I asked to see the deed or for it but did not produce the order. I was refused. I did not see the order.

It may be here. I did not show it to Allen.

I was told it was a matter for Delamere.

You probably asked me why I wanted to see the deeds. I said I wanted a copy of the plan immediately.

You said Smart had sold land to Delamere. I told you Smart stated it was a verbal sale. You took down the deed and showed me the map. You said it would be wise to take separate advice. You said there was writing.

I won't say I asked to see the writing. I asked what kind of agreement there was. You would not tell me the nature of it. I went to Burn's office.

I was back from Burn's office before lunch.

I repeated your statements. I went and saw Smart and told him what had happened.

He then seemed dubious regarding the receipt for it. He was unable to recollect the wording of the receipt and

had no copy.

He insisted he had not signed agreement of sale to Delamere.

I told Burn what had happened.

ADJOURNED to 17th 10.0 a.m.

(Sgd.) J. W. BARTH.

17. 7. 05.

Ex. 3 was not delivered to me on the 5th. It was given to me in Hotel Stanley on 6th February by the Hotel people. On 7th or 8th I signed the agreement Ex. 3.

I showed Ex. 3 to Burn. I don't know whether Smart was with me.

We all considered it bluff on Allen's part.

Mr. Burn knew at the time there was nothing on record regarding the Delamere sale. Burn ignored the notice.

The agreement was signed there was no adjournment for enquiries.

There was no alteration made after the signature were attached to my knowledge.

I don't think the alteration from 7th to 8th was made in consequence of my notice.

The agreement was dated back to the 3rd the same date as the first agreement (receipt). Smart would not come round till 8th. I asked the date 7th to be added to coincide with receipt (EX.3) Letter may have been a small fact: it was not seriously discussed.

I remember on 16th July 1905 driving out along the *Ngong* Road with both Smart and Humphreys and Driver. A. T. Smart and I had a conversation regarding the land he pointed out the boundaries.

A. T. Smart said he had sold land to Delamere.

On February 11th Smart said he had a copy of the 137 receipt from Delamere.

I received application for shares on the basis of £.4000 for the land. Each subscriber was to receive 1/3 acres the balance was to be kept and disposed of for the benefit of the shareholders.

The balance was 2/3 of the whole.

I would not get £.4000 until I had disposed of the shares. I did not wish to dispose of them at that price.

I took the price people were keen on getting the shares at. 139 were applied for up to date of injunction.

There were applications after but I did not make a note of them. £.1390 would not have let me out on my purchase money.

Mr. MacKinnon underwrote a portion of the shares up to 1/3 (witness adds: no definite agreement merely an understanding.)

There was no agreement with applicants to take up shares. They subscribed while Articles were being prepared. They could have withdrawn.

Smart said as far as I remember he would pay the Rs.1000 after this case was over.

I gave Bank instructions not to receive it.

I have no recollection of informing Smart regarding instructions to Bank.

I have not yet paid to Frow. He applied for 20 shares.

Burn's fees were for advice regarding company and the whole thing.

I don't know if the sum of Rs.250 included the cost of preparing Ex. B, or if so what portion of such sum represents the cost.

Fichat has not asked for payment. Fichat would probably never claim any money if I lost the case.

Fichat was to have 5% on 49% of the shares.

I presume Burn thought Smart could not convey until he had paid in full for the land.

We had no doubt about getting the land.

"If possible" in Exhibit 2 was inserted at Smart's request because he thought there might be difficulty in getting the deed from Tenke & Allen.

Personally I never tendered balance of purchase money nor my agent. Clause regarding interest on purchase money was inserted by Burn on my request, to give me longer time to float the Company.

I filed suit before 60 days had expired. (Notice annulling sale put in and marked Ex. 4).

Ex.4.

I think meaning of agreement is that if I fail to complete the sale Smart was to retain Rs.1000 and any other sum paid on account of purchase money.

Re xn:-

I consider the clause regarding forfeiting 49 Rs.1000 usual most unusual without it. Mr. Burn was instructed to communicate with Smart to find out if he was in a position to convey the land and accept payment.

It was some day previous to May 3rd.

I had prior to that been in Court regarding injunction and had given my undertakings. Burn asked me to examine registry of deeds on Monday February 6th to see if any agreement of sale had been filed between Smart and Belamere.

I found no record of sale in Lord Belamere. I saw the original grant recorded. It was delivered to Tenke & Allen September 1st. 1905. I believe I had been advised by Burn not to accept payment of the Rs.1000 if it were tendered.

Ex. 5. List of applicants for shares put in and marked Ex. 5.

There was no agreement with Mackinnon. He had arranged to place a number of the shares.

Read over

(Sgd.) J. W. BARTH.

PROB. THOMAS ALFRED, Christian, sworn, broker and agent :-

I know the land the subject of this suit.

I was to be one of the trustees for the purpose of the Company proposed by Grant. I agreed to take a share £.10.

I understood original shareholders got 1 acre each and participated in balance.

I consider value of land to be from £.12 - £.12 per acre.

I have sold land quite close to it in May 5.41 acres for £.75. This place is on the town side of Smart's land. It is not on Main Road. Smart's land is on Main Road.

I have an interest in some land near Smart's land it was about 8 guineas per acre last October. Value of land has increased 50% since October 1905.

I paid £.11 per acre for land at Egerton. Egerton is of less value than Smart land. Land on Ngong side is worth twice as much as Egerton land.

3 acres at Parklands fetched £.120 and 2.83 " " " " £. 75 at a sale last Thursday and another 2.83 acres fetched Rs.770. A fourth lot of 2.83 acres Rs.450.

The two last lots were at the back and partly swampy.

I prefer Ngong location more healthy but not more valuable than Parklands.

X-ABE-

I have a vague recollection of hearing of sale of

Smart's land to Delamere. I heard from Smart. I don't recollect the date. It did not strike me as curious that the land the Company was to deal with was that sold to Delamere.

I thought the bargain had gone. I never heard of the completion of the sale.

I told Grant I thought the land had been sold to Delamere. That might have been February.

Grant said I think that sale to Delamere had not been completed.

I should not take shares if the papers were not in order.

All land has increased in value. I think the value of land depends on who owns it. A man generally puts his own value on it.

I should not think that fact of Delamere Lingham and Grogan buying land would appreciate value of land adjacent to such land.

More development in Parklands than elsewhere.

Col. Pope Heneassey sold 10 acres for £.500. Eastwood sold 6 acres for £.500.

RE XR:-

I heard that Delamere had pooled his land with Lingham and Grogan's interest. I heard that in Nairobi.

I heard it in reference to the action for an injunction
Road over

(Sgn.) J. W. BARTH.

FREW, ARCHIBALD, Christian, sworn, Surveyor :-

I was asked by Grant to survey some land last February. It was known as Smart's selection. The area was 501 acres.

I prepared a plan.

It was to be subdivided in suburban lots.

£.10 per share and I received 1/3 acre for each share and I was allowed an interest in 2/3 acres per share.

I considered that a very good thing. I thought the 1/3 acre was worth more than £.10. It was a very good speculation.

I thought the land worth more than £.30 per acre. At least double.

XIX:-

I know of no land in vicinity being sold for £.30 per acre.

I consider I have lost a chance of getting a plot.

Read over,

(Sgd.) J. W. BARTH.

FIGHT, SIDNEY CARLISLE, Christian, sworn :-

I am land and estate agent.

I have been in business in Nairobi since October 1st 1905.

The arrangement re. Smart's land was to sell it by means of flotation.

I prepared prospectus and articles of Association.

The capital was £.4,000 in £.10 shares. Grant was taking 50% himself. Shares actually put down were close on 140 others said they would take shares when the prospectus was out. Grant made the list from what I told him.

Prospectus and memoranda of association put in and marked Ex. 6 and 7 respectively.

I got quotation for printing and obtained fees from Registrar when Grant stopped matter because injunction.

Everything was completed. I was prepared to underwrite shares at 12/6 or 12/-

to give less than those

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to give less than those

taken by himself and I was to have secretaryship of Company.

I consider land worth about £.10 - 12 per acre and at present date £. 20 per acre.

3½ acres were sold for £.50 and subsequently for £.75. They adjoined Smart's land.

I have sold leasehold plot on the hill for Rs.650 for two acres. ^{Mr} Burn sold two acres for £.35 belonging to himself and on the opposite of road to Smart's land.

I consider Ngong side more valuable than Ngerton ground. Ngerton ground was fetching £.10 - 11 per acre at that time.

Land was more easily disposed of to advantage in small lots.

There would have been no difficulty in disposing of shares in Company.

X I B:-

Grant did not consult me before purchasing land from Smart.

I have heard that Delavere had purchased the land from Smart.

Grant did consult me about a small document that existed between Smart and Delavere.

I told Grant what I thought of the document it was not produced.

I told Grant that from what he told me of the document that if the deeds were not produced within twelve months the transaction was merely a loan of £.100 at 10% repayable on demand but otherwise it appeared to be an advance on unspecified property.

In the middle of the week he came to me and said the document of sale (Ex. 2) was signed and discussed flotation.

This was 6 or 7 days before he told me of the document. He told me of that the following Monday.

He told me of the purchase of the land a week before he told me of the document between Smart and Delamere and asked me my opinion about it.

ADJOURN to 8 P.M.

(Sgd.) J. W. BARNH.

Mr. Grant had not told me of a notice from Allen warning him not to interfere with the land.

One five acre plot near Burn's is for sale. Vendor wants £.125.

EX. IX:-

Plots near Government House are worth £.25 - 30 per acre. All through at £.10 - 12 per acre.

Hand over.

(Sgd.) J. W. BARNH.

Mr. Buckland puts in Files of No. 1 of 1906 (Ex.8), No. 4 of 1906 (Ex.9), No.135 of 1906 T.N. (Ex.10).

CLOSES CASE FOR PLAINTIFF.

SMART, ARTHUR THOMAS, sworn, butcher :-

In June 1904 I told Marcus to sell my land for £.500. Ex. 2 of Ex. 8 read.

I visited the land with Lord Delamere and G. Cole. Lord Delamere made me a verbal offer of £.500. Lord Delamere I believe informed Marcus.

On 28th June 1904 the sale took place.

I signed no agreement regarding the sale on that day.

I and Marcus visited Allen's office. I don't remember what happened there. I asked Marcus when the matter would be settled up. I wanted the money for other purposes. This was in February 1905. Marcus asked me how much I wanted. I said £.100 or so.

Marcus said he would speak to Lord Delamere. Lord

Delamere sent me a cheque for £.100. I gave a receipt to Marcus for it. I kept no copy of the receipt.

The conveyance from the Commissioner had not been obtained at that time. Land had increased in value at end of 1905.

I was not content with the state of things with Lord Delamere. I had bothered Marcus to settle the thing up. I could not get the money. I wanted it for speculation. As it was I had neither land nor money.

I had spoken to Grant a number of times regarding the land and the transaction with Lord Delamere.

Grant made a proposition to me when he knew the facts.

I told Grant I thought I had the £.100 as a loan and I had signed a receipt but was not sure if anything else was attached to it. Grant suggested that we might make a deal so that I could get double or treble the amount out of it.

I explained how I was fixed. I did not know if I were legally bound to Lord Delamere or not as I did not know the full contents of the receipt for the £.100.

I told Grant I had received nothing from Lord Delamere when the sale was agreed, neither had I put my name to any agreement.

I had a number of interviews with Grant.

Grant told me from what I could tell him of the receipt I was not legally bound to Lord Delamere as no money had passed.

I was not confident as to my position. I was prepared to sell the land if I could get out of the agreement with Lord Delamere. I tried to get a copy of my receipt to Lord Delamere.

I signed the receipt Ex. 1, on the 3rd February.

I went to Burn's office on Monday. Grant was giving instructions as to drawing out the agreement.

Ex. 2 was signed I believe on February 7th 1906. Burn did not ask me about my title to the land.

I told Grant my title deeds were with Fonks & Allen. I told him on Sunday or Monday morning on the way to Burns.

Grant suggested I should go and get them or give him a note to Allen to go and get them.

I believe I gave him a note. He said he went to Allen's office and that he saw the plan after some argument. He said Allen told him the land did not belong to me to dispose of. I repeated I did not know how I stood in regard to the receipt.

I received on the 5th February a notice from Mr. Allen not to interfere with the land (original not produced Mr. Allen will put in copy) I think I got it at lunch time about 12 noon or after.

I think I was at Burn's office twice on that day once before receipt of notice and once after.

It was suggested I should get the title deeds, they were my property. I did not feel inclined to go.

I saw the date of 7th February altered to 5th February on Ex. 2 and was initialled by me.

I was not informed and there was no discussion as to the reason for the alteration.

"If possible" on Ex. 2 were inserted at my request because there were doubts as to getting the deed from Allen's office.

If the money was not paid I thought I got the Rs. 1000 as a gift. Mr. Grant suggested the provision.

There seemed to be doubts because we did not know what had been done beforehand.

I received a summons in Ex. 8.

(Copy of letter 2nd February 1906 from Allen to Smart put in and marked Ex. A)

I have no recollection whether I saw letter from Marcus to Allen 28 June 1904 attached to plaint in Ex. 8. before the summons in that case was served.

I saw a copy of receipt I gave to Lord Delamere on the 11th February.

I showed that copy to Burn and Grant and they said it was of no value so far as holding the land was concerned.

The subject of the present action and one other piece of land in my brother's name were the only parcels of land regarding which I had transaction with Lord Delamere.

The injunction prayed for was granted. (Ex. 8).

My partner Mr. MacGill consulted Mr. Ghandi as to my position.

Mr. Call told me he had been to Ghandi. I was not satisfied and saw Mr. Dalal.

As a result of Mr. Dalal and Ghandi's advice I compromised with Lord Delamere.

Not being able to carry out the contract with Grant has resulted in a loss to me.

On 15th July 1906 my solicitor wrote annulling the sale.

After the settlement in Ex. 8 I told Grant I would willingly ~~take~~ back the Rs. 1000. He said never mind I will ask for it when I am ready. He told me he had instructed Mr. Ferris not to accept any cheque if I offered to pay it in.

No one has ever tendered me the balance of the purchase money. It was suggested to me by Burn and Grant that the

receipt was merely an option.

X.XI:-

I showed Dalal a copy of the receipt I gave to Lord Delamere.

I went down to Mombasa after the grant of the injunction. The receipt has so far as I know not been registered. I recollect seeing a copy in pencil but I don't recollect retaining it. I did not keep any copy of my order to Marcus to sell the land.

I don't think I made any definite remark about any instructions to sell my own land to Grant. I did tell him that I had given instructions to sell the leasehold land.

I am almost confident I gave instructions to sell the leasehold land. I don't think I ever had the deed from the Land Office in my possession.

They were issued before the agreement with Grant.

It may have been September 1908.

Read over,

(Sgd.) J. W. BARTH.

SHANDE, PESTOMI KAKKABAD, affirmed, pleader:-

Moseli asked me after the injunction and before the case was down for hearing before the High Court regarding Grant's position with Lord Delamere.

(Sgd.) J. W. BARTH.

RAYNE, JOHN ALLEN, sworn :-

I was proprietor of Rayne's Hotel in June 1904. Grant was staying there and Lord Delamere and the Hon. E. Cole at the end of June. I heard of sale by Grant to Lord Delamere. It was I thought general property.

X.XII:-

I have put my name down for a share in Grant's

Company.

Read over,

(Sgd.) J. W. BARTH.

SMART, WILLIAM HENRY, sworn :-

I am a lawyer with Mr. Atkinson at Elbargon and a brother of defendant.

I recollect the sale of the land on Dagoretti Road by my brother to Lord Delamere.

I came down in June 1905 ill to Nairobi with rheumatism.

I remember when I was better conversing with Grant at Bayne's Hotel. I said we had taken up some plots and have sold them to Lord Delamere, he said we were foolish to sell.

I remember my brother becoming dissatisfied with the deal with Lord Delamere.

I remember my brother saying to Marcus that he was dissatisfied and if the thing was not ~~pushed~~ pushed along he would have to see what he could do.

I think he was trying to bluff. It was this year the interview took place.

I knew my brother was negotiating with Grant. I told Grant the conversation with Marcus had taken place.

Read over,

(Sgd.) J. W. BARTH.

ADJOURNED to 10. a.m. 18. 7. 06.

(Sgd.) J. W. BARTH.

18. 7. 06.

Mr. ALLEN writes that he is ill.

ADJOURN to 18. 7. 06 9 a.m.

(Sgd.) J. W. BARTH.

18. 7. 06.

MARCUS.

(22)

Evid. pp. 27, 28

MARTIN, IGNATIUS, Jew, sworn to-

Land Agent in Nairobi.

Mr. Smart gave me an authority to sell 500 acres of land in June 1904. (Ex. 2 of Ex. 8) June 27th 1904. I sold that land next day to Lord Delamere (Ex. 1 of Ex. 8) Note of deal dated 28th.

Lord Delamere, Cole and Smart visited the land. Smart and I called on Allen to give instructions on 28th June.

It was not quite clear Mr. Smart held the land.

Allen thought it was held as homestead. I had a conversation with regard to the land with Grant.

I was in Allen's office when Grant came in. It was before he bought the land. Grant said he was going to buy Smart's land. I said he could not because Lord Delamere had bought it. He said there were no papers. I said there were.

Some days after I heard it was an accomplished fact.

X FBI-

I remember I saw Mr. Grant one day. I believe it was a Saturday. I cannot tell the exact date.

I heard it was an accomplished fact about 5 days after my interview with Grant in Allen's office.

I was acting for Smart in the transaction with Lord Delamere.

Mr. Smart had not been informed in writing of the completion of the sale. The matter was allowed to stand over until Allen had communicated with Lord Delamere.

Mr. Smart ~~had~~ not revoked his authority to sell.

Read over,

(Sgd.) J. W. BARTH.

ALLEN, BERTRAM GRAY, Solicitor, Pleader in Nairobi :-

On February 5th 1906 early in the morning Grant came to my office and asked to see the conveyance ^{from} of the Commissioner to Smart.

Smart
He told me he had purchased from Smart and wanted to see the document. I at first refused as the matter was between Smart and Delamere. I told him Delamere had bought the land a long time ago.

He said he knew that but there was nothing in writing.

I told him there was and that he should be careful. I then showed him the deed and he looked at the map.

He said that was what he wanted to see. Z

He said he had bought it but I thought he wanted to know how the land lay before he bought it.

Marcus came in after and said he had a conversation with Grant.

I drafted Ex. 3 on February 5th.

I have sold through agents in town on November 11th 1905 plot No. 30 of the Hill plots for Rs.500 two acres leasehold.

On 13th March 1906 I sold plot 24 for Rs.500. On same date I sold plot No. 19 for Rs.500.

Mr. Fichtel was speaking of a plot next to 30 in his evidence.

X EX:-

I sold the plots through Newland & Farlow and Harris Lewis and Godwin. The latter sold No. 19 and 30. I sold the other privately.

Mr. Fichtel sold his for Rs.350.

Grant offered £.400 for plot near the Bank. It was refused. The other offer was more.

Read over

(Sgd.) J. W. BARNH.

ALLEN closes his case and addresses the Court.
BUCKLAND sums up.

JUDGMENT reserved.

(Sgd.) J. W. BARTH.

LE. S. QG.

BEFORE writing my Judgment I now proceed to frame
further issues i.e.

- (3) Did the Defendant commit a breach of the contract
of the 3rd February 1906?
- (4) If the Defendant did commit a breach of the
contract of 3rd February 1906 is the Plaintiff entitled
to any damages and if so what amount?

(Sgd.) J. W. BARTH.

IN THE DISTRICT REGISTRY OF THE HIGH COURT AT NAIROBI.

EAST AFRICA PROTECTORATE.

Civil Case No. 5 of 1906.

Charles Grant.....Plaintiff.

VERSUS.

Arthur Thomas Smart..... Defendant.

JURORRENTRY

In this case the Plaintiff is suing for damages for the breach of an agreement entered into by him and the Defendant on February 3rd (Exhibit 2) for the sale by the Defendant to the Plaintiff of a block of land near Nairobi of about 500 acres for Rs.25,000.

The history of the negotiations which lead up to the execution of the agreement have been given in evidence but for the purposes of this suit such negotiations are immaterial (Englin & Hattery 5 App. Cases 552) the parties are bound by the contents of the document (Exhibit 2) itself but to understand the defence it is essential in some measure to trace the history of the transactions.

On 27th June 1904 the Defendant instructed an agent, Marcus, to sell the land the subject of this suit for £,500 (v. Rs. 5 Rs. 2) It was offered to Lord Delamere (v. Rs. 5 Rs. 1) and that offer appears to have been considered by Lord Delamere there is however no acceptance in writing.

In the beginning of 1905 the Defendant received £,100 from Lord Delamere and gave a curious document (Ex. 5 Ex. 3) as a receipt, which describes the £,100 both as a loan and as an advance payment on various pieces of land sold to His Lordship without specifying what.

The matter rests for another year when Mr. Smart who appears to be a man of a curiously short and uncertain memory is approached by the Plaintiff for the sale of the

come land to him. Smart stated that he had received nothing from Lord Baltimore when the sale was agreed and he had not put his name to any agreement, further, that he thought the £,500 was a loan.

Smart apparently considered that he was not bound to Lord Baltimore regarding Allen's statements as Plaintiff and eventually agreed to sell the land to the Plaintiff. The negotiations began on January 20th earnest money is paid on February 3rd and a receipt given (Exhibit 1) and a formal contract of sale was executed (Exhibit 2) bearing the date of 2nd February 1636.

Mr. Allen, with whom was the original Crown grant to Smart, heard of the deal with Grant by Grant desiring to see such document and sent Exhibit 2, to the Defendant.

The contention put forward for the defence is that with the knowledge of the uncertainty of the former deal with Lord Baltimore the agreement (Exhibit 2) was so drafted that Smart could by giving notice get out of his contract with Grant in the event of Lord Baltimore proving an obstacle. At the time the contract was made with Grant Smart had not conveyed his interests to anyone.

What is the true construction of the document Ex. 2?

By it the Defendant agrees to sell fee simple possession free from encumbrance of the land in question for £,25,000 whereof £,1000 is to be paid within 12 days from February 3rd such sum was paid - and the residue on May 3rd.

Then comes a covenant for a specified time in which the delivery of the original grant from the Crown to the vendor's legal adviser is to be made "if possible".

These words have been explained by Mr. Smart himself as being added at his request because Mr. Allen had the Crown grant and he thought there might be some difficulty in getting it out of his hands.

Then follow more or less ordinary covenants as to possession being retained by the vendor until the purchase is completed. Then a provision for the payment of interest on the unpaid purchase money if the purchase is not completed on the 3rd day and then a proviso that if the purchase is not completed within 60 days from the 3rd day the vendor may by notice demand the sale but shall retain any moneys paid on account of the purchase money.

It appears to me that there is no ambiguity whatsoever about the contract. It follows fairly closely the ordinary form and the last (provision) appears to me to be nothing more or less than one in favour of the vendor whereby in the event of the vendor breaching the agreement by failure to complete on the specified date he can forfeit the sums paid on account of purchase money as liquidated damages and definitely say off the bargain.

This interpretation is further borne out by the concluding words "but he shall not be entitled to any other compensation whatever".

In my mind these words make it clear that the whole proviso is in the interest of the vendor in the event of the vendor failing to complete by a specified date and it is impossible to put upon the document the construction urged by the defence.

What did Hunt do? He filed an action against Feaks and Allen and Lord Baltimore for the recovery of the Crown grant. That was successful inasmuch as Lord Baltimore graciously caused the document to be handed over - the order going by consent (v. No. 10).

On the same date - 17th February Lord Baltimore brought an action (v. No. 11) Against Hunt for specific performance and damages in respect of an alleged contract of sale of the land obtaining meanwhile a temporary injunction restraining the Defendant from conveying the land to grant or

any other person; Grant giving an undertaking not to take any action in regard to the land until the decision of the question in issue by the Court.

On 18th April before the hearing of the case Smart settled the action by, inter alia, agreeing to convey and conveying the land to Balmore thus putting it out of his power to complete the contract with Grant.

Therefore on the first issue I hold there were no circumstances entitling the Defendant to annul the sale under the provisions of the contract of 3rd February.

As a result of my decision on the first issue a decision on the second issue is not necessary.

On the third and fourth issues I hold that the Defendant did commit a breach of the contract of the 3rd February 1894 by so agreeing to convey and conveying the land to Lord Balmore thus putting it out of his power to complete his contract with the Plaintiff and the Plaintiff is therefore entitled to damages, and was entitled to sue directly the defendant had rendered himself incapable of performing the contract (*Wright v. Carter* 2 H & B 576 and *Street and Knight L.R. 7 Exch 111*).

With regard to the amount of damages to which the Plaintiff is entitled this case does not come within the rule of *Pharm and Sherrill* and the cases based on that decision down to *Edin and Petherick*. The principle of those decisions is that when the vendor is unable to make good his title then the purchaser cannot recover damages beyond the expenses he has incurred by an action for breach of the contract. In this case there is no difficulty as to title. The defendant has a clear good title and on the 9th March at least was in possession of his deeds (*v. Ex. 12*) although then he was restrained from conveying the land until the decision of suit., Dec. 1 of 1894 (*Ex. 8*). If
the

(5)

the breach of contract arises from some other cause than defect in title the purchaser is entitled to damages beyond such expenses as above stated.

If the defendant had allowed the action for specific performance brought by Lord Baltimore to go to trial then there might have been some answer to this claim in the event of the defendant failing. He does not do this he elects to settle it.

(1) I hold the £2,100 paid on account of purchase money must be repaid with 5% interest from the date of payment to the date of Judgment.

(2) The Plaintiff is entitled to the legal charges for preparing and entering into the agreement. I fix such sum at £2,100.

(3) The Plaintiff is not entitled to the survey fees or other expenses incurred in preparing his scheme for the resale of the land.

(4) And the plaintiff is entitled to damages for the loss of his bargain. The suggested price to be obtained by the resale to a company which had not yet been incorporated or the capital subscribed is too remote to be taken into consideration in assessing damages. The evidence however, shows that the land is valuable the market price of similar land varying from £,00 to about £,20 per acre.

These prices were obtained by sales of small lots of about 2-10 acres and the probabilities are that a large block would not fetch quite so much per acre I shall therefore take £,5 per acre as representing the fair market price per acre of the whole block.

This is actually the price it was proposed to sell the

(6)

the land to the Company if formed but arrived at from the prices of actual sales given in evidence.

The damages the Plaintiff is entitled to is the difference between the amount he agreed to purchase the property and such market price, that is Rs.25,700 and I give Judgment for the Plaintiff for such amounts under 1, 2 and 4 i.e. Rs.24,000 with interest on the Rs.1000/- part payment of purchase money at the rate of 6% to date of payment and costs.

(sd) J. W. Barth

21. VIII. 04.

Application by Mr. Tenks to transfer decree to Nairobi Town Magistrate's Court for execution.

Decree not yet passed.

Adjourned to allow decree to be issued.

Leave to apply.

(Sgd) J. W. Barth.

5. IV. 07.

Order- decree to be sent for execution to the Town Magistrate's Court at Nairobi.

(Sgd) J. W. Barth.

18. V. 07.

Byron for defendant

Tenks for Plaintiff.

An application to raise restraining order on sale of defendants interests in M'Call and Smart butchery business Parties consent to following order:-

Central butchery business to be wound up by a person to be appointed by the parties to this action and M'Call Smart to be restrained from dealing with his interest in the business ^{according} according from such winding up till further order.

The order of Town Magistrate of 18.IX.06 to be varied accordingly.

(Sgd) J. W. Barth.

6. XI. 07.

Tenks for Plaintiff applies to attach debt due to Judgment-debtor from Lord Delamere under Section 508 Civ.P. C.

Submits *not res judicata*.

Fact of application having been made and withdrawn does not prevent it being brought again.

Submits that release to Smart need not be considered by Court.

Lord Delamere will deny debt *Concl* should ^{appoint} ~~approve~~ *Redman* ~~Redman~~ ^{Redman} under Section 508 when his liability can be determined. Adjourned to 7. XI. 06. (Sgd) J. W. Barth

7 XI. 07.

The sum now sought to be attached has already been the subject of proceedings for attachment in the Town Magistrate's Court Nairobi. In these proceedings Lord Delinere appeared denied the debt and stated that Smart had accepted £.50 to release him from the indemnity Smart acknowledged that he had so released Lord Delinere.

If I now attach the alleged debt and receiver is appointed under section 503 I do not believe that matters will be carried any further than they are at present --- Mr. Teaks therefore asks permission to withdraw the present application. Application withdrawn.

84/- J. W. Burt.

IN THE ^{High} District Registry of the COURT

160

AT Nairobi

EAST AFRICA PROTECTORATE.

CIVIL CASE No. 5 of 1906.

Charles Grant

Plaintiff.

VERSUS.

Arthur Thomas Smart

Defendant.

WHEREAS Mr H N Buckland pleader for the Plaintiff herein
 has instituted a suit in this Court against you for Shs. 36 750/- for damages
for breach of contract to sell land, as per copy of
plaint annexed and for costs

you are hereby summoned to appear in this Court in person or by Agent on
 the 2nd day of July 1906 at 10 o'clock in the fore noon

or as soon thereafter as the case can be heard to answer the above-named
 plaintiff, and as the day fixed is for the ^{putting in of your written} final disposal of the suit, you must be

statement only, you are hereby required to file the same
promptly to produce all your witnesses on that day, and you are hereby requested
on or before the said date of 2nd day of July 1906
to take notice that in default of your appearance on the day before mentioned
and the case will then be set down for the settlement
the suit will be heard and determined in your absence; and you will bring with
of issues and final hearing at the next session of the
you any documents on which you intend to rely in support of your defence.

High Court in Nairobi
 Dated this 19th day of June 1906 at Nairobi

2065 laid

8-0 Writing Application
 0-0 Summons
 0-0 Service
 0-0 Takala filing
 0-0 in all 19/6/06

Sy E. R. Logan

Registrar

High Court,

East Africa Protectorate.

IN THE *District Registry of the* ^{High} COURT

AT *Nairobi*

EAST AFRICA PROTECTORATE.

CIVIL CASE No. *5* of 1906.

Charles Grant

Plaintiff.

VERSUS.

Arthur Thomas Smart

Defendant.

WHEREAS *Mr. H. M. Buckland* *pleases for the Plaintiff herein* has instituted a suit in this Court against you for *Shs. 36 750/- for damages for breach of contract to sell land, as per copy of plaint annexed, and for costs*

you are hereby summoned to appear in this Court in person or by Agent on the *2nd* day of *July 1906* at *10* o'clock in the *forenoon* or as soon thereafter as the case can be heard to answer the above-named

plaintiff, and as the day fixed is for the *final disposal of the suit, you must be* ^{*putting in of your written*} *statement only, you are hereby required to file the same* ~~to appear~~ *to produce all your witnesses on that day, and you are hereby required* *on or before the said date of 2nd day of July 1906* to take notice that in default of your appearance on the day before mentioned *and the case will then be set down for the settlement* the suit will be heard and determined in your absence; and you will bring with *of issues and final hearing at the next session of the* you any documents to which you intend to rely in support of your defence.

High Court in Nairobi
Dated this *19th* day of *June* 1906 at *Nairobi*

Sd/- E. R. Logan

Registrar

High Court,

East Africa Protectorate.

not paid
8.0 *Writing Application*
0.0 *Summons*
0.0 *Service*
0.0 *Takala filing*
0.0 *in all 19/6/06*

In the High Court of the East Africa Protectorate at Nairobi.
Civil Suit No. 5 of 1906.

Charles Grant.....Plaintiff.

V.

Arthur Thomas Smart.....Defendant.

The above named Plaintiff states as follows:-

- (1). The Plaintiff is a settler and resides at Nairobi and the Deft is a butcher also residing at Nairobi.
- (2). By an agreement dated the 3rd Day of February 1906 made between the Defendant agreed to sell to the Plaintiff for the sum of Rs.26,250/- certain land situate near Nairobi containing 800 acres known as Provincial No.466 and registered as SSI A 1905 and delineated the Government plan as No.389 and the plaintiff paid the Defendant Rs.1000/- on account of the said purchase money.

The Plaintiff craves leave to refer to the said agreement which has been duly registered in the Registration Office at Nairobi a copy of which is hereto annexed and Marked A.

- (3). By an agreement made the 12th day of April 1906 between the Defendant of the one part and one Baron Delamere of the other part after reciting inter alia the aforesaid agreement between the plaintiff and Defendant of the 3rd Feby.1906 the defendant agreed for the considerations therein mentioned to sign a conveyance to the said Lord Delamere of inter alia the said land mentioned in the said agreement of the 3rd day of February 1906 and set forth in the 3rd para of this plaint- and the said Lord Delamere undertook to indemnify the defendant against any costs and damages he ^{might} incur or be compelled to pay in regard to any action which might be brought against the defendant by the Plaintiff in respect of the said Agreement of the 3rd day of February 1906

The Plaintiff craves leave to refer to the said agreement a copy of which is hereto annexed and marked B.

- (4). Pursuant to the said agreement of the 12th day of April 1906 the Defendant has duly assigned and conveyed to the said Lord Delamere the said land and premises by a deed of transfer duly executed attested and registered and bearing date the 17th day of April 1906.
- (5). All conditions are fulfilled and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement of the 3rd day of July 1906 performed by the defendant on his part yet the defendant has not executed or performed the said agreement and has put it out of his power to perform the same.
- (6). By reason of the failure of the Defendant to carry out the said agreement with the plaintiff of the 3rd day of February 1906 the Plaintiff has been unable to carry out certain negotiations for the sale of the said land on the basis of the value of £4000/ or Rs. 60000/.
- (7). The plaintiff has also lost the use of the said sum of Rs. 1000/ repaid by him as such deposit as aforesaid and of the monies provided by him for completion of the said purchase and has lost the expenses incurred by him in preparing to perform the Agreement on his part and has incurred expenses in endeavouring to procure the performance thereof by the Defendant.
- The Plaintiff therefore prays judgment for the sum of Rs. 1000/- so paid by way of deposit as aforesaid for the sum of Rs. 2000/- for loss and expenses incurred by reason of such failure and for the sum of Rs. 33,750/- being loss and damages incurred by him by reason of his being unable to carry out the sale of the said premises on the basis of the value of Rs. 60,000 as aforesaid and for the costs.

I the above-named plaintiff declare that the above statements

statements are true to the best of my knowledge information and belief.

Sd/- Charles Grant.

Filed by Mr. E. W. Buckland Plaintiff's Pleader.

14th June 1906.

In the High Court of the East Africa Protectorate at Nairobi
Civil Suit No. of 1906.

Charles Grant.....Plaintiff.

v.

Arthur Thomas Smart.....Defendant.

Special Pleading.

The plaintiff's claim is for damages for breach of a contract to sell land.

Sd/- Charles Grant.

In the High Court of East Africa Protectorate at Nairobi.

Civil Suit No. of 1906.
Charles Grant.....Plaintiff.

V.

Arthur Thomas Smart.....Defendant.

List of documents upon which the plaintiff will rely:-

- (1). Agreement between the plaintiff and defendant dated the 3rd February 1906.
- (2). Agreement between the defendant and Lord Dalmore dated 12th April 1906.
- (3). Conveyance dated 17th day of April 1906 made between the Deft of the one part and Lord Dalmore of the other part.
- (4). Conveyance dated 17th day of April 1906 between William Henry Smart of the one part and Lord Dalmore of the other part.
- (5). All documents and proceedings in suits Civil suit No.1 of 1906 between Lord Dalmore Plaintiff and the defendant herein Civil Suit No.4 of 1906 between Lord Dalmore Plaintiff and the Deft herein and William Henry Smart Defendants Civil Suit in the Provincial Court at Nairobi No. 135 of 1906 between the defendant herein as plaintiff and Lord Dalmore and Messrs Tonks and Allen Defendants.

Draft prospectus Memorandum and Articles of Association of a proposed Company to be formed for the purpose of making the land the subject of this suit into a Suburban Township and all correspondence ~~of this kind~~ documents and papers relating thereto.
Receipt dated 3rd February 1906 signed by the Defendant.

All other deeds documents papers and correspondence relating to the subject matter of this suit.

34/- Charles Grant.

A.

An Agreement made this 3rd day of February 1906 between Arthur Thomas Smart of the Central Butchery Nairobi British East Africa Settler (herein called the Vender) of the one part and Charles Grant of Nairobi aforesaid settler (hereinafter called the purchaser) of the other part The said vender will sell and the said purchaser will purchase the fee simple possession free from incumbrances of ALL THAT piece of parcel of land situate near the township of Nairobi known as Provincial number 466 and registered in the Registration of Deeds Office in the office of the Sub-Commissioner of Ukamba Province at Nairobi as 251 A of 1905 and delineated on Land office plan number 369 for the sum of Rupees Twenty Six thousand two hundred and fifty whereof the sum of Rupees one thousand shall be paid within twelve days from 3rd day of February 1906 and the residue on the 3rd day of May next at the office of Mr. W. A. Barn, Barrister-at-law, Nairobi when the purchase shall be completed THE VENDOR shall if possible within thirty days from the date thereof deliver his conveyance from His Majesty's Commissioner for the East Africa Protectorate to the said Mr. W. A. Barn UPON PAYMENT of the residue of the said sum of Rupees Twenty six thousand two hundred and fifty at the office aforesaid the vender will execute a proper assurance of the premises to the purchaser such assurance to be prepared by and at the expense of the purchaser THE POSSESSION will be retained by the vender down to the 3rd day of May 1906 or until the purchase is completed and as from that day all outgoings shall be discharged and the possession taken by the purchaser and such outgoings shall if necessary be apportioned between the vender and the purchaser IF FROM any cause whatever the purchase shall not be completed on the said 3rd day of May 1906 the purchaser shall pay interest at the rate of Rupees seven per centum per annum on the unpaid purchase money from that day until the completion of the purchase PROVIDED that if the purchaser shall

not be completed within sixty days from the 3rd day of May next the vendor may by notice in writing to the purchaser annul the sale but shall nevertheless be entitled to retain the said sum of Rupees one thousand and any other sum paid on account of the purchase money, but he shall not be entitled to any other compensation whatever. IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first above written.

and in the presence of

V.A.Durn
Barrister-at-law.

Sd/- Arthur T. Smart
Sd/- Chas. Grant.

East Africa Protectorate
Nairobi Registry

No. 29... of A....1906.

Produced by Mr.C. Grant

P. p. W.A.Durn.

and registered at his request

the Registration Office at Nairobi

in the presence of Sd/- W.A.Paillithope

Reg. Clerk.

Dated this 7th day of Febry 06

Sd/- H.B. Tate

for Principal Registrar.

Registration fee

.....
S/S.
.....

.....
-/S.

RECEIVED FOR EAST AFRICA
PROTECTORATE
Nairobi
Produced by Mr. C. Grant
Sd/- Arthur T. Smart
Sd/- Chas. Grant
SWORN BEFORE ME THIS 17
DAY OF April 1906
CH. Grant
REG. CLERK

B.

Memorandum of an agreement made the 18th day of April 1906
 between Arthur Thomas Smart of Nairobi settler of the one part and
 the Right Honourable Hugh Cholmendely Baron Delamere of N'jere of the
 other part. WHEREAS sometime ago the said A.T. Smart sold a piece
 of land containing 500 acres situate on the Dageretti Road near Nai-
 robi to the said Lord Delamere for Five hundred pounds as the said
 A.T. Smart hereby admits and WHEREAS sometime ago the said A.T. Smart
 sold another piece of land situate near the European Hospital Nai-
 robi to the said Lord Delamere Rupees Two thousand five hundred as
 the said A.T. Smart hereby admits and one of the terms of the said
 sale was that the said Delamere should pay the costs of the survey
 fees, the lease from the Govt. to the said A. T. Smart and other
 expenses and WHEREAS the said Lord Delamere has paid Rupees one
 thousand five hundred on account of the purchase monies of the two
 pieces of said to the said A.T. Smart and WHEREAS the said A. T.
 Smart has refused to complete the said purchases and to accept the
 balance of the purchase monies thereof and the said Lord Delamere
 thereupon instituted two suits against the said A. T. Smart in the
 District Registry of the High Court at Nairobi for Specific Perfor-
 mances of the said contracts for sale and for damages one of the
 said suits being numbered 1 of 1906 in the District Registry and the
 other being numbered 4 of 1906 in the said Registry and the said suit
 suits are fixed for hearing by the Principal Judge on the date of
 these presents and Whereas by an agreement dated the 3rd of Feby.
 1906 and made between the said A.T. Smart and one Charles Grant the
 the said A. T. Smart sold or purported to sell to the said C. Grant
 the said piece of land situate on the Dageretti Road for the sum
 of Rs.20000/- but the said agreement was entered into after express
 notice had been given to the said C. Grant of the prior sale of the
 said land to the said Lord Delamere and with and with full knowledge
 by the said C. Grant that it might be impossible for him the said

A.

A. T. Smart to defend any action which the said Lord Delamere might bring against him in regard to the said land and whereas after ~~hearing~~ hearing the evidence produced by the said Lord Delamere on a preliminary application made by him in the said case No. 1 of 1906 for interim injunction and the order of the Court thereon the said A. T. Smart is satisfied that it is impossible for him to ~~defend~~ defend the said action with success and whereas the said A. T. Smart has approached the said Lord Delamere with a view to settling the said two cases so brought against him as aforesaid. Now it is hereby mutually agreed by and between the parties hereto as follows namely:-

(1). The said A. T. Smart agrees to sign the conveyance to the said Lord Delamere of the said piece of land situate on the Dageretti Road Nairobi which has already been prepared by Mr. B. G. Allen Solicitor Nairobi and to obtain the signature of his Brother W.H. Smart to the assignment to the said Lord Delamere of the said land near the European Hospital which has already been prepared by Mr B.G. Allen Solicitor Nairobi.

(2). In consideration of the agreement by the said A.T. Smart mentioned in the last preceding paragraph the said Lord Delamere agrees to withdraw the said two suits Nos. 1 and 4 of the District Registry of the High Court at Nairobi so as aforesaid filed by him against the said A. T. Smart and to pay the said A. T. Smart the sum of One thousand pounds for the said two pieces of land less the Rs.1500/ already paid as aforesaid.

(3). The said Lord Delamere agrees to indemnify the said A. T. Smart against any costs and damages he may bona fide incur and be compelled to pay in regard to any action which may be brought against him by the said G. Grant in respect of the said revised agreement between him and the said G. Grant of 2nd February 1906.

The said A. T. Smart undertakes to bonafide defend any ~~suits~~ such case and resist any such claim for damages to the best of his ability

ability.

(4). Each party shall bear his own costs incurred to date in respect of the said two cases numbered 1 and 4 in the District Registry of the High Court Nairobi.

signed by the said A. T. Smart

in the presence of

(S/d) J. Marcus

(S/d) D. D. Mehta.

clerk, B. S. Allen

H.R.B.

Sd/- A. T. Smart.

signed by the said Lord Delamere

in the presence of

(S/d) J. Marcus

(S/d) D. D. Mehta

clerk B. S. Allen

H.R.B.

Sd/- Delamere

I hereby undertake and agree to execute the above mentioned assignment of the land situate near the Cemetery to Lord Delamere.

Dated the 18th April 1906

(S/d) H. H. Smart.

Witness.

(S/d) J. Marcus.

(S/d) D. D. Mehta
clerk B. S. Allen.

H.R.B.

Filed 11-27 c 6

IN THE HIGH COURT OF THE EAST AFRICA PROTECTORATE NAIROBI.

CHARLES GRANT. Plaintiff
ARTHUR THOMAS SMART...Defendant.

CIVIL CASE NO. 5 of 1906
.....

WRITTEN STATEMENT.

.....

The above-named defendant states as follows:-

1. Defendant admits paragraphs 1, 2, 3, & 4 of plaint.

2. Defendant denies paragraph 5 of plaint and says that the Agreement of the 3rd February therein referred to was purposely prepared so that the vendor could annul the same at any time after 60 days from the 3rd day of May 1906 if the purchase ~~money~~ of the land the subject of this suit was not completed within that period.

Defendant duly annulled the said agreement by notice in writing to Plaintiff dated the 15th day of July 1906 to which defendant begs leave to refer when produced.

3. On the 27th day of June 1906 defendant authorized Mr. J. Marcus a Land Agent in Nairobi to sell the land the subject of this suit at the price of £,500.

On the 28th June 1906 the said J. Marcus informed defendant that he had sold the said land to Lord Delamere, but no agreement or contract in writing was made between defendant and Lord Delamere evidencing the transaction.

4. Defendant was unable to convey the said land to Lord Dalmore at the time of the said sale and for a long time afterwards, owing to the delay of the Land Officer in completing the grant of the said land from H.M.'s Commissioner to defendant.

5. In January 1906 defendant became dissatisfied with the said sale to Lord Dalmore owing to the great ^{advance} ~~advance~~ which had taken place in the price of land.

Plaintiff who was well aware of the transaction with Lord Dalmore suggested that the defendant was not legally bound and that he should sell the land to plaintiff at an advanced price.

Defendant informed plaintiff that he had not signed any contract for sale to Lord Dalmore, but that he had received £1,200 from him in February 1906, and had given a receipt therefor, but had retained no copy of same.

6. Plaintiff then consulted his lawyer and friends and assured defendant that he was not legally bound to Lord Dalmore.

It was then arranged that the sale to plaintiff mentioned in paragraph 2 of plaint should be made.

Plaintiff took defendant to his (Plaintiff's) lawyer Mr. Burn on the 5th February, and the Agreement dated the 3rd February 1906 mentioned in paragraph 2 of plaint was then drawn up and executed.

7. The said agreement of the 3rd February 1906 was specially drawn up on the understanding that it might prove impossible for defendant to resist Lord Dalmore's claim to the land and to obtain the title deeds thereof from his Solicitor (who then held them) and it is for that reason that the said Agreement varies from the usual form of such documents.

The unusual provision that I was to retain the deposit of Rs.1000 whether the sale was completed or not was inserted with the object of recouping me for any expenses I might

might have to incur in resisting Lord Delamere's claim for specific performance of the contract previously made with him.

8. On learning of the above mentioned Agreement of the 3rd February 1906 made between plaintiff and defendant Lord Delamere immediately instituted an action against defendant for specific performance of the Agreement with him for sale of the said land, for an injunction and damages. Defendant employed plaintiff's Lawyer, Mr. Burn, to defend the said action, and to resist Lord Delamere's application for an injunction and at the first hearing before the District Registrar of the High Court defendant did all in his power to resist the application for the injunction without effect, and the injunction was granted against him. After seeing the documents produced by Lord Delamere, and hearing the arguments of his counsel at the preliminary hearing, and after taking separate legal advice defendant found it impossible to resist Lord Delamere's claim, and he therefore settled same by agreeing to convey the said land to Lord Delamere at the price originally arranged.

9. Defendant was always most anxious to carry out the Agreement with Plaintiff, as same was much more advantageous to him, and should have done so had it been possible to resist Lord Delamere's claim.

10. The said Agreement of the 3rd February 1906 between plaintiff and defendant was really made on the understanding that it might be impossible to prevent Lord Delamere obtaining the land, and that in that event the said Agreement should be annulled.

It has turned out impossible to resist Lord Delamere's claim, and the said Agreement had accordingly been annulled.

Defendant therefore prays that this suit may be dismissed with costs.

I ARTHUR THOMAS SMART the abovesnamed defendant hereby
declare that what is above written is true to the best of
my knowledge information and belief.

I ARTHUR THOMAS SMART the above-named defendant hereby
declare that what is above written is true to the best of
my knowledge information and belief.

In the District Registry of the High Court of the East Africa
Protectorate at Nairobi.

Civil Suit No. of 1906.

Between

Charles Grant.....Plaintiff

and

Arthur Thomas Smart.....Defendant.

I Charles Grant the above-named Plaintiff do hereby
appoint Mr. H. W. Buckland, Pleader, to appear and act for
in the above suit.

Dated the 14th Day of June 1906

sd/- Charles Grant.

Witness:-

sd/- Joseph Fernandes

clerk to

Mr. H. W. Buckland.

Court Clerk

It is impossible for me to prepare written statement in case of Grant v. Smart until I get copy of file which I understand you are getting up from Mombasa for Mr. Buckland and Smart.

Will you please arrange adjournment from 2nd July and wire for the file?

Yours

Sd/- B.G.Allen.

In the Dist. Reg. of the High Court

AT NAIROBI.

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EAST AFRICA PROTECTORATE.

Application for summons
PARTICULARS OF PLAINT.

Civil Case No. 6 of 19 06.

Applicant's full name... **Charles Grant.**

Nationality... **European**

Place of abode... **Nairobi.**

Religion... **Christian.**

Occupation... **Settler.**

Caste... **-----**

Nature of claims stating money value if any... **Rs.36,750/-**

As per plaint attached and for costs.

Name of Defendant... **Arthur Thomas Smart.**

Nationality... **European.**

Place of abode... **Nairobi.**

Religion... **Christian.**

Occupation... **Butcher & settler.**

Caste... **-----**

Where cause of action arose or object in dispute is situated... **N A I R O B I .**

Fees charged.

Has there been previous litigation over this matter?

Summons Clerk.

..... declare that what is stated above is true to the best of my knowledge, information and belief.

14th June 1906.

Mark or Signature of applicant

Sd/- Charles Grant.

IN THE Dis. Reg. of the High COURT

177

AT NAIROBI.

EAST AFRICA PROTECTORATE.

Case No. 5 of 1906.

C. Grant.

Plaintiff.

A. T. Smart.

Defendant.

H. W. Buckland Esq., for Plaintiff.

B. J. Allen Esq., for defendant.

Whereas the hearing of the above case has been fixed for the 16th day of July 1906 at 10 o'clock in the forenoon before the Town Magistrate at NAIROBI. And whereas the Town Magistrate's office is situated at NAIROBI. And whereas the Town Magistrate is authorized to act for you the case will be heard and decided in your absence.

Given under my hand and the Seal of the Court this 11th day of July 1906.

H. K. Tate for Town Magistrate.

EAST AFRICA PROTECTORATE.

Received a true copy of written Notice
Shs 12th day of July 1906
Ld. B. G. Allen

Received Service
At H. H. Buckland
12/7/06

Only served upon the Plaintiffs of the parties
concerned by Robert Court orderly

Ld. P. P. Radestaw
Court Clerk

TOWN

NAIROBI

Date 11-7-1906

RECEIVED.

TOWN HALL CHAMBERS.

NAIROBI.

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11th July, 1906.

The District Registrar.

High Court

Nairobi.

Sir,

Civil Suit No.5 of 1906.

Grant. v. Smart.

Please to issue Subpoena *duces tecum* herein to the Registrar of Documents or his clerk at Nairobi to appear and bring with him at the hearing of this suit the following documents.

- (1). Agreement between plaintiff and defendant dated 3rd Feb. 1906 No.29 A. of 1906- relating to land Provincial Number 466.
- (2). Agreement dated 12th. April 1906. Between Defendant and Lord Delamere- relating to the same land.
- (3). Conveyance dated 17th April 1906 between the same parties and relating to the same land Register No.251⁴ of 05 and aliother documents relating to the above land No.466

Please also issue Subpoena *duces tecum* herein to Mr.S.G.Fiehat to bring with him certain agreement and Memorandum and articles of Association and all other documents and papers relating to the land the subject matter of this suit and in his possession.

Please also issue Witness summonses to A.S.Frew. R.O Preston, A.E.Linton and T.A.Wood & all of Nairobi.

Yours faithfully.

Sd/- H.W.Buckland.

IN THE Dist. Reg of the High COURT
AT NAIROBI.
EAST AFRICA PROTECTORATE.

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CIVIL CASE No. 5 OF 1906,

C. Grant.

Prosecutor.

VERSUS.

A. T. Smart.

Defendant.

To Captain S.C. Fichat.

You are hereby commanded in His Majesty's name to attend the
Court on 16th day of July 1906 at 10
o'clock in the Fore or as soon thereafter as the case can be heard as
and to bring certain agreement and
witness in the above case

Memorandum and articles of Association and all other
documents and papers relating to the land the subject matter
of this suit and in your possession.

Dated this 12th day of July 1906.

This Semmons has been issued on
the application of Plaintiff.

Sd/- F. G. Hamilton

IN THE *Dist Registry of the High* COURT
AT *Nairobi*

180

EAST AFRICA PROTECTORATE.

CIVIL CASE No. *5* of 190*6*.

C. Grant

} Prosecutor.

versus.

A. J. Smart

} Defendant.

To *A. J. Frow* (2) *A. G. Proctor*

(3) *A. E. Linton* (4) *J. A. Mord*

You are hereby commanded in His Majesty's name to attend the

Court on *16* day of *July* 190*6* at *10*

o'clock in the *forenoon* or as soon thereafter as the case can be heard as

witness in the above case

Dated this *12* day of *July* 190*6*

This Summons has been issued on

the application of *9/11*

J. G. Hamilton
for Judge.

Received notice

sd/ A. T. Frew

sd/ A. G. Preston

sd/ A. E. Linton

sd/ Jas a Wood

sd/ Robert

Court Orderly

12-7-06

Duly served by ^{Robert} Court Orderly on
witnesses named on the reverse
herein on 12th day of July 1906

sd/ P. P. Radcliffe

Court Clerk

In The District Registry of the High Court at Nairobi, 181

Civil Case No. 5 of 1906.

Charles Grant.....Plaintiff. A.T.Smart.....Defendant.

Costs of Plaintiff

Costs of Defendant.

16/6/06.	Writing Application.	0-8:0
"	Summons.	378:0:0
"	Service.	£ 1:0:0
"	Wakala filing.	3:0:0½

IN THE High Court COURT

182

AT Mombasa

EAST AFRICA PROTECTORATE.

CIVIL CASE No. 57 OF 1906.

Charles Grant

VERSUS,

Arthur Thomas Smart

Let all parties concerned attend the Judge in Chambers, High Court,
Mombasa, on the 22nd day of August 1906,
at 3 1/2 o'clock in the *after noon* ~~when the Court will be moved~~
on the part of *the Plaintiff* on the hearing of an application

That the decree passed in the above case may be transferred to be executed by the Provincial Court at Nairobi under Sec 223 of the Code of Civil Procedure

Dated 23rd day of August 1906.

This summons was taken out by *Solicitor* ~~counsel~~ for the *Plaintiff*

Sd/ Asmond Jones
for Mr. Buckland

charter

Civil Case No.5 of 1906.

Charles Grant.....Plaintiff.

v.

Arthur Thomas Smart.....Defendant.

I Oswald Tonks of Mombasa East Africa Solicitor make oath say as follows that is to say:-

1. I appear in the above case as holding a Brief for H.V. Buckland of Nairobi Solicitor for the plaintiff.
2. I have to-day received a telegram from the said H.V. Buckland instructing me to apply at once for execution and immediate attachment of the defendant's assets as otherwise the plaintiff risks substantial loss.
3. Judgment was passed by this Honourable Court on the 21st Inst for the sum of Rs.34900/7 and costs.
4. The costs of the said suit have not been ascertained up to the present time.
5. The telegram referred to in paragraph 2 is now shown to me attached hereto and marked A.
6. To the best of my knowledge the defendant actually and voluntarily resides or carries on business or personally works for gain within the local limits of the jurisdiction of the Nairobi Court.
7. From the information I have received I verily believe that if the execution of the decree in the above case is not immediately granted the Plaintiff is likely to suffer material loss.

TAKEN AT MOMBASA

Sd/- Oswald Tonks.

This 24th day of August 1906

Before me

Sd/- J.W.H. Parkinson.

M.A.

23-8-06

To.

Touks

Mombasa.

Grant versus Smart please apply at once for
execution herein and wire same to Court here for
immediate attachment defendants assets otherwise
plaintiff risks substantial loss.

From.

Sd/- Auckland.

Town Magistrate's Office,
Nairobi,
June 20th, 1906.

REMITTANCE.

of the costs collected in the District Registry
of the High Court at Nairobi.

Sir,

I have the honour to forward herewith Treasury draft
No. 274 dated the 20th June 1906 for Rs. 322-8-0, being the
costs of the following civil action, filed by Mr. H.W. Buck-
land in the District Registry heret-

CIVIL CASE No. 5 of 1906.

Charles Grant.....Plaintiff.

versus.

Arthur Thomas Smart.....Defendant.

Claim for Rs. 26,750/- damages for breach of contract to
sell land.

Writing application for summons..	Rs.	0-8-0
Summons.....	"	322-0-0
Service.....	"	1-0-0
Vakalla for Mr. Buckland.....	"	1-0-0

Total Rs. 322-8-0.

I have the honour to be,

Sir,

Your obedient servant,

Sd/- H.A. Logan.

Town Magistrate.

To,

The Registrar,
High Court,
N O T E S A S A.

Town Magistrate's Office.

NAIROBI,

August, 8th 1906.

Re costs of actions filed in the Dist. Reg: at
Nairobi

Sir,

I have the honour to forward herewith Treasury
Draft No. 277 for Rs. 160:8:0 being the Court costs
collected here, for actions filed in the District
Registry of the High Court, Nairobi, and per appertien-
ment sheet attached.

I have the honour to be,

Sir,

Your obedient servant.

24/- H. R. Logan.

Town Magistrate.

To,
The Registrar,
High Court,
Nairobi.

Of Treasury Draft for No. 100,000 forwarded to you
with this office letter No. 379/06, dated the 28th August 06

Court fees in actions, filed in the District Registry
of the High Court at Nairobi.

Civil Case No. 2/06 King v. Greenlaid

Summons and Service. 20. 0. 0.

Vakalla Duskland. 5. 0. 0.

Writing application for summons 8. 0.

Interlocutory application 1/, Order: 2/.

Servd: 1/, Swearing affidavit 1/; 7. 0. 0.

Temporary injunction. 10. 0. 0.

And Interl Application same as above. 7. 0. 0.

Civil Case No. 3 /06 Grant v. Smart

Witness summonses for Plaintiff. 15. 0. 0.

Civil Case No. 4/06 H.G. Culliver versus

J.A. Raybe

Summons and service. 20. 0. 0.

Vakalla Dughill. 5. 0. 0.

No. 100. 0. 0.

R & S. L.

Dated at Nairobi,

5th August 1906.

24/- H. A. Logan.

Town Magistrate.

IN THE District Courts of the High COURT

188

at Nairobi

EAST AFRICA PROTECTORATE.

CIVIL CASE No. 5 of 1906.

Charles Grant

Prosecutor.

VERSUS.

A. J. Smart

Defendant.

To Mr P. K. Shandy

You are hereby commanded in His Majesty's name to attend the Court on 17 day of July 1906 at Five o'clock in the afternoon or as soon thereafter as the case can be heard as witness in the above case

Dated this 17 day of July 1906

This Summons has been issued on

the application of Self

(19)

JUDGE.

Adj. P. Ghandy.

Adj. Robert
Court. Ghandy
17-7-06

Buty owned by Robert Court
on 17 July 1906

Adj. W. P. Lewis
Court Interpreter
Kasohi

In the District Registry of the High Court of the East

African Protectorate, Nairobi.

Case No. 5 of 1906.

G. Grant.....Plaintiff.

versus.

A. T. Smart.....Defendant.

I hereby nominate and appoint B.G. Allen to be
my Solicitor and Attorney to appear and act for me
in the above matter..

Dated this 16th day of July 1906.

sd/- A. T. Smart.

Received fees Rs. 5/-.

11
16, O.T.

16-7-06.

Exhibits produced by plaintiff.

- Exhibit. 1. Receipt.
- 2. Agreement between Smart & Co., Grant.
 - 3. Mr. Allen's letter. A.T.Smart D/ 5-2-06.
 - 4. Mr.Allen to Mr.Grant.
 - 5. List of application for shares.
 - 6. Prospectus
 - 7. Articles of association.
 - 8. File in Nairobi Dist Regy Civil Suit No.1/06
 - 9. Do Do Do Do. 4/06
 - 10. Do. Town Magistrate.Civil Suit No.15/06.
- A. Tenks and Allen to Smart..

IN THE *District Registry of the High* COURT
AT *Nairobi*

191

EAST AFRICA PROTECTORATE.

CIVIL CASE NO. *5* of 190*6*

Charles Grant

Prosecutor.

versus.

A J Smart

Defendant.

To *J. A. Rayne*

You are hereby commanded in His Majesty's name to attend the
Court on *16* day of *July* 190*6* at *12*
o'clock in the _____ of as soon thereafter as the case can be heard as
witness in the above case *and to produce your books*
relating to the month of June 1914

Dated this *14* day of *July* 190*6*

This Summons has been issued on

(LS)

the application of *Defendant*

J. G. Hamilton
for Asst. JUDGE.

IN THE District Registry of the High Court
AT Nairobi
EAST AFRICA PROTECTORATE.

192

CIVIL CASE NO 67 of 1906.

C. Grant

} Prosecutor.

versus.

A. J. Smart

} Defendant.

To The Registrar of Documents
or His Clerk
Mombasa

You are hereby commanded in His Majesty's name to attend the

Court on 16 day of July 1906 at 10

o'clock, in the _____ or as soon thereafter as the case can be heard as

witness in the above case and to produce (1) Agreement between
Puff and Doft dtd 3rd Feb '06 No 221 of '06
relating to land provincial number 466

Dated this 12th day of July 1906

This Summons has been issued on

the application of Puff

Sd/- F. G. Hamilton
for Town Magistrate
Jurat.

- (2) Agreement dated 12 April 1906 between defendant
Lord Selkirk relating to the same land
- (3) Conveyance dated 17 April '06 between the same
parties and relating to the same land. Register No
of 1905 and all other documents relating to the above
land No 466

H. F. G. H.

for Town Magistrate

Telegram

193

31-206

Registrar,

Law Courts

MEMORANDUM.

Grant against Smart please send copy evidence
by first train.

From

B. G. Allen.



NAIROBI.

East Africa.

22nd August 1906.

Sir,

Grant v. Smart,
Nairobi District Registry
No. 5 of 1906.

I beg to enquire whether the file in this matter can be returned to Nairobi, as both parties and their pleaders are here and it will be probably more convenient to make any applications that may be necessary before the Local Law Registrar.

If this cannot be done will you be good enough to supply me with a plain copy of the judgment, if possible by next mail?

I hereby undertake to pay the charges as soon as you inform me of same.

I have the honour to be,

Sir

Your obedient servant,

Sd/- B.S. Allen.

J.W.H. Parkinson, Esq.,
Registrar, Law Courts,

MOMBASA.

Mombasa

East Africa.

27th August 1906.

Sir,

Grant v. Smart.

I have been instructed by Mr. Allen to appear on the taxation of the plaintiff's costs herein: I understand Mr. Tonks appears for the plaintiff: I have ~~written~~ written to Mr. Tonks suggesting Monday next the 3rd September as a suitable date for the taxation: Will that date suit you?

I am

Sir,

Your obedient servant.

Ed/- J.M. Byron.

The Registrar

High Court.

NAIROBI,

British East Africa

13th August 1906.

The Registrar,
High Court

Sir,

Civil Suit No. 5 of 1906.

Grant v. Smart.

I shall be obliged if you could kindly ascertain from His Honour Judge Barth when we may expect judgment in this action which was heard on the 16th ulto.

I have the honour to be,

Sir,

Your obedient servant.

H/- H.W. Duckland.

Plaintiff's pleader.

IN THE *Central Registry of the* ^{High} COURT
AT *Nairobi*
EAST AFRICA PROTECTORATE.

197

Case No 5/06

Nairobi 12 July 1906.

No. *A/308*

Sir,

Witness

I have the honour to transmit herewith in duplicate a ^{*Notice*} ~~Summons~~
which *has* been issued by *the* Court and to request
that you will have the kindness to cause *it* to be served upon

yourself or your clerk

The duplicate of the ^{*Notice*} ~~Summons~~ should be left with that person. The original
should be signed by *him* ^{*or you*} and then returned to *this*
Court with an endorsement showing the time and manner in which service
was executed.

Date of hearing *16* day of *July* 190*6*.

I have the honour to be

Sir,

Your most obedient,
humble servant,

J. G. Hamilton
for Town Magistrate
East Africa Protectorate

To

The Registrar
of Documents

Mombasa

Grant
refused
Smart

IN THE *Honorable* ~~Supremacy~~ of the High COURT

AT *Nairobi*

EAST AFRICA PROTECTORATE.

198

CIVIL CASE No. *5* OF 190*6*

C. Grant

Prosecutor.

VERSUS.

A. J. Smart

Defendant.

TO *The Registrar of Documents*
or his Clerk

You are hereby commanded in His Majesty's name to attend the Court on *16* day of *July* 190*6* at *10*

o'clock in the *morning* or as soon thereafter as the case can be heard as

witness in the above case *and to produce (1) Agreement between Pff and Deft. d/d 3rd Feb '06 No 291 of 1906 relating to land provincial No 466 (2) Agreement dated 12th April 1906 between*

Dated this *12* day of *July* 190*6*

This Summons has been issued on

the application of *Pff*

Sgt. F. G. Hamilton
for Town Magistrate
J.P.O.

~~(1) Agreement dated 17th April 1906 between~~

(2) Agreement dated 17th April 1906
between defendant and Mrs Belamere
relating to the same land.

(3) Conveyance dated 17th April 1906
between the same parties and relating
to the same land Register No. 2
of 1905 and the other documents relating
to the above land nos. 460.

(2) F. G. H.
For Town Magistrate

IN THE HONORABLE MAGISTRATE'S COURT OF THE EAST AFRICA PROTECTORATE
AT NAIROBI.

199

Nairobi, 21st August, 1906.

No. A/367.

Sir,

I have the honour to inform you that the judgment notice in Case No. 8 of 1906, forwarded to me with your letter of the 14th Inst: has been duly served and is returned herewith.

I have the honour to be,

Sir,

Your obedient servant.

Sd/- E.R. Logan.

Asst: Judge

Nairobi.

East Africa Protectorate.

To.

The Registrar,
High Court.
Mombasa.

In the District Registry of the High Court at
Nairobi.

EAST AFRICA PROTECTORATE.

Civil Case No.5 of 1906

Charles Grant.....Plaintiff.

v.

Arthur Thomas Smart.....Defendant.

Take notice that the judgment in the above case
will be delivered in the High Court at Mombasa on
the 20th day of August 1906 at 9-30 o'clock in the
morning.

Given under my hand and seal of the Court, this
14th day of August 1906,

J.W.H. Parkinson

Ag: Registrar.

High Court E.A.P.

B.G. Allen Secy.,

H.F. Buckland Secy.,

NAIROBI.

Recd 18/8/06
J.W.B.

Town Magistrate's Office,

Nairobi,

August 29th 1906.

Sir,

I have the honour to acknowledge the receipt of your letter numbered C/738, dated the 24th Instant, and in reply to inform you that the notices in question were delivered here at about 2.30 on the 15th August.

The Court Clerk State that he gave them the same evening to one of the Court orderlies for service. The Court orderly however states very positively that they were given to him for service on the evening of the 17th, and that he served both of them the next morning (Saturday) at 9.30 a.m. I regret that I am unable to unravel the matter further. In any case the train for Mombasa does not leave till 12.30 on Saturday morning.

I desire to point out that the time allowed by you for service was too short. There is a great deal of office work here and I have only one clerk who is capable of supervising the office work here and at present the greater part of his time is occupied interpreting in Court. I fear that unless I can be provided with another capable clerk, as I have frequently asked, small oversights of this nature are bound to occur. I am writing to the Judge in regard to this matter.

I have the honour to be, Sir,

Your obedient servant,

Sd/- E.A. Logan.
Town Magistrate.

The Registrar,
High Court.
MOMBASA.

IN THE District Registry of the High Court

AT SAIROBI.

202

EAST AFRICA PROTECTORATE.

CIVIL CAUSE No. 52 OF 1906.

Charles Grant.

} Plaintiff.

versus.

Arthur Thomas Smart.

} Defendant.

DECREE.

Claim for Rs. 55,750/-.

This cause coming on 15th, 17th & 18th July and 21st August

1906 for final disposal before J.W. Barth Esq.

Esq.: Principal Judge, in the presence of H. W. Buckland.

on the part of the plaintiff and B.G. Allen.

on the part of the defendant, it is ordered that Defendant.

do pay to the Plaintiff the sum of Rs. Fifty-five thousand

and hundred and fifteen and annas six only being the amount

of damages allowed, interest on Rs. 1000/- part of the purchase price
of judgment and costs.

	Hs.	as.	p.
Principal	54,000	-	-
Interest	49	8.	-
Costs	521	8.	-
Cost of Decree	4	8.	-
Total...	55,025	8.	-.

54/- J. W. Barth

Actg: Principal Judge.

Dated this 21st day of August 1906.

Certificate given under Section 224
of the Code of C. P.

IN THE High Court COURT

AT Nairobi

EAST AFRICA PROTECTORATE.

CIVIL CASE No. 5 1906

Charles Grant Plaintiff.

versus

Arthur Thomas Smart Defendant.

I hereby certify that no satisfaction of the final Decree passed in the above Suit on the 21st day of August 1906, has been obtained by execution within the Jurisdiction of this Court.

Given under the Seal of the Court, this 6th day of September 1906.

Acting Registrar

East Africa Protectorate.

To

NAIROBI,

203

East Africa.

31st August, 1906.

Sir,

I beg to acknowledge yours of the 23rd Inst. No. C/731. I would be glad to know what the memos No. 225 and 226 for Rs. 1/ and Rs. 2/8/- respectively are for. I have never received the memos in question.

On hearing from you, I will of course forward a cheque.

Your obedient servant.

Sd/- B.G. Allen.

J. W. H. Parkinson, Esqr.,

Registrar Law Courts.

Mombasa.

NAIROBI,

East Africa,

31st August, 1906.

Sir,

Grant v. Smart.

Nairobi District Registry No.5 of 1906.

I have to acknowledge yours of the 24th inst. enclosing copy Judgment herein and docket for Rs.4/- copying charges, and beg to thank you for your quick delivery of the copy.

I wired you to-day for a copy of the evidence and will send you a cheque for the Rs.4/-, and charges for copy evidence together.

I have the honour to be,

Sir,

Your Obedient Servant.

Sd/- B. G. Allen.

J.W.H. Parkinson, Esqr.,

Registrar/ Law Courts,

Mombasa.

IN THE ^{High} District Registry of the COURT

AT Harare

EAST AFRICA PROTECTORATE.

205

CIVIL CAUSE No. 5 OF 1906

Charles Grant

Plaintiff.

versus.

Arthur Thomas Smart

Defendant.

DECREE.

Claim for Rs 36,730/-

This cause coming on 16, 17, 18 July and 21 August

1906 for final disposal before J. W. Barak

Actg. Principal

Esquire, Judge, in the presence of H. B. Buckland

on the part of the plaintiff and B. G. Allen

on the part of the defendant, it is ordered that the defendant do pay

to the Plaintiff the sum of thirty five thousand

nine hundred and fifteen and annas six only being amounts of
damages allowed with on Rs 15,000/- part of the above money at the
rate of 4% to date of judgment
and costs

	Rs.	as.	p.
Principal	34,900	-	-
Interest	49	8	-
Costs	96	6	-
Cost of Decree	4	8	-
Total	35,915	6	-

J. W. Barak

Actg. Principal Judge.

Town Magistrate's Office,

N A I R O B I,

October 22nd 1906

Transfer Decree No.4 of 1906.

(Original Civil Case No.5 of 1906, of the District

Registry of the High Court at Nairobi)

Charles Grant.....Plaintiff (Decree-holder)

Arthur Thomas Smart.....Defendant (Judgment debtor)

Sir,

With reference to your letter No.218, dated the 6th, September last, I have the honour to forward herewith on application of Mr. Buckland for Decree-holder, a Certificate under Section 225, clause (d) para (3) of the Code of Civil Procedure.

The copies of orders passed by this Court in aid of execution are attached for your information, to the said certificate, and please note that the costs incurred by the decree holder regarding these orders amount to Rs.39/-.

I have the honour to be,

Sir,

Your obedient servant,

24/- H.A. Logan.

Town Magistrate,

Nairobi.

The Agt Registrar,
High Court, N.A.P.

N O R B A S A

Certificate given under Section 224 2 & 3 clause 3 of the Code of C. P.

207

IN THE Town Magistrate's COURT

AT Nairobi

EAST AFRICA PROTECTORATE

Original CIVIL CASE No. 5 1906. of the 1st
Registry of the High Court, at Nairobi
Transfer Decree No 4 of 1906

Charles Grant

Plaintiff.

Charles Grant

VERSUS.

Arthur Thomas Smart

Defendant.

Arthur Thomas Smart

Partial

I hereby certify that ~~in~~ satisfaction of the final Decree passed in the above Suit on the 21st day of August ^{to the extent of Ksh 100/-} 1906, has been obtained by execution within the Jurisdiction of this Court.

Given under the Seal of the Court, this 20 day of October 1906.

(L.S.)

E. R. Logan
Town Magistrate
Nairobi
East Africa Protectorate.

the 4 copies of which are attached herewith
Certified that no order has been filed in this Court for execution of the
Decree, and that partial satisfaction to the extent of
has been obtained within the jurisdiction of the Court

Dated this 20th day of October 1906.

M. E. R. Logan
Town Magistrate
Nairobi
Registrar.

the 4 copies of which are attached hereto
Certified that no orders have been filed in this Court for execution of the
Decree, and that partial satisfaction to the extent of
has been obtained within the Jurisdiction of this Court

Dated this 20 day of October 1906.

M/ E R Logan
Town Magistrate
Nairobi
Registrar.

In the Town Magistrate's Court at Nairobi.

Transfer Decree No. 4 of 1906.

Original Civil Suit No. 5 of 1906 in the District

Registry of the High Court at Nairobi.

Charles Grant.....Plaintiff

(Decree holder.)

A. T. Smart.....Defendant.

(Judgment debtor.)

Copies of 4 orders passed by the Town Magis-
trate Nairobi in aid of execution of decree in above
suit.

20-10-06.

Id/-P.P.D.

(1).

Court orders £.50/- paid to debtor by Lord Delamere and now standing to his credit at the National Bank of India Nairobi to be attached. Further order restraining debtor from disposing of his interest in the butchery business of Smart and McCall. Further it appears that monies belonging to the partnership of Smart & McCall Butchers Nairobi are at the Bank of India Nairobi standing in the sole name of A.T.Smart. The Court orders Mr.C. Rely of Newland Tarlton & Co. to be appointed Interim Receiver of all monies to credit of A.T.Smart at Bank of India & to pay out such sums as are necessary for carrying on the Butchery business & to receive such sums as are paid in the course of his business from the said butchery business, the terms under which Mr.Rely is to pay out & receive such sums to be agreed between Mr.Backland and Mr.Allen & to be filed in Court & become an order of Court, question of committal of J. debtor to civil imprisonment adjourned to 19th, Sept. 06 at 10 a.m. Mr.McCall becoming security for appearance of J.debtor at that time in the sum of Rs.1,000.

S/d) H.R.Legan

18-9-06.

In the Town Magistrate's Court at Nairobi.

Transfer decree No. 4 of 1906

Original civil case No. 5 of 1905 of the District Registry of
the High Court, Nairobi.

Charles Grant. v A.T. Smart.

ORDER OF THE COURT.

The debtor is before the Court on an application to commit him to civil imprisonment for not paying the amount of decree made against him in the High Court on the 21st, August 1906 for Rs. 35,915-6-0. The decree was transferred to this Court for execution & application for execution was made on 15th, September 1906, the application was adjourned to 20th, September, as it appeared that the debtor intended to appeal against the decree; it now appears that the debtor has no intention of appeal & that the security which the debtor stated he would be able to offer does not exist.

The facts, leading up to this application are somewhat peculiar & appear from the plaint & other documents, filed in the High Court action, which are now before me.

Quite briefly, they are as follows:-

The debtor entered into contracts to sell a certain piece of land to 2 different people, viz., Charles Grant, the Decree-holder & Lord Delamere, being apparently aware that such action must inevitably land him in an action for damages from one or other of the vendees, when he sold the land to Lord Delamere, he obtained from him an indemnity "against any costs & damages he may bona fide incur and be compelled to pay in regard to any action which may be brought against him by the said Grant" in respect of his Agreement to sell the land to Grant & the debtor undertook to bona fide defend any such case & resist any such claim for damages to the best of his ability.

In due course an action was brought against Smart by Grant with the inevitable result that Smart was ordered to pay heavy damages to Grant

Grant Rs. 35,000 odd.

The case was fought out in the High Court & during the greater part of 3 days was contested apparently with the utmost rigour; Mr. Allen, who now acts as adviser to Lord Delamere, appearing on behalf of Smart. Yesterday the debtor appeared in Court in consequence of an affidavit sworn by Grant & stated that he had released Lord Delamere from his indemnity in return for a cash payment of £.50/- only.

Absolutely the only explanation, he can give for his extraordinary conduct, is that Lord Delamere was not satisfied with the way in which he had fought the case & he thought he had better take what he could get & further that he thought he could get nothing from Lord Delamere until he had paid Grant & also that he thought he had got to appeal. When pressed by the Court for an answer he had admitted somewhat reluctantly that he fought the case bona fide & to the best of his ability, but he has seemed anxious to make much of the fact that he forgot to mention in his evidence certain facts which might have been of importance. Mr. Allen, who now appears for Smart has tried to suggest that there was some collusion between Grant and Smart in the High Court action. The suggestion comes strangely from the very pleader who appeared for Smart in the High Court action. There is in fact not a little of evidence in support of the suggestion. So far as can be seen the action was fought bona fide and the debtor had a good claim against Lord Delamere on the indemnity for the costs & damages given against him in the High Court action. The indemnity says not one word about an appeal to any other Court. Yet in the face of this, Smart accepts £50/- for his rights & now states is unable to satisfy the decree against him. It is one of the most extraordinary things which has ever come under my notice and reflects little credit upon anyone concerned in it.

Section 357A of the Code of Civil procedure says that before refusing an application for civil imprisonment, the Court may take into consideration:-

- (1). the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date or any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree holder in the execution of the decree;
- (2). any undue or unreasonable preference given by the judgment debtor to any of his other creditors.

I have no hesitation in saying that the debtor has given an undue preference to a man against whom he had prima-facie a good claim in Law. If he could not have recovered the money otherwise, he should have sued for it or at the very least taken the best legal advice available. He has not attempted to do either. Such conduct appears to me to be an act of bad faith with the object of obstructing the decree-holder in the execution of the decree.

The order of the Court is for the debtor either to pay the amount of the decree or to find satisfactory security for it forthwith, or in default to be committed to Civil Imprisonment for six months.

(Sd) E. R. Logan.

19th, September 1906.

I hereby certify that
this is a true copy
of the original

Sd/- E.R.Logan.

Town Magistrate.

NAIROBI

5-10-06.

21. Sept, 1906

Mr. Buckland for decree-holder; Mr. Allen for judgment-debtor.

Mr. Buckland mentions the order made by the Court on 18th Sept 06 in regard to the appointment of Mr. Rely as receiver & states that Mr. Rely is unable to act.

After discussion it is agreed.

- (1). that Mr. T.A. Wood be appointed interim receiver of the business of McCall & Smart and that he open a fresh account at the --- National Bank of India Nairobi in his own name as receiver.
- (2). that all monies now in the or hereafter received over the counter in respect of ~~the~~ business done by McCall & Smart prior to 20th Sept 06 be handed over daily to Mr. Wood as receiver and that any sums received provisionally by Mr. ~~McCall & Smart~~ Rely in the capacity of Receiver be handed over by him to Mr. Wood, and that out of such sums received by Mr. Wood, Mr. Wood is to pay off the liabilities of the business of McCall & Smart incurred previous to the 20th September 1906.
- (3). that Mr. McCall is to find the capital for carrying on the business of McCall & Smart from the date hereof until the 1st Oct. 1906 & is to have a first charge on the business of McCall and Smart in respect of any such capital found by him.
- (4). that in the meantime Mr. Wood is to ascertain the position of the business of McCall & Smart, its value as a going concern & its assets & liabilities, with a view to an equitable arrangement between Mr. McCall & the judgment ~~debtor~~ creditor on Oct. 1st
- (5). that Mr. Wood's remuneration is to be fixed by the Court at a later date.

(S/d) H.R. Logan.

21-9-06.

On application by decree holder to attach a debt alleged to be due to the judgment debtor on an indemnity bond given to him by Lord Delamere.

The Court rules that in as much as the sum claimed as a debt to the judgment debtor from Lord Delamere is disputed by the latter, the proper course is to appoint a Receiver under Section 603 of the Code of the Civil procedure to test the liability of Lord Delamere by an action, vide, Toolsa Goolal & others v. Jehn Antone, XI Bombay Reports, p.448.

Mr.T.A.Wood is appointed Receiver.

(s/d) E.R. Logan.

27-2-06.

ZANZIBAR,

British East Africa.

22nd October 1906.

THE REGISTRAR
HIGH COURT
ZANZIBAR

Civil Suit No. of 1906.

Grant, v. Smart,

Sir,

In this suit application was made to transfer the Decree for execution to the Magistrates Court here and I am now instructed to apply for the return of the decree and papers for execution by the High Court and I shall be obliged if you will apply to the Judge for that purpose.

I should of course apply through Mr. Tenks but he is away in Zanzibar and the matter is somewhat urgent. The defendant Smart is now undergoing Civil imprisonment in Mombasa jail and will require to be before the Court.

I shall be obliged if you could bring the matter before Judge Barth and ask for the return of the Decree and file of proceedings in regard thereto in the Town Magistrates Court here and that this may be done by telegram as the matter is urgent - Any costs of the telegram I undertake to defray.

I have the honour to be,

Sir,

Your obedient servant.

Sd/- H. W. Bushland.

Nairobi,

British East Africa.

22nd. October 1906.

The Registrar,

High Court,

Mombasa.

Civil Suit No. of 1906.

~~.....~~ v. Smart.

Sir,

In this suit application was made to transfer the Decree for execution to the Magistrate's Court here and I am now instructed to apply for the return of the Decree and papers for execution by the High Court and I shall be obliged if you apply to the Judge for the purpose.

I should of course apply through Mr. Jenks but he is away in Mombasa and the matter is somewhat urgent. The Defendant Smart is now undergoing civil imprisonment in Mombasa Jail and will require to be before the Court.

I shall be obliged if you could bring the matter before Judge North and ask for the return of the Decree and file of proceedings in regard thereto in the Town Magistrate's Court here and that this may be done by telegram as the matter is urgent - Any costs of the telegram I undertake to defray.

I have etc.

Ed. N. W. Auckland.

IN H. M. COURT FOR EAST AFRICA
AT MOMBASA.

217

APPLICATION FOR EXECUTION OF DECREE ²⁶⁸ C. P. C.

In the District Registry at Nairobi
Civil Suit No. 5 of 1906

Parties *Charles Grant v Arthur Thomas Smart*

Date of decree *21st August 1906*

State if appeal has been preferred *No*

State if there has been any settlement subsequent to the decree *No 186/ has been
paid into court by The National Bank of India at Nairobi
on the 19th Sept 1906*

State if there has been a previous application for execution
See attached paper A.

State amount due under decree with interest, if any, or other relief granted
No 35915-6-

State amount of costs *966/-*

State name of person against whom enforcement is sought *The Right Hon Hugh
Chelmondely Baron Selamere of Nigeria East Africa*

State mode in which the assistance of the Court is sought *By the attachment of
of No 35915-6- due from Lord Selamere to the defendant under a
agreement dated 12 April 1906 under Sec 268 Civil Process
Code and for the issue of the necessary prohibitory order*

Verification.
*What is stated above is true to the best
my knowledge information + belief
Respectfully Yours*

A.

- 10- 9-06. Application made under sec.235 Civil Procedure Code
Notice issued under sec.248 Civil Procedure Code.
- 13- 9-06. Adjourned to 20 Sept 1906 for debtor to lodge appeal
and if no appeal execution to go on application.
- 18- 9-06. Application made under sec.337A Civil Procedure Code
for arrest of judgment debtor.
- 18- 9-06 Application to attach Rs.750 in hands of National
Bank of India .
- 19- 9-06. Rs.186 paid into Court by National Bank of India at
Nairobi.
- 19- 9-06 Defendant committed to civil Imprisonment for six
months.
- 25- 9-06. Application to attach debt due by Lord Delamere to
defendant under sec.266 Civil Procedure Code.
- 27- 9-06. Order that a receiver be appointed under sec.503 Civil
Procedure Code but debt not attached.
- 9-10-06. This order was reversed on appeal.
- 10-10-06. Application for attachment of debt due by Lord Dela-
mere to defendant under section 266 Civil Procedure
Code.
- 12-10-06. Application withdrawn nothing done.
- 20-10-06. Certificate of satisfaction issued by Nairobi Court.

54/- Edward Tenks

Solicitor for plaintiff.

In the High Court of the East Africa Protectorate.

Case No. 5 of 1906.

Charles Grant.....Plaintiff.

versus.

Arthur Thomas Smart.....Defendant.

I hereby nominate and appoint Osmand Tonks to be
my Solicitor and Attorney to appear and act for me in
the above matter.

Sd/- Charles Grant.

Dated this 9th day of November 1906.

Town Magistrate's Court,

Nairobi,

October 24th 1906.

No. 514/06.

Sir,

In reply to your telegram of yesterday's date, I have the honour to forward herewith typewritten copies of proceedings in Grant v. Smart, the copies of the orders are not there as they have already been detached and forwarded to you with certificates under sec. 225(d) para 5 Civil Procedure Code.

I have the honour to be,

Sir,

Your most obedient servant.

sd/- E.R. Logan.

Town Magistrate.

To.
The Agt. Registrar,
High Court,
Nairobi.

Town Magistrate's Court,

V A I R A T I,

October 21st 1906.

Civil Case No. 5 of 1906.

Sir,

In reply to your letter numbered G/1066, dated the 23rd Instant, I have the honour to point out that you misunderstood the latter portion of my letter No. 500/06, & dated the 22nd Instant.

My letter was written in order to inform you of the amount of the costs incurred by the decree holder and same recoverable against the judgment debtor. These fees have been paid ~~at~~ at the time ~~when~~ they were incurred. They are of course payable in this Court, and not the High Court.

I have the honour to be

Sir,

Your obedient servant.

Sd/- M. R. Logan.

Town Magistrate.

To,

The Agt. Registrar,

High Court, R.A.P.

U R R A S A

No. 535/06.

Town Magistrate's Office,

Nairobi,

November 7th 1906.

Criminal Case No. 241 of 1906.

Crown. v. GERALD s/o DOGAN.

Sir,

At the request of Mr. C. H. HARRISON pleader for the accused in the above case, I have the honour to forward the original records. I understand that on arrival of the records in your Court, Mr. Byron will make his application to the Principal Judge at Mombasa.

I have the honour to be,

Sir,

Your obedient servant.

Sd/- E. R. Logan.

Town Magistrate.

To,

The Ag: Registrar,

High Court, R.A.P.

M O M B A S A.

IN THE HIGH COURT FOR EAST AFRICA
Nairobi District Registry Case
Civil Case No. 5 of 1906.

CHARLES GRANT

versus.

A. T. Smart.

Let all parties concerned attend the Judge in Chambers High Court, Mombasa, on Saturday the 18th day of May at 9-15 o'clock in the forenoon to the hearing of an application on the part of the defendant that the restraining order passed by the District Judge at Nairobi on the 18th day of September 1906; restraining the defendant from disposing of his interest in the firm of McCall & Smart be raised or for such other order as this Honourable Court shall deem right.

Dated 11th day of May 1906

This summons was taken out by counsel for the defendant

Sd/- G. Banks Esqr., for C. Grant.

In the High Court at Mombasa.

C.C. No. 5 of 1907 of the District Registry at Nairobi.

Civil Case No. of 1907.

Charles Grant.....Plaintiff.

versus.

A.T. Smart.....Defendant.

I hereby nominate and appoint Gerald Harvey Mead,
Robert Mc Clure Byron, Chas H.M. Harrison and G. G.
Atkinson jointly and each of them severally to be my
Solicitors and Attorneys to appear and act for me in
the above matter.

Dated this 11th day of May 1907.

Sd/- A. T. Smart.

Town Magistrate's Court,

F A I R O F I.

5th May 1907.

No. 164/07.

Decision of Court of Appeal.

Grant. v. Smart.

Sir,

In regard to the decision of the Court of Appeal in the above, I should be greatly obliged if you would elucidate the following point for me:—

All the 3 Judges agree in saying that Judge Benham Carter was wrong in holding that the English Law of bankruptcy was excluded from operation in this Protectorate in consequence of Chapter XX Civil Procedure Code.

They all however agree in saying that the appellant had his remedy under Section 344 etc., of Chapter XX C.P.C. which he should have made use of & in consequence the appeal has been dismissed.

On the 10th day of September 1906, proceedings were taken before me under section 236 C.P.C. by the Appellant Grant, to obtain execution of a decree which he had obtained in the High Court & against the respondent Smart & on the 15th day of September 1906 application was made to commit the respondent to Civil imprisonment under section 242B.

On the 19th September 1906, I committed Smart to Civil imprisonment for 6 months in default of the payment of the amount of the decree, on the ground that he had been guilty of an act of bad faith in relation to his property Sec. 257A Civil Procedure Code.

These applications & my order form a part of the record of the case in regard to which the decision of the Appeal Court

has

has been given-, it is all one case. They were therefore in evidence before the Court of Appeal. Section 344 Chapter XX C.P.C. states that any judgment-debtor arrested or imprisoned for money do., & any holder of a decree for money may apply in writing that the judgment debtor may be declared an insolvent & Section 351 (d) says that if the Court is satisfied that the judgment debtor has not committed any other act of bad faith regarding the matter of the application, the Court may declare him to be an Insolvent, but, if the Court is not^{Co} satisfied it shall make an order rejecting an application.

You will observe that I had held that the debtor had been guilty of bad faith & therefore, it was useless for the Decree holder to apply under these sections for him to be declared an insolvent. Such an application must have failed. Chapter XX contains no provision for making a judgment debtor who has been guilty of bad faith, an insolvent.

The decree holder apparently, therefore, recognised that he had no remedy under Chapter XX C.P.C. & application was accordingly made under the English Bankruptcy Law which provided the only possible means of making the debtor an insolvent.

I am, therefore quite at a loss to understand how the Appeal Court has arrived at the conclusion that the decree holder has a remedy under Chapter XX C.P.C. It is obvious that if application is made under that Chapter to me, it must inevitably be refused & the matter will then be at a deadlock.

I should be greatly obliged if you would give me your views on the matter.

I have the honour to be,

Sir,

Your obedient servant,

Sd/- M. R. Logan,
Town Magistrate

To.
The Principal Judge,
High Court,
M O B A S A.

IN COURT AT
 CIVIL CASE No. 5 OF 1907
 EXHIBIT No. 1
 PUT IN BY PLAINTIFF THIS
 11 FEB 1906 1906

Rs. 1.

Nairobi 227
 February 3/06.

Received from Charles Grant the sum of One pound sterling part payment of one thousand seven hundred and fifty £.1750, pounds purchase price of my block of free hold land No. 486. five hundred acres "more or less" in extent and situated just South West of and adjoining Nairobi Municipality payments to be made as follows:-

Rs. One thousand (Rs. 1000) Rupees on or before twelve days from this date, upon the payment of which an agreement of sale will be entered into.

And the balance of the £.1750 on or before the third day of May 1906 the purchaser to have if he desires it the privilege of extending the date for making the last payment, sixty days upon paying interest at the rate of 7% per time intended.

If final payment should not be made on date stated agreement to be cancelled and any payment already made will be forfeited.

576

Ed/- Arthur T. Smart.

3/3/06.

This is the document marked A
referred to in the affidavit of
Charles Grant sworn
17th day of April 1906
before
S.K. Logan
O.T.H. Ex-2

162	PUT IN BY	2
	DATE	22.2.06

162
PUT IN BY
DATE

2
22.2.06

An Agreement made this 3rd day of February 1906 between Arthur Thomas Smart of the Central Butchery Nairobi British East Africa Settler (hereinafter called the vendor) of the one part and Charles Grant of Nairobi aforesaid settler (hereinafter called the purchaser) of the other part The said vendor will sell and the said purchaser will purchase the fee simple possession free from incumbrances of ALL THAT piece or parcel of land situate near the township of Nairobi known as Provincial number 466 and registered in the Registration of Deeds Office in the Office of the Sub-Commissioner of Ukamba Province at Nairobi as 251 A of 1905 and delineated on Land Office plan Number 369 for the sum of Rupees Twenty Six Thousand two hundred and fifty whereof the sum of Rupees one thousand shall be paid within twelve days from 3rd day of February 1906 and the residue on the 3rd day of May next at the Office of Mr. W.A. Burn, Barrister at-law, Nairobi when the purchase shall be completed. The vendor shall if possible within thirty days from the date thereof deliver his conveyance from His Majesty's Commissioner for the East Africa Protectorate to the said Mr. W.A. Burn. UPON PAYMENT of the residue of the said sum of Rupees Twenty six thousand two hundred and fifty at the office aforesaid the vendor will execute a proper assurance of the premises to the purchaser such assurance to be prepared by and at the expense of the purchaser. The POSSESSION will be retained by the vendor down to the 3rd day of May 1906 or until the purchase is completed and as from that day all outgoings shall be discharged and the possession taken by the purchaser and such outgoings shall if necessary be apportioned between the vendor and purchaser. If from any cause whatever the purchase shall not be completed on the said 3rd day of May 1906 the purchaser shall pay interest at the rate of Rupees seven

seven per centum per annum on the unpaid purchase money from that day until the completion of the purchase. PROVIDED that if the purchase shall not be completed within sixty days from the 3rd day of May next the vendor may by notice in writing to the purchaser annul the sale but shall nevertheless be entitled to retain the said sum of Rupees one thousand and any other ^{sum of or account of the purchase money} ~~sum of or account of the purchase money~~ ~~but he shall not be entitled to any other compensation~~ ~~penetration whatever.~~ In Witness whereof the parties have hereunto set their hands the day and year first above written.

Signed in the presence of

Sd/- W.A.Burn

Barrister-at-Law.

handwritten signature

Sd/- Arthur T. Smart.

Sd/- Charles Grant.

Registration fee.

Ca. 2.
No. 21.

Handwritten signature

26
Feb 29
7.3.06

Registration of documents etc.

East Africa Protectorate
Nairobi Registry.

No. 29 of A 1906.

Produced by Mr. C. Grant.

P.P. W.A. Burn.

and registered at his request at the
Registration Office at Nairobi in the
presence of

W. C. Paul Thompson
Sd/- Registration Clerk.

Dated this 7th day of February 06

Sd/- H.R. Tate

for Principal Registrar.

Stamp fee

0/0/0

223.

High Court
Nairobi

5

E. A. F.
86

3

162

July

2006

NAIROBI.

230

East Africa.

February 6th 1906.

3 p.m.

Dear Sir,

A.T. Smart to you.

Referring to your interview with the writer just now when you informed him that you had purchased Mr. Smart's 500 acres on the Magretti Road for £.2000 on Saturday last

We beg to inform you in writing as we have already done verbally that this land was purchased a considerable time ago by Lord Delamere and the conveyance has been prepared and signed by Lord Delamere and only now awaits signature by Mr. Smart and payment of the purchase money by Lord Delamere.

We have wired to Lord Delamere and have no doubt that he will immediately apply for injunction against you and Mr. Smart.

Meanwhile we give you notice of the facts and warn you that any further dealing with the land or completion for the sale after this notice may cause you considerable expense.

G. Grant Esqr.,

Commercial Hotel,
Nairobi.

Yrs f. fully.

Ed/- Tenks & Allen.

IN. *High* COURT *Nairobi* E. A. P.
CIVIL *5* 1906
4
17 *July* 1906

N A I R O B I.

EAST AFRICA.
13th July 1906. 231

Sir,

I am instructed by Mr. A. T. Smart to inform you that he annuls the sale to you of 500 acres of land on the Dagoretta Road near Nairobi, under the Agreement between you dated the 3rd day of February 1906, and same is hereby annulled under the proviso in the said Agreement.

This course is rendered necessary by the fact that my client was unable to get out of his previous contract for sale of the same land to Lord Delamere, as you both hoped he would be able to do at the date of the signing of the above mentioned agreement.

Yours faithfully.

Sd/- B.G.Allan.

G. Grant, Esqr.,
Nairobi.

*List of Applicants
for Shares.*

Ex. 5.

IN THE COURT AT *Leeds* E. A. P.
 CIVIL CASE NO. *5* OF 19*06*
 ENTERED *5*
 PUT UP FOR SALE THIS
17th DAY OF *July* 19*06*

Mr. Hayne.	2.	Mr. H. Harlton.	1.	232
" Young.	1.	" Price.	1.	
" Barrell.	1.	" Ostrum.	1.	
" Sanderson.	2.	" Smart A.T.	20.	
" Bunburky.	5.	" French	20.	
" Linton.	5.	" Wuttenbury.	3.	
" Davidson.	3.	" Goldham.	9.	
" Preston.	5.	" Pailtherpe.	1.	
" Howarth.	3.	" Lucas.	21.	
" Westray.	2.	Parker	1.	
" Flache.	1.	" Brown.	1	
Turner.	1.			159.
Wood T.A.	2.			
" Watkins.	2.			
" Baly.	1.			
" Fichal.	5.			
" James.	10.			
" Jesson.	3.			
" Bowler.	2.			
" Harris	2.			
" Lucy.	1.			

PROSPECTUS.

233

This company has been formed with the objects mentioned in its Memorandum of Association, and primarily for the purpose of acquiring from Charles Grant Esqr of Nairobi, five hundred acres of free hold ground, and turning same into a suburban township.

The ground will be surveyed, and cut up into township plots of one third of an acre each (and of one acre plots) and allowing that three hundred of these will be required for roads etc. a balance of twelve hundred is thus left.

The capital of the Company is comprised of 4 00 shares of Rs.150 each and for every share taken the share-holder will receive a free title of one third acre freehold plot (i.e. in extent 100 \times 130 ft) in the suburban township, this will therefore leave a balance of 800 $\frac{1}{3}$ acre plots, as an asset of the shareholders, to be disposed of from time to time, by auction or otherwise as may be decided upon, in other words each Shareholder besides having a freehold one third acre plot for each share he may possess, has still a direct interest in two more one third acre plots.

ALL

monies received from the sale or disposal of the remaining 800 acre plots shall be divided amongst the share holders, pro rata according to their holdings.

The only condition appertaining to the plots of ground will be that they cannot be sold to, leased to, or occupied by, any coloured person, or Eurasian.

The 500 acres are situated on the Nairobi Hill, on which two acre lease-holders plots have quite recently been disposed of for £.30 (Rs.450) per acre, and these plots have building conditions etc., not to mention the annual rental of Rs.75,

while

whilst these offered ^{now} are freehold, without any such conditions or rental, further the cost of transfer of a leasehold plot is about 150% more than the cost of a freehold plot.

Between the 500 acres and the Nairobi Hill lease-hold plots is the waterworks reserve of some ⁷⁰ acres, an arrangement is now being made which will ensure stand pipes being erected at intervals in the new township when required. which shows that the new suburb should experience no difficulty in obtaining its water supply.

Within a short distance of the Northern boundary of the proposed new Suburb is the new Government house, which very shortly will be ready for occupation by His Majesty's Commission^{er}. this fact alone, without taking into consideration, the extraordinary cheap and unique manner in which ^{situation of the proposed} shareholders will obtain their plots, the magnificent and healthy site, its beautiful outlook and surrounding scenery, the close proximity to the town, the splendid water supply so near at hand; goes to prove without one shadow of a doubt that the new suburb within a very short period of time will be the most fashionable, and most sought after suburb in the East Africa Protectorate, for it must be borne in mind that Nairobi is the Capital, and that before very many months have lapsed, most of the principal Government offices now located at Mombasa will be moved to the Hill Capital.

With the phenomenal progress which has taken place and is taking place in Nairobi, and the daily increase of white inhabitants from all parts of the world, it is only reasonable to suppose that before very long, the demand for building plots in the new fashionable suburb will be greater than can be supplied, with the natural result, that those who have had the courage of their opinions, and been wise enough to look into the future and

and are the lucky holders of shares in one of the finest schemes ever set before a general public, will reap an enormous return and profit:

The purchase price has been fixed by the vendor at the sum of Rs.57000/ which he is to receive in cash and shares.

The capital required for working expenses, is, under the circumstances, a small one, as provision has only to be made for survey fees, transfer and issue of initial title deeds, printing, office rent, stationery etc., the salary of the secretary having been arranged upon a commission basis.

An agreement dated the day of February 1906, has been entered into by and between the Vendor, of the one part, and the Directors, on behalf of the Company of the other part, for the purpose of effecting the said purchase, a copy of which can be seen at the office of the Company and all applicants for shares, shall be deemed to have notice thereof.

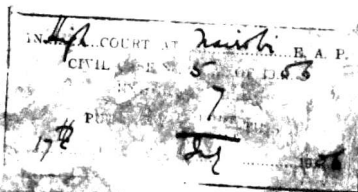
ALL applications for shares (printed forms for which can be obtained at the Company's office) to be sent to the secretary S.C.Fichat Esqr., Nairobi, on or before the 3rd day of March 06 accompanied by a crossed cheque for the amount of the application money.

Applicants who apply for 3 or more shares, must state whether they would prefer a full acre plot, allotted to them for each three shares, as in such case the Directors will cause the survey to be made accordingly.

The 250 shares offered for subscription, will be allotted to the first 250 applications received.

ALL expenses of promotion etc, up to date of allotment will be borne by the Vendor.

Copies of the Memorandum and articles of Association can be seen at the office of the Company, or their Solicitor W. A. Burn, Esqr., Nairobi.



THE NAIROBI SUBURBAN ESTATES COMPANY Ltd.

Memorandum of Association.

236

1. The name of the Company is "THE NAIROBI SUBURBAN ESTATES COMPANY LIMITED".
2. The registered office of the company will be situate in Nairobi in the East Africa Protectorate.
3. The objects, for which the Company is established, are
 - (a). To acquire by purchase, five hundred acres of freehold, immediately outside the Municipal Boundary and known as Provincial No.466 and registered as 251,A, Land Office Plan No.369 in the Registration of Documents Office for the Province of Ukamba; from Charles Grant Esqr., and with a view thereto, if approved of, to enter into and carry into effect, (with or without modifications) an agreement which has already been entered into, and executed by and between the said Charles Grant of the one part and Thomas A. Wood and Duncan Mackinnon as Trustees for the Company of the other part.
 - (b). To utilise the ground mentioned in the said agreement for the purpose of creating a suburban township, and with a view thereto to survey and mark off the said ground into plots, streets etc., To lay out form and maintain, streets paths, roads, watercourses and means of drainage and lighting on the said township.
 - (c). To dispose by sale or otherwise of the said plots to the best advantage, to build construct and maintain buildings on the said plots, and to let or sell same for the benefit of the Company.
 - (d). To acquire by purchase any immovable property of whatever tenure in the vicinity of Nairobi, or elsewhere, for the purpose

purpose of converting the same into townships or otherwise for utilizing the same for the advantage of the Company.

- (e). To improve, manage, cultivate, develop, exchange, let on lease or otherwise, mortgage, sell, dispose of turn to account grant rights and privileges in respect of, or otherwise deal with, all or any part of the property and rights of the company.
- (f). To invest and deal with the monies of the company not immediately required, upon such securities and in such manner as may from time to time be determined.
- (g). To borrow or raise money in such manner as the company shall think fit, and in particular by issue of debentures or debenture stock perpetual or otherwise, and to secure the repayment of any money borrowed raised or owing by mortgage, charge or lien upon the whole or any part of the Company property or assets, whether present or future and also by similar mortgage, charge or lien, to secure and guarantee the performance by the Company of any obligation or liability it may undertake.
- (h). To draw, make, accept, endorse, discount, execute, and issue Promissory Notes, Bills of Exchange, Debentures, and other negotiable or transferable instruments.
- (i). To subscribe for, take, purchase, or otherwise acquire, and hold shares or other interest in, or securities of any other Company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted as to directly or indirectly to benefit this Company.
- (j). To pay all or any expenses incurred in connection with the formation, promotion, and incorporation of the Company, and to pay any commissions to Brokers and others for underwriting, placing selling or ^{guaranteeing} the subscription

of any shares, debentures, debenture stock, or securities of this Company.

- (k). To procure the Company to be registered in the East Africa Protectorate.
- (l). To sell or otherwise dispose of, the whole or any part of the undertaking of the Company, either together or in portions for such ~~condition~~ ^{consideration} as the Company may think fit, and in particular for shares, debentures, or securities of any Company purchasing the same.
- (m). To distribute among the members of the Company in Kind any property of the Company, and in particular any shares, debentures, or other securities of other companies belonging to this Company, or of which this Company may, have the power of disposing.
- (n). To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

4. The liabilities of the members is Limited.

5. The capital of the Company is Rs.60000 divided into 400 shares of Rs.150/ each. The Company has power from time to time to increase or reduce its capital, and to issue any shares in the original or increased capital as ordinary preferred or deferred shares, and to attach to any class or classes of such shares any preferences rights, privileges or considerations, or to subject the same to any restrictions or limitations provided always, that if and whenever the capital of the Company is divided into shares of various classes, the rights and privileges of any such class shall not be modified or varied except in the manner following. that is to say

Any such modification or variation may be effected when sanctioned by an extraordinary resolution of the holders

of the shares of such class passed at a separate meeting of the shareholders of such class, at which time shall there shall be present in person or represented by proxy the holders of not less than a moiety of the issued shares of such class.

We the several persons whose names, addresses, and descriptions are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the Capital of the Company set opposite our respective names.

Names & Signatures.	Address.	Descriptions.	No. of shares taken by each subscriber.

Witness to above Signature Dated at NAIROBI this 2 day of 1906

IN HIGH COURT OF KENYA
CIVIL DIVISION
112
Jury
19.06

Not from Trench &
Co's Letter Book,
(see Copy)

February 28th 1906. 240

Dear Sir,

You to Delamere.

Mr. Grant has just called and informed us that
you have sold the 500 acres on Dagoretti Road to him for
£5,000/-

You are well aware that this is the land you sold to
Lord Delamere a long time ago, and there is abundance of
evidence in writing to that effect both in the Land Office
Mr. Marcus' and our office,

We fear you have made a serious mistake which will
cost you dearly.

We have wired Lord Delamere and await his instructions

A. T. Smart, Esq.,

Nairobi.

True Copy

Edw. M. K. M. V. M. M.

H.R.B. 17-7-06. Chief Clerk High Court.

IN THE HIGH COURT OF THE EAST AFRICA PROTECTORATE

AT N A I R O B I.

Civil Suit No. 5 of 1906.

Charles Grant.....Plaintiff.

versus.

A. T. Smart.....Defendant.

Plaintiff's Bill of Costs.

Disbursements Charges.

	Attending Client on his handing me all his papers and in this action and in previous actions and taking instructions thereon for letter of demand.	15. 0. 0
13th.	Letter of demand.	5.
16th.	Attending receipt and perusing reply from defendant's Solicitor asking for time.	5.
	Attending Deeds registry and taking inspection of Agreement and transfer by defendant to Lord Dalmeida.	10.
	Paid fees for search.	4. 0. 0.
19th.	Letter in reply to defendant's Solicitor that unable to give time and action would be filed.	5.
	Instructions for plaint at length.	100.
15th.	Drawing plaint and folios 72 words at 5/	40.
	Fair Copy in duplicate at -/s/- annas per folio = 16 folios.	8.
	Drawing concise statement.	5.

Making fair copy in duplicate.	1. 0. 0.
Drawing list of documents to annex & folios at 2/3/-	10. 0. 0.
Fair Copy in duplicate.	2. 0. 0.
Copy annexures to, plaint in duplicate at -/2/- per folio - 40 folios.	20. 0. 0.
Drawing authority to sue.	5. 0. 0.
Attending client obtaining his signature to same and to plaint.	10. 0. 0.
19th. Attending to file.	5. 0. 0.
Paid fees.	382. 8. 0
Attending on receipt of notice of trial for 2nd July.	5. 0. 0.
22nd. Attending Court when time given to defendant to file written state- ment to 12th July.	10. 0. 0.
12th. Further attendance and further time given to 16th July.	10. 0. 0.
Attending receipt and perusing notice of trial for 16th July.	5. 0. 0.
Drawing notice to Registrar of Court to produce proceedings in Suit No.1 and No.2 of 1906.	5. 0. 0.
Attending therewith.	5. 0. 0.
Drawing notice to Court for Subjanna Dadao Tanna & following witnesses. Messrs Pichat, Frew Draeton Linton & Wood.	10. 0. 0.
Attending therewith.	5. 0. 0.
Paid fees.	15. 0. 0.
Attending Court and inspecting files and proceedings in previous suits.	15. 0. 0.

Attending taking proofs of plaintiff's evidence 10 folios.	30.	0.	0.
Do. Do. Mr. Fichat.	18.	0.	0.
Do. Do. Mr. Frew.	10.	0.	0.
Do. Do. Mr. Linton.	10.	0.	0.
Do. Do. Mr. Preston.	10.	0.	0.
Do. Do. Mr. Wood.	10.	0.	0.
Instructions on brief	300.	0.	0.
Drawing brief 40 folios at 5/-	200.	0.	0.
16th. Attending on service of written statement.	5.	0.	0.
Perusing and examining considering same. and attending client therein at length.	15.	0.	0.
Drawing notice to defendant to produce documents.	30.	0.	0.
Attending service.	10.	0.	0.
Perusing notice to defendant to produce documents.	5.	0.	0.
16th. Attending Court all day.	10.	0.	0.
17th. do do.	100.	0.	0.
18th do do.	100.	0.	0.
Paid fees on Exhibits.	80.	0.	0.
Paid witness fees to Mr. Fichat attending 3 days.	45.	0.	0.
" Frew. do.	45.	0.	0.
" Linton. do.	45.	0.	0.
" Preston. do.	45.	0.	0.
" Wood. do.	45.	0.	0.
18th Letter to registrar Re date judgment.	5.	0.	0.

at 10th. Attending on receipt of notice of judgment		5. 0. 0.
Letter to agent Houbson to attend on judgment.		5. 0. 0.
attending on judgment.		5. 0. 0.
Attending on receipt of telegram with result.		5. 0. 0.
Attending client thereon.		5. 0. 0.
Telegram to agent to obtain copy.	1. 0. 0.	5. 0. 0.
Obtaining copy thereof paid	4. 0. 0.	
Attending on receipt of judgment.		5. 0. 0.
Perusing same.		10. 0. 0.
Attending client thereon at length.		15. 0. 0.
Telegram to Agent to issue execution.		5. 0. 0.
Paid for same.	3 6.0.	
Further telegram and paid.	1.14. 0	5. 0. 0.
Perusing reply.		3. 5. 0.
Drawing this Bill Costa folios 6.		10. 0. 0.
Fair copy.		6. 0. 0.
Notice of taxation and Copy bill.		11. 0. 0.
Attending taxation.		10. 0. 0.
Fee.		5. 0. 0.

555 15.0.	1356. 0.0.
104 4 0.	555 0.0.
555 5.0.	555 0.0.
	555 0.0.
	555 5.0.

Placed at No. 951/4/-

By J. U. H. P.

1/1/95.

NAIROBI,

British East Africa.

12th May, 1906.

The Registrar,
High Court,
East Africa Protectorate,
Mombasa.

Sir,

IN THE NAIROBI DISTRICT REGISTRY

Civil case No.5 of 1906.

GRANT v. SMART

In this case you will find the Plaintiff's Bill of Costs was taxed by yourself as between party & party at the sum of Rs.961.57.

I have recently sent the bill again to Mr.O.Tenks for taxation as between Solicitor & client and he wires that as he is now acting for the plaintiff he is unable to represent me.

The taxation is by no means a hostile one only that I want the amount settled and I am prepared to leave the matter in your hands on my behalf for taxation as between Solicitor & Client.

I have asked Mr.Tenks to hand over the papers to you.

I have the honour
to be, Sir,

Your obedient servant.

TOWN MAGISTRATE'S COURT,

N A I R O B I,

2nd M A R C H 1909.

RE; District Registry of the High Court, Nairobi.
 Civil Case No. 8 of 1906.
Charles Grant vs. Arthur Thomas Smart.

Sir,

In reply to your letter, numbered C/245, dated the 25th. ultimo, and marked "Immediate", which reached here at 3 p.m., yesterday, I have the honour to forward herewith the original records of the above file, receipt of which please acknowledge.

I may here mention for your information that the decree in the above case was transferred here for execution and on application for the said execution by the decree holder, a separate file was made, viz., Transfer Decree No. 4 of 1906, Charles Grant, Decree holder Vs. A.T. Smart Judgment debtor. Please let me know if you require this file also.

I have the honour to be,

Sir,

Your obedient servant,

Sd/- W.F. Porter.

Town Magistrate,

N A I R O B I.

To,
 The Registrar,
 High Court,
 Mombasa.

NAIROBI.

British East Africa.

1st April 1906.

J.N.H.Parkinson Esqr.,

Registrar,
High Court.

Sir,

In the District Registry

G.C.No.5 of 1906.

GRANT v. SMART.

I shall be obliged if this file could be again produced at the ensuing Sessions in view of the taxation of my bill of Costs herein between Solicitor and Client.

Yours faithfully.

Sd/- H.B.Backland.

70 H.

248

No. 2.

Nairobi District Registry
IN THE *of the High Court*
AT *Nairobi*

EAST AFRICA PROTECTORATE.

CIVIL CASE No. *1* of 1906.

Hugh Cholmondeley

Plaintiff.

Baron Selamere

versus

Arthur Thomas Smart

Defendant.

Date of Issue *11th July* 1906. Date of hearing *23rd July* 1906.

HIGH COURT AT *Nairobi* E. A. P.
CIVIL CASE No. *1* OF 1906
EXHIBIT No. *8*
PUT IN BY *Plaintiff* THIS
17th DAY OF *July* 19*06*

HIGH COURT AT *Nairobi* E. A. P.
Overwritten CASE No. *3* OF 1906
EXHIBIT No. *3*
PUT IN BY *Plaintiff* THIS
17th DAY OF *July* 1906
(10) E. R. Lyon
7.4

IN THE NAIROBI DISTRICT REGISTRY OF THE HIGH COURT
FOR EAST AFRICA AT NAIROBI.

Civil Case No. 1 of 1966.

Hugh Cholmondely Baron Delamere Plaintiff.

versus.

Arthur Thomas Smart Defendant.

MR. ALLEN for Plaintiff.

.. BURN for Defendant.

BERTRAM GRAY ALLEN, duly sworn states:-

On 28th June 1964 Lord Delamere called at my office, he told me he had purchased 500 acres of land freehold on the top of the hill Nairobi on the Dagoretti Road for £,500 from Mr. Marcus Agent for A. T. Smart and he gave me instructions to act for him in the matter. Later same day I received a letter from Mr. Marcus (attached to plaint Ex.1) with enclosure Ex.2. Next day 29th, Mr. Marcus and Smart called on me and we had a long conversation about the matter. I ascertained that Smart had no freehold but had an application to the Land Office for a homestead area. I pointed out that Lord Delamere might not care to buy merely an application for a homestead on which instalments would be payable and that I must refer to Lord Delamere. Smart arranged to go to Land Officer and see if he could be allowed to obtain the freehold by paying Re.1 per acre. I referred to Plaintiff and found he would accept from Smart whatever title Smart had. I informed Marcus and Smart. Mr. Grant has informed me that he has purchased the land in question from Smart and I have heard that he is

forming a company to develop the land and has employed surveyors to divide the land into building plots.

11.3. I produce copy of an acknowledgment of receipt by Defendant for Rs.1500.

MR. BURN argues that the contract is void for uncertainty and therefore no injunction should be given also under Section 32 Contract Act.

MR. BURN objects to any documents being put in evidence in regard to the contract for sale of the land which have not been registered.

The Court rules that this being merely an application for an injunction and it being merely necessary to shew that the plaintiff has a fair question to raise (Chandidhat Dha v. Padmanand Singh, I.L.R. 22 Cal. 459) the documents may be put in for that purpose.

(Sgd.) E. R. Logan.

MR. BURN says plaint is not signed by plaintiff and there is no affidavit by Plaintiff in support.

C R R

ORDER OF COURT:-

This is a clear case for an injunction.

I am not called upon here to decide whether there was a legally valid contract between the parties for the sale of the land in question. It may be that there was not. It is sufficient here for the Plaintiff to shew that he has a fair question to raise before the Court and I think that he has shewn this by the documents which have been put in and by the evidence of his Solicitor Mr. Allen who acted

for him in the matter. I think that Plaintiff should have filed an affidavit in support of his application and the injunction will be issued only on the understanding, and on the express assurance of his Solicitor, Mr. Allen that an affidavit will be filed at the earliest possible moment.

With regard to Mr. Grant, no sufficient notice of the application has been given him, he has however appeared in Court and has given a verbal undertaking that he will not take any action in regard to the land, until the decision of the question in issue by the High Court.

There will therefore be an injunction restraining the Defendant from conveying the land in question on the Dagoretti Road to Mr. Grant or any other person, pending the decision of the case before the High Court.

Costs to be costs in the cause.

(Sgd.) E. R. Logan.

23. 2. 06.

14. 4. 06.

Nairobi.

ALLEN for Plaintiff.

BURN for Defendant.

Allen reports settlement of this case together with Case No. 4/06. Needs settlement.

Before filing settlement.

Burn applies for adjournment to have C. Grant added as Defendant. refer p. 19 of plaint. s. 52 Code of Kincaid and VIII Bombay 323. Settlement has been made without reference to him.

ALLEN : Application should have been made earlier.

I think under the circumstances Mr. Burn has made out a case for an adjournment in order to have an opportunity of filing his application formally which he has not yet had an opportunity of doing owing to the case having at the last minute been set down earlier than originally fixed at the request of plaintiff.

Let the case stand over till Tuesday next when Mr. Burn's application can be taken.

(Sgd.) R. W. HAMILTON

14. 4. 06.

17. 4. 06

BURN for Applicant C. Grant.

Puts in application and quotes case referred to on Saturday.

In this case there is a fresh agreement pendente lite'

I do not call on Mr. Allen.

In this application Mr. Burn applies on behalf of a third party a Mr. Grant to be joined as Defendant as the original Defendant Smart has come to terms with the Plaintiff, and argues that there having been a fresh assignment pendente lite of the lands which he alleges were sold to him by Smart he is entitled to be joined as Defendant.

The original action was for specific performance of a contract and it is possible that thereby the applicant's interests may be affected, but the relief claimed against the original Defendant is of a different nature from that with ^{the} applicant might be entitled to and therefore I am

of opinion that his remedy lies in a separate action and not by way of being joined as a party to the present suit.

The application must be dismissed with costs.

(SGD.) R. W. HAMILTON.

17. 4. 06.

Mr. Allen will file agreement read by him on 14th.

(Initialled) R. W. H.

Lackington
30/4/06
30
with business they
17/4/06

Memorandum of an agreement made the 12th day of April 1906
Between Arthur Thomas Smart of Nairobi settler of the One
Part and the Right Honourable Hugh Chelmsdaley Baron
Delamere of Njere of the Other Part Whereas sometime ago
the said A.T. Smart sold a piece of land containing 500 acres
situate on the Dagoretti Road near Nairobi to the said Lord
Delamere for Five hundred pounds as the said A. T. Smart
hereby admits And Whereas sometime ago the said A. T.
Smart sold another piece of land situate near the European
Hospital Nairobi to the said Lord Delamere for Rupees Two
thousand five hundred as the said A. T. Smart hereby admits
and one of the terms of the ^{said} sale was that the said Lord
Delamere should pay the cost of survey fees, the lease
from Government to the said A. T. Smart and other expenses
And Whereas the said Lord Delamere has paid Rupees One
thousand five hundred on account of the purchase monies of
the said two pieces of the land to the said A. T. Smart And
Whereas the said A. T. smart has refused to complete the
said purchases and to accept the balance of the purchase
monies thereof and the said Lord Delamere thereupon insti-
tuted two suits against the said A. T. Smart in the District
Registry of the High Court at Nairobi for Specific Per-
formance of the said contracts for sale and for damages, one
of the suits being numbered 1 of 1906 in the said District
Registry and the other being numbered 4 of 1906 in the
said Registry and said suits are fixed for hearing by the
Principal Judge on the ^{date} ~~12th~~ of these presents And Whereas
by an Agreement dated the 3rd day of February 1906 and made

(2)

between the said A. T. Smart and one Charles Grant the said A. T. Smart sold or purported to sell to the C. Grant the said piece of land situate on the Dagoretti Road for the sum of Rupees Twenty six thousand two hundred and fifty but the said agreement was entered into after express notice had been given to the said C. Grant of the prior sale of the said land to the said Lord Delamere and with full knowledge ^{by} ~~of~~ ^{said} ~~the~~ ^{C.} ~~Grant~~ that it might be impossible for the said A. T. Smart to defend any action which the said Lord Delamere might bring against him in regard to the said land ~~AND~~ Whereas after hearing the evidence produced by the said Lord Delamere on a preliminary application made by him in the said case No. 1 of 1906 for interim injunction and the ~~order~~ ^{order} of the Court thereon the said A. T. Smart is satisfied that it is impossible for him to defend the said action with success And whereas the said A. T. Smart has approached the said Lord Delamere with a view to settling the said two cases so brought against him as aforesaid

Now it is hereby mutually agreed by and between the parties hereto as follows namely:-

1. The said A. T. Smart agrees to sign the Conveyance to the said Lord Delamere of the said piece of land situate on the Dagoretti Road Nairobi which has already been prepared by Mr. E. G. Allen Solicitor Nairobi and to obtain the signature of his brother W. H. Smart to the assignment to the said Lord Delamere of the said land near the European Hospital which has been already prepared by Mr. E. G. Allen Solicitor Nairobi.

(3)

2. In consideration of the agreement by the said A. T. Smart mentioned in the last preceding paragraph the said Lord Delamere agrees to withdraw the said two suits Nos. 1 and 4 in the District Registry of the High Court at Nairobi so as aforesaid filed by him against the said A. T. Smart and to pay the said A. T. Smart the sum of One thousand and Fifteen hundred already paid as aforesaid.

3. The ~~said Lord~~ ^{said} Delamere agrees to indemnify the said A. T. Smart against any costs and damages he may hereafter incur and be compelled to pay in regard to any action which may be brought against him by the said C. Grant in respect of the said recited agreement between him and the said C. Grant of 3rd February 1906.

The said A. T. Smart undertakes to hereafter defend any such case and resist any such claim for damages to the best of his ability.

4. Each party shall bear his own costs incurred to date in respect of the said two cases numbered 1 and 4 in the District Registry of the High Court Nairobi.

Signed by the said A. T.

Smart in presence of

(Sgd.) A. T. SMART

(Sgd.) F. Marcus

(Sgd.) D. D. Metha

Clerk, E. G. Allen

Nairobi

(4)

Signed by the said Lord
Delamere in presence of

(Sgd.) DELAMERE

(Sgd.) J. Marcus

(Sgd.) D. D. Metha

Clerk, B. G. Allen

Nairobi

I hereby undertake and agree to execute the above
mentioned assignment of the land situate near the Cemetery
to Lord Delamere.

Dated the 18th day of April 1906.

Witness

(Sgd.) E. H. Smart

(Sgd.) J. Marcus

(Sgd.) D. D. Metha

Clerk, B. G. Allen

Nairobi.

I hereby certify that this is a true copy of the
original produced by Mr. B. G. Allen, Solicitor, Nairobi.

(Sgd.) E. R. LOGAN

Town Magistrate,

Nairobi.

Sty J R
26.6.1906

EAST AFRICA PROTECTORATE.

258

PARTICULARS OF PLAINT.

Civil Case No. 1 of 1906

Applicant's full name	The Right Hon'ble Hugh Cholmondeley Baron Selamere
Nationality	English (British)
Place of abode	Njoro
Religion	Christian
Occupation	Peer of the Realm (Settler)
Caste	English

Nature of claims stating money value if any	To execute to Plaintiff a sufficient conveyance of 500 acres of Freehold land situate on the Dageretti Road Nairobi value £,500/-=Rs.7,500 and damages for refusing and delaying to execute same & for an injunction and for costs of this action.
---	--

Name of Defendant	Arthur Thomas Smart
Nationality	British
Place of abode	Nairobi
Religion	Christian.
Occupation	Proprietor of Central Butchery.
Caste	English.

Where cause of action arose or object in dispute is situated	Nairobi	Fees charged.
--	---------	---------------

Has there been previous litigation over this matter?		50/-
--	--	------

Date of application	I.....declares that what is stated above is true to the best of my knowledge, information and belief. 17th february 1906 at 11 a.m.	Summons Clerk
---------------------	--	---------------

Mark or Signature of applicant	Sgd/ Tenks and Allen for Applicant.
--------------------------------	-------------------------------------

IN THE Dist. Registry of the High COURT

259

AT Nairobi

EAST AFRICA PROTECTORATE.

CIVIL CASE NO. 1 OF 190 6

~~The Rev. Canon Charles Grant~~
~~vs~~
~~Charles Grant~~
~~vs~~
~~Mr. T. Smart~~
versus.

Plaintiff.

~~Mr. T. Smart~~

~~vs~~

~~Mr. G. Allen~~

Defendant.

WHEREAS

the above-named plaintiff (through his

Solicitor Mr. G. Allen)

has instituted a suit in this Court against you ~~to~~ to execute to the said plaintiff a sufficient conveyance of 800 acres of Freehold land situate ~~on~~ on the Dageretti Road, Nairobi, value £,500 Rs. 7500 & Rs. 900/- damages for refusing & delaying to execute same and also for an injunction to restrain you from conveying the said land to Charles Grant or any other person & to restrain the said Charles Grant from dealing in any way with the said lands pending the trial of this suit (vide, copy of plaint attached and for the costs.

you are hereby summoned to appear in this Court in person or by Agent on the

23rd day of February 06 at 10 o'clock in the forenoon

or as soon thereafter as the case can be heard to answer the above-named plaintiff, and for such further order as the Court may make for the disposal of the suit.

Dated this 17th day of February 190 6 at Nairobi

(S)

Edw. E. R. Logan
Act. Agent, Judge,
East Africa Protectorate

To Mr. Arthur T. Smart,
Proprietor of Central Butchery,

Nairobi.

REGISTERED
High Court of Kenya
EAST AFRICA PROTECTORATE.

C O P Y.

In the District Registry of the High Court,

N A I R O B I.

Civil Case No. 1 of 1906.

The Right Hon. Hugh Chalmersley

Baron Delamere.....Plaintiff.

Arthur Thomas Smart.....Defendant.

Specific Performance & Injunction.

I, Bertram Gray Allen of Nairobi Solicitor state as follows:-

1. Plaintiff is a settler and resides ^{at Ngara - says is a butcher residing} at Nairobi.
2. Previous to the month of March 1904 Defendant had applied to the Land Officer Nairobi for a grant of 800 acres of freehold land situate on the Dageretti Road, Nairobi and also for 500 acres of leasehold land situate near the European Hospital, Nairobi.
3. On the 28th June 1904 Plaintiff informed me that he had purchased the said 500 acres of freehold land situate on the Dageretti Road, Nairobi belonging to Defendant through Defendant's agent Mr. Ignatius Marcus of Nairobi for the sum of £500 and instructed me to act for him in the matter.
4. On the same dated I received a letter addressed to my firm from the said I. Marcus stating that Plaintiff had visited and approved of the said land that day and would pay £500 for same on completion of transfer and enclosing a letter dated 27th June 1904 from Defendant to him authorising the said I. Marcus to sell the said land for him for £500.

(2)

I beg to refer to the said two letters copies of which are attached hereto.

5. On or about of 16th of March 1904 previous to the transaction above mentioned Plaintiff had purchased from Defendant the said 500 acres of leasehold land situate near the European Hospital in Netrebi for the sum of Rs.2,500/-

6. The Conveyance of the said 500 acres of land on the Dageretti Road and the Assignment of the said 500 acres of land near the European Hospital to Plaintiff could not be completed at the dates of the respective contracts for sale as Defendant had not then obtained his Conveyance and Lease of the said lands respectively from Government.

7. On or about 3rd of February 1905 Plaintiff advanced to Defendant at his request Rs.1,500/- as an advance payment on account of the purchase monies of the said two parcels of land sold by him to Plaintiff.

Defendant signed an acknowledgment of his having received the said advance dated the 3rd February 1905.

8. On the 8th February 1906 the Conveyance of the said 500 acres of land on Dageretti Road from H. M's Commission to Defendant having been completed and having prepared a Conveyance thereof from Defendant to Plaintiff I presented the Conveyance to Defendant and requested his signature thereto and at the same time I tendered payment of the balance of the purchase money to Defendant but Defendant refused to sign the said Conveyance and to accept the balance of the purchase money.

9. The Plaintiff is still ready and willing to pay the balance of the said purchase money of the said property to Defendant and has placed funds at my disposal for that purpose.

10. By an agreement in writing made the 3rd day of February 1906 Defendant agreed to sell the said land situate on the Dageratti Road to Charles Grant of Nairabi for the sum of Rs.26,250 and I am informed and believe that the said Charles Grant has since employed Surveyors to divide up the said land into ⁴building plots and is forming a company to develop same.

Plaintiff therefore prays that Defendant be ordered to execute to Plaintiff a sufficient Conveyance of the said property Rs.500/- for damages for refusing and delaying to execute same for such other relief as to the Court may seem fit and also for an injunction to restrain the Defendant from conveying the said land to the said Charles Grant or any other person and to restrain the said Charles Grant from dealing in any way with the said lands pending the trial of this suit and for costs of this suit.

I make the foregoing statement because the Plaintiff is at present up country and because the facts therein mentioned are peculiarly within my own knowledge and some are

(4)

true and correct to the best of my knowledge, information
and belief.

Dated the 17th day of February 1906.

(Sgd.) B. S Allen

TORKE & ALLEN,

Solicitors

for Plaintiffs

N a i r o b i .

COPY.

COPY LETTER REFERRED TO IN THE PLAINT.

Nairobi 26th June 1904.

Messrs. Tunks & Allen,
Solicitors,
Nairobi.

Dear Sirs,

I beg to hand you herewith Mr. A. T. Smart's authority to sell for him ~~at~~ his account his plot of land of 500 acres known as Hill Top farm. Lord Delamere has today visited the said farm and has approved of it. Lord Delamere will pay £.500 on Mr. Smart's behalf to the farmer all titles and rights and has asked me to communicate with you on the subject.

Mr. Smart will call tomorrow at your office for the purpose of giving you instructions regarding this deal.

I am etc.

(Sgd.) J. Marcus.

COPY.

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COPY LETTER REFERRED TO IN THE PLAINT.

J. Marcus.

Dear Sir,

I authorise you herewith to sell for me and my account my plot of 500 acres of land known under the name of Hill Top farm bounded on the East by the Military and on the West by the Dagoretti Road for £.500 five hundred pounds sterling I give the buyer a clean sheet of all survey fees and dues and rents upto the date of transfer.

Yours etc.

(Sgd.) ARTHUR T. SMART,

27. 6. 04.

I hold the above land freehold, subject to the transfer of 100 acres of land (from the five hundred above mentioned to Government at the rate of Rs.8 per acre and compensation for all improvements, should the Protectorate Government require the said 100 acres within three years for public purposes.

27. 6. 1904.

(Sgd.) Arthur T. Smart.

COPY.

IN THE HIGH COURT OF EAST AFRICA.

NAIROBI REGISTRY.

Civil Case No. 1 of 1904.

Right Honourable Hugh Cholmondeley

Baron Delmeire

Plaintiff.

v.

Arthur Thomas Smart

Defendant.

WRITTEN STATEMENT:-

The above-named Defendant states as follows:-

1. The Defendant admits paragraph 1 of the plaint.
2. The Defendant admits that prior to March 1904 he made various applications to His Majesty's Commissioner for the East Africa Protectorate for land ultimately receiving 800 acres of land situate on the Dagoretta Road Nairobi and he admits that he also applied for 500 acres of household land near European Hospital Nairobi, which were not allowed to him.
3. The Defendant has no knowledge as to any communications that passed between the plaintiff and his solicitor on or about 28th June 1904.
4. The Defendant admits that he wrote the letter dated 27th June 1904, addressed to I. Marcus, copy of which is attached to the plaint.
5. The Defendant has no knowledge as to the correctness or otherwise of the copy of letter from I. Marcus to Messrs. Fooks & Allen dated 28th June 1904, copy of which

is annexed to the plaint.

6. The conveyance of 500 acres of freehold land on Dagoretti Road from His Majesty's Commissioner to the Defendant was to the best of Defendant's belief taken possession of by Messrs. Tonke and Allen as Defendant's solicitor in September 1905.

7. On 3rd day of February 1905 the Plaintiff advanced to the Defendant the sum of Rs. 1500 one thousand five hundred rupees as an advance payment in the event of the plaintiff purchasing various plots of land from him and having the same transferred within twelve months from 3rd day of February 1905. In the event of the Plaintiff not purchasing and having transferred to him any of the said plots within such twelve months it was agreed that the said sum of Rs. 1500 one thousand five hundred rupees was to be repaid by the Defendant to the Plaintiff as a loan with 10% interest on Plaintiff demanding payment. The terms of the said contract are embodied in ^a the document written by Defendant's agent I. Marcus and signed by Defendant which document is now in the possession of the Plaintiff and to which Defendant craves leave to refer.

8. The Plaintiff did not exercise within twelve months from 3rd February 1905 the option of purchasing and having transferred to him the 500 acres of land on the Dagoretti Road Nairobi which the Defendant gave I. Marcus authority to sell by letter dated 27th June 1904., mentioned in paragraph 4 hereof.

9. On 3rd day of February 1906 as the Plaintiff had not exercised the option of purchase given ~~to~~ him by the docu-

gent mentioned in paragraph 7 of the statement, the defendant entered into a contract with Charles Grant to sell to him the said 500 acres of freehold land on the Dagorwai Road Nairobi thereby revoking the authority he had given by his letter of 27th June 1904 to his agent the said I. Marcus to sell the land for him.

10. When the tender mentioned in paragraph 8 of the plaint was made, the option of purchase given to the plaintiff by the document referred to in paragraph 7 hereof had expired and the Defendant had revoked his authority to I. Marcus to sell for him as his agent as stated in the last preceding paragraph.

11. The Defendant admits that he is indebted to the Plaintiff in the sum of Rs.1500 one thousand five hundred rupees and interest at 10% from 3rd day of February 1905 and is ready and willing to pay the same.

The Defendant prays that this suit may be dismissed with costs.

Nairobi 5. 4. 05

(Sgd.) R. F. Smart.

This statement was filed by Mr. W. A. Hunt of Nairobi,
Pleader for the Defendant.

IN THE SUPREME COURT OF THE KINGDOM OF HAWAII.

Civil Case No. of 1884.

The High Honourable High Court

Have Honourable..... Plaintiff,

vs.

Arthur G. King..... Defendant.

AFFIDAVIT.

I, High Court Judge Have Honourable of this Royal
Court in England the above named Plaintiff at present
residing and carrying on business as a Shop (in Hono kaka
and) and state as follows:

1. I on the Plaintiff in the above suit and authorized
my solicitor Arthur G. King of Hono kaka to make and
sign the plead in this suit as counsel of my choice ap-
pearing and the instructions and expense which a visit
to Hono kaka for the purpose of having the plead prepared
in my suit and signed by me would have amounted to and
also having to be better acquainted with the details of
the transactions giving rise to this suit than I am.

2. I purchased the 100 acres of land situate on the In-
gouled land near Hono kaka the subject of this suit from
Dr. Ignatius through the Agent of the defendant on the 20th
day of June 1884 after having inspected the land with the
defendant and my brother-in-law the Honourable Arthur
King and I directed the said Ignatius through to refer to
my said solicitor on the matter.

On the same date I instructed my solicitor the said
A. G. King to act for me in the matter.

(8)

I make the foregoing affidavit of my own knowledge and not to copy to the best of my knowledge, information and belief.

Given by the above named said collector of Internal Tax for the City of New York before me during the office of the J. Edwin Proctor and I have so certified.

R. W. Lawson

Notary Public.

IN THE HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION.

CIVIL CASE NO. 1 OF 1934.

The Right Honourable Sir John Simon, Lord Chief Justice.

Plaintiff.

John Thomas Smith, Defendant.

I agree to pay the (five) hundred pounds here
and there.

1. I have read the plaint signed by Mr. J. H. Allen Herwin.

2. I have no knowledge of any instructions which may
have been given by the plaintiff to his solicitor Mr. J. H.
Allen.

3. I admit signing a letter to Mr. J. H. Allen authorising
him to sell certain land the original letter is in the
possession of the plaintiff and to it I agree to refer.

4. The plaintiff has never accepted ⁽²⁴⁴⁵⁾ my offer to sell
the said land.

5. On the 7th February 1934 plaintiff advanced to me an
amount of £2500 on the terms and conditions
mentioned in the document marked A attached hereto. The
original duly signed by me is in plaintiff's possession
and to it I agree to refer.

According to the terms of the said document the said
sum of £2500 was to be repaid by me with interest at
the rate of 5% annual upon the sum of the said document to be transferred within 24 months from the date
of the said document, that is to say with-in 24 months from
the day of February 1934.

6. None of the plots to which the said document referred

(1)

the transferred within the period mentioned and on the day in question I entered into an agreement mentioned, part of the price for the sale of the said real estate of deceased land to the said party,

to I will that this act and the application for an in-justice be made upon the said party.

(Sgt) Arthur V. Smith.

Done at witness this 12th day of February 1914.
before me

(Sgt) E. E. Lagan

Age 20th Regiment
Infantry.

Agreement made February 3rd 1888.

I have the honour to hand you herewith my promissory note for £2,000/- and to acknowledge receipt of your cheque, the same amount given me as a loan, as an advance payment on various pieces of land I have sold @ your behest the transfer of which is now in the East Africa Protectorate Government for calculation this advance of £2,000/- can be deducted from any amount of money having due to me.

In purchase money for any of the plots of land I have sold to your behest. Should none of these plots be transferred any within 12 months from date I undertake to repay you the said amount of £2,000/- with interest added at the rate of 10% on you demanding payment.

Yours faithfully,
 Sgt. Arthur T. Smart.

IN THE HIGH COURT OF JUSTICE AT WESTMINSTER.

1902 June 26, A. D. 1902.

The Right Hon. Hugh Cairns Esq. Lord Chancellor of Great Britain.
Solicitor-General.

Arthur James Gifford Esq. Respondent.

I, Charles Grant of Geneva Esquire do hereby make oath and affirm—

1. That I am the person named in the plaint as having entered into an agreement in writing with the defendant herein for the purchase of certain land in England &c.

2. That I have searched at the High Court of Justice at Geneva of the Records of that Court in order to find whether any document conferring or purporting to confer any right, title or interest in that land or any part of the said land was ever registered as provided by section 4 of the said High Court Registration Act.

3. That I found that no contract for the sale of the said land to said defendant had been registered and I claim that the documents in the possession of the plaintiff not having been registered should not be received in evidence or any proceeding affecting the property under section 17 of the said High Court Registration Act.

Given at Geneva
this 26th day of February 1902.
Signed as
[Signature] Charles Grant.

Wm. H. R. Logan
[Signature] Vice Registrar
Geneva

IN THE DISTRICT COURT OF THE UNITED STATES AT WASHINGTON.

Civil Case No. 1, of 1904.

The Right Hon. Hugh Thompson Esq.
 Plaintiff.

versus,

Arthur Thomas Esq., Defendant.

I hereby nominate and appoint Samuel Tilden and J. G. Allen or either of them to be my solicitors and attorneys to appear and act for me in the above matter.

Dated this 7th day of February 1904.

(sgd) Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

April 20th 1914.

The Hon. Chief Justice of the Supreme Court of the District of Columbia.

Verdick

Arthur Hays Sulzberger

I hereby certify that the above is a true and correct copy of the original as filed in this case.

(Sgd) Arthur Hays Sulzberger

Arthur H.
Chief Justice 1914.

Order of the Court in the case of **THE STATE OF ILLINOIS vs. JAMES EARL RAY**

under the provisions of the Code of Civil Procedure, Chapter 120, Section 120-1.

The Hon. the Hon. **JOHN P. QUINN**, Judge of the Circuit Court of Cook County, Illinois, Plaintiff.

vs.

JAMES EARL RAY, Defendant.

That the Hon. the Hon. **JOHN P. QUINN**, Judge of the said Circuit Court, Illinois, being the plaintiff in the above captioned cause, filed in this court on the 27th day of February 1968, a petition praying the assistance of the said Judge **JOHN P. QUINN**, Illinois, in restraining the defendant, **JAMES EARL RAY**, from conveying any interest in any real estate in the County of Cook, Illinois referred to in the above petition to Mr. **JOHN P. QUINN**, until the decision of this court, before the High Court.

That under my hand and the seal of the Court, this 28th day of February 1968.

John P. Quinn

Judge of the Circuit Court,

Age: Four Registrate

A. V. Quinn, Esq.
Sgt. Harris,

Chicago

Receipt for exhibit 1 see back.

Nairobi,

East Africa,

March 1st 1906.

278

THE HONOURABLE MR. JUSTICE
T. S. JACKSON
& ALLEN,
Solicitors,
and Messrs.
J. ALLEN.
(Sole Agents)

Sir,

Lord Dalmeida v. A. T. Smart

District Registry Case No. 1. of 1906.

We beg to apply for the return to us Exhibit 1 (one)
filed by us in this case as we require same for a few days.

A copy of the Exhibit is filed with the plaintiff and we
undertake for the safe custody of the Exhibit and to return
same as soon as we are finished with it or it is required
by the Court.

We have the honour to be,

Sir,

Your most obedient servant,

(Sgd) Jenks & Allen.

A. E. Logan Esq.,

District Registrar of the High Court,

N A I R O B I.

Nairobi,

279

Woods & Allen,
Solicitors.

East Africa,

March 2nd 1906.

Sir,

East African Agency, Ltd.

District Registrar, East Prov. of U.K.

Referring to case of the 1st instant to you return
herewith Exhibit 1. In above case in accordance with our
undertaking.

We have the honour to be,

Sir,

Your obedient servants,

(Sgd) Woods & Allen.

The Town Magistrate,

Nairobi.

Exhibit No. 1

Civil Case No. 1/06

COPY

Nairobi 28th June 1904.

Messrs. Tonks & Allen,
Solicitors, Nairobi.

Dear Sirs,

I beg to hand you herewith Mr. A. F. Smart's authority to sell for him and his account his plot of land of 500 acres known as Hill top farm. Lord Delamere has today visited the said farm and has approved of it. Lord Delamere will pay £.500 on Mr. Smart's accession to the former all titles and rights and has asked me to communicate with you on the subject.

Mr. Smart will call tomorrow at your office for the purpose of giving you instructions regarding this deal.

I am Dear Sirs,
Yours faithfully,

(Sgd.) I. Marcus.

<p>23</p>	<p>Handwritten notes and stamps</p>
-----------	-------------------------------------

East Africa Protection Act
Nairobi Registry
No. 8 of 1906
Produced by Lord Delamere
for Tonks and Allen
and registered at their request
at the registration office at
Nairobi in the presence of
Lord Delamere

Registration Clerk
dated this 2nd day of March
1906 - I. Marcus
Principal Registrar

~~Exhibit No. 2.~~

Civil Case No. 1/08.

COPY.

J. Marcus.

Dear Sir,

I authorize you herewith to sell for me and my account my plot of 500 acres of land known under the name of Hill top farm bounded on the East by the Military and on the West by the Dagoratti Road for £.500 five hundred pounds sterling I giving the buyer a clean sheet of all survey fees and dues and rents up to the date of transfer.

Yours faithfully,

(Sgd.) ARTHUR T. SMART.

27. 8. 04.

I held the above land freehold, subject to the transfer of one hundred acres of land (from the 500 above mentioned) to Government at the rate of Rs.6/- per acre and compensation for all improvements, should the Protectorate Government require the said 100 acres within 3 years for public purposes.

27. 8. 04.

(Sgd.) ARTHUR T. SMART.

High COURT AT <i>London</i>	E. A. F.
CIVIL CASE NO. <i>1</i>	<i>08</i>
<i>2</i>	
<i>23</i>	<i>February 1906</i>
<i>(Sgd.) E. K. ...</i>	<i>12 ...</i>

~~Exhibit No. 2.~~

Civil Case No. 1/08.

COPY.

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27. 6. 04.

(Sgd.) ARTHUR T. SMART.

High Court at Nairobi E.A.F.
 CIVIL CASE NO. 1 OF 1906
 2
 23
 February 1906
 V. J. Marcus
 H. S. Smith

*copy*Exhibit No. 3Civil Case No. 1 of 1904

Nairobi, 3rd February 1905.

Copy Receipt from A. T. Smart to Lord Delamere.

To

The Lord Delamere

Equator Ranch, Njere,

Nairobi.

My Lord.

I have the honour to hand you herewith my Promissory note for Rs.1,500/- and to acknowledge receipt of your cheque of the same amount given me as a loan, and as an advance payment on various pieces of land I have sold to your Lordship the transfer for which is now in the ^{land} hands of the East Africa Protectorate Government for consumation. This advance of Rs.1500/- can be deducted from any amount of money becoming due to me as purchase money for ~~ix~~ any of the plots of land I have sold to your Lordship.

Should none of these plots be transferred say within twelve months from date, I undertake to repay you the said amount of ^{Rupees} Fifteen hundred with interest added at the rate of 10% on your demanding payment from me.

I remain etc.,

(Sgd.) Arthur T. Smart.

THE COURT AT *Nairobi* E. A. P.
CIVIL CASE NO. 1 OF 1904
EXHIBIT 3

23

February 1905
A. T. Smart

At Nairobi

2.11/06
EAST AFRICA PROTECTORATE.

TOWN MAGISTRATE'S OFFICE,
NAIROBI,

283

East Africa 28th April 1906.

Re. Civil Cases No.1 and 4 of 1906 in the District
Registry of High Court at Nairobi.

Sir,

I have the honour to forward herewith the certified
copy of the settlement arrived at between the parties in
these cases filed by Mr. S. G. Allen Flesher of Lord Dela-
more.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd) E. R. Logan

Ag: Town Magistrate.

To
The Registrar,
High Court,

Nairobi.

High
IN THE Dist. Regy of COURT

AT NAIROBI

284

EAST AFRICA PROTECTORATE.

Civil Case No. 1 OF 1906.

IN THE DISTRICT REGISTRY

The Rt. Hon'ble Hugh Chelmsdeley Baren Plaintiff.
Delamere.

Arthur Thomas Defendant.

Taken by (1) Mr. W. G. Allen,

Pleader for the Plaintiff herein.

(2) Mr. W. A. Burn,

Pleader for the defendant herein.

Take notice that the hearing of this case has been fixed for the 12th day of April 1906 at 10 o'clock in the fore noon or as soon thereafter as the case can be heard at the Town Hall At Nairobi Court of the East Africa Protectorate at

If no appearance is made on your behalf by yourself, your pleader or by someone by law authorized to act for you the case will be heard and decided in your absence.

Given under my hand and the Seal of the Court this 27th day of March 1906.

Sgd. E. R. Logan

Ag. Town Magistrate,
Nairobi.

East Africa Protectorate.

IN THE Dist regy of the High COURT 285

AT N A I R O B I (Town Hall)

EAST AFRICA PROTECTORATE.

CIVIL CASE No. 1 of 1906.

~~The Rt. Hon'ble Hugh Cholmondeley Baron~~

~~Plaintiff~~

~~Delamere~~

~~LEASER.~~

~~Arthur Thomas Smart~~

~~Defendant.~~

T

The Land Officer,

East Africa Protectorate

N a i r o b i

You are hereby commanded in His Majesty's name to attend the Court on 12th day of April 1906 at 10 o'clock in the forenoon or as soon thereafter as the case can be heard as witness in the above case.

Dated this 9th day of April 1906

This Summons has been issued on

the application of Mr. Allen for

Sgd. E. R. Logan

the Plaintiff

Asst. Secy.

TOWN MAGISTRATE'S COURT,
NAIROBI,
26th February 1906.

Sir,

I have the honour to inform you that the following Civil Case has been filed by Mr. B. G. Allen on the 17th day of February 1906 in the District Registry of the High Court at Nairobi.

"Civil Case No.1 of 1906.

"The Rt.Hon.Judge Chalmersby Baron

"Belamere.....Plaintiff.

"versus

"Arthur Thomas Smart.....Defendant

"To execute to the said Plaintiff a sufficient conveyance of 200 acres of Freehold land situate on the "Ingeretti Road, Nairobi, value £,500/- Rs. 7000/- and "Rs.500/- damages for refusing and delaying to execute "the same; and also for an injunction to restrain you "from conveying the said land to Charles Grant or any "other person and to restrain the said Charles Grant "from dealing in any way with the said lands, pending "the trial of this suit".

The Registrar,
High Court,

N a i r o b i .

I now beg to forward herewith Treasury draft for Rs. 200/-, being the fees collected in this Court for the above case, including Rs. 10/- the balance of Appeal fees etc.

1. Cash Court
2. Chanda Singh

Appellants.

versus

CRUSH..... Respondent.

MEMO FOR RECORD IN CASE NO. 10 of 1924.

Conveyance of land value Rs. 7000/-	
plus Rs. 200/- for damages - in all	
Rs. 2000/- for the first Rs. 1000/-	
& 10% for the subsequent Rs. 1000/-	Rs. 200
Injunction (Temporary)	" 10.
Service.	" 1.
Vehicle (Mr. Allen) for Plaintiff.	" 5.
Writing application for summons.	" 50. 0.
Vehicle (Mr. Allen) for defendant.	" 1.
<u>MEMO FOR RECORD IN CASE NO. 10 of 1924.</u>	
Interimutory application.	" 1.
Order made thereon.	" 10.
Service of order.	" 1.
<u>MEMO FOR RECORD.</u>	
Filing & Exhibits by Mr. Allen at the	
interimutory application.	
Please acknowledge receipt.	Rs. 100. 0.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd) M. K. Logan

Ag: Town Magistrate.

Recd 26 2 06

Registry Act

Nairobi,

23rd February 1906.

To

The Registrar,
High Court,
N e m b a s a.

Sir,

Delanore vs. Smart.

Civil Case No. 1 of 1905 Nairobi Registry.

*That judge
is up upon
of*

The above action which is (as for specific performance of an alleged contract for the Cufe of land has been filed in the Nairobi Registry of the High Court. The Fees Magistrate has to-day made an order for an interim injunction restraining the defendant until the hearing from parting with or dealing with the land in question. My client the defendant has already made an agreement to sell the land to a third party and a company is in process of formation to develop the property as a suburb of Nairobi. It is therefore of the greatest importance to defendant that the action should be quickly decided, as loss and inconvenience is occasioned by each day's delay.

The object of my writing is to ask when in ordinary course His Honour will attend at Nairobi and hear the case. In the event of no sessions having been fixed I should like to ask whether His Honour will be likely to come to Nairobi to hear the case. If His Honour cannot attend at Nairobi, the defendant will appeal from the interim injunction and would be glad to have that appeal combined with the hearing of the suit, so as to avoid two hearings of what is practically one issue. Should an appeal the hearing of the appeal would I presume take place in Nairobi.

The

(2)

The case is not a heavy evidence case, as its decision will depend *mainly* on questions of law.

I may add that the decision of the case will affect property valued at upwards of Rs. 50000/-

I have the honour to be,

Sir,

Your obedient servant,

(Sgd) V. A. Rama.

To

Registrar,
High Court,
Nairobi.

Handwritten:
Nairobi
5/10/66

Please say when Judge will visit Nairobi I leave end
April.

From Burns.

note
Informed that *note* quite certain but probably April.
(20) R.G.B.
R. G. B.

C O P Y

In the High Court of East Africa, Nairobi registry.

Civil Case No. 1 of 1906.

Rt. Hon. Hugh Chelmondeley Baron Delamere.....Plaintiff
versus.

Arthur Thomas Smart.....Defendant.

To the above named plaintiff:

WHEREAS Charles Grant of Nairobi settler has applied to this Court under Sec. 32 civil procedure code to be made a defendant to this action on the ground that his presence before the court is necessary to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit, you hereby summoned to appear on 17th day of April 1906 at 10 a.m. at Nairobi and also ^{as} soon after as his Council ^e can be heard in person or by an authorized pleader to show cause why the above named Charles Grant shall not be added as a Defendant on such terms as the court thinks just and you are hereby required to take notice that in default of your appearance this summons will be heard and determined in your absence.

Given under my hand and seal of this Court this 14th day of April 1906.

(L.C.) (Sgd.) E. R. Logan.

J U D G E.

C O P Y.

In the High Court of East Africa, Nairobi Registry.

Civil Case No. 1 of 1906.

Rt. Hon. Hugh Cholmondeley March Delemere....Plaintiff.

versus.

Arthur Thomas Smart & In re Charles ^{Grant} Application . Deft.

I Charles Grant of Nairobi settler make oath and say:

1. I am the person named in the plaint in this action and against whom the plaintiff moved for an interim injunction to restrain me from dealing in any way with the land in dispute in this action till the hearing of the cause. At the hearing of the said application I gave an undertaking in the terms of the said plaint.
2. On the 3rd day of February 1906 the defendant entered into an agreement in writing with me to sell the land in dispute herein to me for the sum of Rs.25,000 and received the sum of Rs.1,000 from me on account of the purchase money of the said land. The document now produced and shown to me marked A is the said agreement.
3. At the time of entering into the said contract the defendant informed me that the plaintiff had lent him £100 for which he had given a promissory note at 10% interest and that he had not sold the said land.
4. The terms of the contract between the plaintiff and defendant as to sale of said land are embodied in a document in writing dated 3rd day of February 1906 and signed by the defendant, which said document was filed as an exhibit in Court at the hearing of the motion for the interim injunction.

(2)

5. The terms of the document to which I crave leave to refer are to the effect that unless the land in dispute (inter alia) was transferred to plaintiff before 3rd day of February 1906, the sum of Rs.1800 for which the defendant gave a promissory note was to be treated as a loan.

6. The agreement between plaintiff and defendant to withdraw the action and for the defendant to execute a conveyance of the land in dispute seriously affects my interests and my presence before the Court is necessary to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit.

7. I did not apply to be made a defendant to this action as there was no necessity for my being so as long as it was being defended by the defendant Smart. I received no intimation that the defendant had abandoned his defence and had made an independent agreement for a fresh sale at an enhanced price to plaintiff of land in dispute till the day fixed for hearing of the action.

8. I respectfully submit to this honourable Court that I am entitled to be added as defendant to this action to carry on the defence abandoned by the defendant Smart.
Sworn before me at yairebi,
this 17th day of April 1906.

(Sgd.) Charles Grant.

(Sgd.) H. R. Logan
Ag. Town Magistrate.

IN THE HIGH COURT OF EAST AFRICA HANDED JUSTICE,

Civil Case No. 1. of 1906.

The Rt. Hon. High Chiefdomsday

DAVID HILBERT,..... Plaintiff

versus.

ARTHUR HANCOCK SMITH,..... Defendant.

I hereby appoint Mr. A. Burn of Nairobi to be my
Counsel in the above case.

Wm. Charles Grant.

Nairobi,

14. 4. 06.

~~Self~~ telegram 9-7-06

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To
Magistrate,
High Court,
Nairobi.

Your letter 8/25/06 and Auckland call for both files to be produced in Court here at which time Allen call for uncertified copy of both files including plaints written statements exhibits and proceedings to be sent by next mail cost deposited here.

From
Town Magistrate

Replied
(1d) K.W.B.
11. 7. 06

V 603 ^c
4.7.06

Copies of proceedings sent to T.M. Nairobi for Mr.
Allen. (1d) J.W.B.
12.7.06.

EAST AFRICA PROTECTORATE.

296

R e p l y .

In reply to your ^{letter} ~~letter~~ No. 200/24 of the 4th instant I have the honour to state that I regret I am unable to send up the archives to Nairobi for inspection but I shall be happy to grant inspection at Mombasa to Mr. Buchanan or his Agent.

(Sd) R. W. H.

T. H.

Nairobi.

v. 1/572

28 KMO

Registered
no. 11-6206

File
K.P. 13.6.42

297

THE REGISTRAR'S OFFICE,
MUMBAI,
7th June 1942

No. Civil Case Nos 1 & 4 of 41.

Mumbai District Registry.

Sir,

In reply to your letter numbered G/MS dated the 27th April last I have the honour to return herewith the copy of agreement arrived at between the parties, together with a letter of Mr. S. Chellian attached to it.

I have the honour to be,

Sir,

Your obedient servant,

(Sd) M. K. Logan

Your Magistrate.

The Registrar,
The Courts,
Mumbai.

THE DISTRICT COURT,

NAIROBI.

July 28 1954.

Re. Reference to Archives.

Sir,

I have the honour to forward herewith the written application of Mr. A. W. Bushland for inspection of records of civil cases Nos. 1 and 4 of 1954 of the District Registry Nairobi.

Will you please therefore send down the original records of the above cases to this Court by return of post.

I have the honour to be,

Sir,

Your obedient servant,

(Sd) E. R. Logan

Town Magistrate

The Registrar,

Law Courts,

Nairobi.

MEMORANDUM TO ARCHIVES.

Application

To

The Town Magistrate,

299

Nairobi.

Sir,

I have the honour to request that you will please allow me inspection of the original records of the cases herein below set out in accordance with the High Court Archives Rules 1906 (N.A.S.M.C. 2 of 1906)

I have the honour to be,

Sir,

Your obedient servant,

Sd/-, H.W. Buckland.

Dated at Nairobi

July 4th 1906.

(1) In the District Registry of the High Court at Nairobi
Civil Case No. 1 of 1906.

Lord Delamere vs. A. T. Smart.

(2) In the District Registry of the High Court at Nairobi
Civil Case No. 4 of 1906.

Lord Delamere vs. (1) A.T. Smart (2) W.H. Smart.

cc. 2

No. 2

H.

IN THE Supreme COURT

AT Nairobi

300

EAST AFRICA PROTECTORATE.

Transfer Case No. 4 of 1906

original CIVIL CASE NO. 5 OF 1906. of the District Registry of the High Court, at Nairobi.

Charles Grant

Plaintiff.
Lease Holder

versus

Arthur Thomas Smart

Defendant.
Judge and settlor

Date of ~~issue~~ *21st Aug* 1906. Date of hearing *11th Sept* 1906.

JUDGMENT:—

10th September 1906.

301

Decree transferred from the Mombasa High Court for execution.

Mr. Buckland for decree holder applies for execution, files herein his written application in support thereof under sec. 235 C.P.C.

ORDER. Issue notice under Sect. 248 C.P.C. and serve upon the judgment debtor to appear before Court on the 13th September 1906 and show cause why execution as asked for in the above application should not be granted.

Sd/- E.R. Logan.
10-9-06.

Mr. Buckland for decree holder.

* Alien for judgment debtor.

After argument adjourned to 20th September 06 for judgment debtor to lodge his appeal, if he intends to do so if no appeal lodged, execution to go on application.

Sd/- E.R. Logan,
13th Sept, 1906.

18th September 1906.

Mr. Buckland for decree holder.

Mr. Allen for judgment debtor.

Mr. Buckland puts in affidavit of decree holder dated 18th September 1906 and in view of the facts sworn to, asks for the arrest of the judgment debtor and his committal to Civil imprisonment under sec. 337 A Civil Procedure Code.

Mr. Allen states that he is at present without instructions

instructions from the debtor, being in Court at the time on other business.

Court directs the debtor A.T. Smart to be sent for and to come to the Court at once. Later Judgment debtor A.T. Smart appears in Court and his evidence is taken.

ARTHUR THOMAS SMART duly sworn states

I could get to satisfaction out of Lord Delamere - he said he was not satisfied with the way I had fought the case. I had not said in the evidence what I could have done to defend my case. He said he would not put up the money for an appeal and I must make the best of it myself. I did not what to do, so I release Lord Delamere from his agreement to indemnify me against the result of the ~~xxx~~ action Grant v. Smart, heard at last Sessions by the Judge. & I get what I could from him as a quid pro quo I suppose I am now in the hands of the plaintiff.

Xrd. I got £.80 from Lord Delamere for releasing him - nothing else at all. this agreement was made - Mr. Allen's office. I took Mr. Allen's advice. Lord Delamere did not undertake to start me in business - he did nothing else for me. I am not in a position to pay decree in Grant v. Smart the £.80 is in Bank.

I and my brother got £.900 when agreement with Lord Delamere d/d 12. April 1906 was signed and we had had £.100 in advance. I gave the money to my brother I owed it him. I had been here for 2 years without making anything and living on him all the time. I have interest $\frac{1}{2}$ share in Butchery Smart & McCall. Have not made this interest to my brother - it is not a valuable asset. I have no interest in hotel here. I never had any interest in it. it is my

brother's

brother's.

Re Xd. by Allen.

I should say that Allen was acting for Lord Delamere when I released Lord Delamere from indemnity. I received letter from Allen on Lord Delamere's behalf. Ex.1 I answered that considering the circumstances I was placed in, I ^{would} accept the offer. Latter Allen gave me Lord Delamere's cheque for £.50 and I gave a receipt for it. I have no intention of leaving Nairobi at present. I did not say to Lord Delamere or anyone else that I intended to go to Argentine Republic.

BY THE COURT.

Q. Can you give any explanation why you accepted £.50 in satisfaction of your claim against Lord Delamere for roughly £.3000.

A. I thought I should not get anything out of it. I thought I had to pay defendant Grant before I could get anything out of Lord Delamere. I was told I had not fought the case properly. I did.

Q. Did you do your best to fight the case?

A. Yes.

Q. First question again put to Smart on request of Mr.Allen.

A. I did not tell the Court that Grant had offered me 100 shares in the Lingham & Grogan Co if their land deal between myself and Grant went through in Grant's favour.

Q. When Grant made this statement to you did you make any reply.

A. I said I should be pleased to have them.

Q. Did you suppress any facts in the case which you knew would be in your favour?

A. I did not suppress any thing but I forgot some things

Q. Did you fight the case honestly to the best of your

ability with a view to win?

A. Yes.

Q. Did Lord Delamere allege that you had not fought the case bona fide?

A. Yes.

CHARLES GRANT, duly sworn states.

When I purchased the land from Smart I took steps to form a land Company for the purpose of dealing with it. I discussed the scheme with Smart at the time - he thought it would be a good scheme and applied for 20 shares of £.10 each in the company. Afterwards he made a kind of a complaint that he had sold me the land for less than £.4 an acre and he was buying it back at £.10 a share. he thought he should have it on better terms. I ~~thought it best~~ felt inclined to give it on better terms. I thought it best not to give the shares at a reduced price, so instead I offered him the shares in the Lingham & Grogan Co. which I thought were then worth about 7/ a share. I gave the shares simply in lieu of taking a lower price for the shares in the Land Co. this took place 8 or 10 days before Lord Delamere got his injunction against ^{Smart} and myself.

BY THE COURT,

Did you attempt in any way to influence Smart not to defend the action bona fide.

A. In no way whatever. Smart was most anxious for me to get the land at that time.

Xcd by Mr. Allen.

I offered these shares long before the summons was issued in case Delamere v. Smart & his brother. Nothing whatever was said about fighting Lord Delamere Smart had already applied verbally for shares in my intended land Co

at £.10 a piece. The Lingham & Grogan Co has not been floated yet. The value of the shares could not therefore be ascertained. Smart did not allege in the action that the shares in the Lingham & Grogan Co were to be made over to me for not defending the action.

Court orders £.50 paid to debtor by Lord Delamere and now standing to his credit at the National Bank of India Nairobi to be attached, further order restraining debtor from disposing of his interest in the butchery business of Smart & McCall - further, it appearing that moneys belonging to the partnership of Smart and McCall butchers ^{handwritten} are at the Bank of India Nairobi standing in the sole name of A.T.Smart, the Court orders Mr.C.Rally of Newland, Tarlton & Co to be appointed interim receiver of all moneys to credit of A.T.Smart at Bank of India and to pay out such sums as are necessary for carrying on the butchery business and to receive such sums as are paid in, in the course of business from the said butchery business the terms under which Mr.Rally is to pay out and receive such sums to be agreed between Mr.Buckland and Mr.Allen and to be filed in Court and become an order of Court - question of committal of judgment debtor to civil imprisonment adjourned to 19th September 1906 at 10 a.m. Mr.McCall becoming security for appearance of judgment debtor at that time in the sum of Rs.1000.

Sd/- E.R.Logan.

18-9-06.

In the Town Magistrate's Court at Nairobi.

Transfer decree No.4 of 1906

Original civil case No.5 of 1906 of the District Registry of
the High Court, Nairobi.

Plaintiff Charles Grant
Charles Grant v *Defendant A.T. Smart. deft judgment & costs*

ORDER OF THE COURT.

The debtor is before the Court on an application to commit him to civil imprisonment for not paying the amount of decree made against him in the High Court on the 21st, August 1906 for Rs.35,915-6-0. The decree was transferred to this Court for execution & application for execution was made on 13th, September 1906, the application was adjourned to 20th, September, as it appeared that the debtor intended to appeal against the decree; it now appears that the debtor has no intention of appeal & that the security which the debtor stated he would be able to offer does not exist.

The facts, leading up to this application are somewhat peculiar, it appears from the plaint & other documents, filed in the High Court action, which are now before me.

Quite briefly, they are as follows:-

The debtor entered into contracts to sell a certain piece of land to 2 different people, viz., Charles Grant, the Decree-holder & Lord Delamere, being apparently aware that such action must inevitably land him in an action for damages from one or other of the vendees, when he sold the land to Lord Delamere, he obtained from him an indemnity "against any costs & damages he may bona fide incur and be compelled to pay in regard to any action which may be brought against him by the said Grant" in respect of his Agreement to sell the land to Grant & the ~~stated~~ debtor undertook to bona fide defend any such case & resist any such claim for damages to the best of his ability.

In due course an action was brought against Smart by Grant with the inevitable result that Smart was ordered to pay heavy damages to

307

Grant Rs. 35,000 odd.

The case was fought out in the High Court & during the greater part of 3 days was contested apparently with the utmost rigour; Mr. Allen, who now acts as adviser to Lord Delamere, appearing on behalf of Smart. Yesterday the debtor appeared in Court in consequence of an affidavit sworn by Smart & stated that he had released Lord Delamere from his indemnity in return for a cash payment of £.50/- only.

Absolutely the only explanation he can give for this extraordinary conduct is that Lord Delamere was not satisfied with the way in which he had fought the case & he thought he had better take what he could get & further that he thought he could get nothing from Lord Delamere until he had paid Grant & also that he thought he had got to appeal. When pressed by the Court for an answer he had admitted somewhat reluctantly that he fought the case bona fide & to the best of his ability, but he has seemed anxious to make much of the fact that he forgot to mention in his evidence certain facts which might have been of importance. Mr. Allen, who now appears for Smart has tried to suggest that there was some collusion between Grant and Smart in the High Court action. The suggestion comes strangely from the very pleader who appeared for Smart in the High Court action. There is in fact not a little of evidence in support of the suggestion. So far as can be seen the action was fought bona fide and the debtor had a good claim against Lord Delamere on the indemnity for the costs & damages given against him in the High Court action. The indemnity says not one word about an appeal to any other Court. Yet in the face of this, Smart accepts £50/- for his rights & now states ^{is} unable to satisfy the decree against him. It is one of the most extraordinary things which has ever come under my notice and reflects little credit upon anyone concerned in it.

Section 337A of the Code of Civil procedure says that before refusing an application for civil imprisonment, the Court may take into consideration:-

- (1). the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date or any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree holder in the execution of the decree;
- (2). any undue or unreasonable preference given by the judgment debtor to any of his other creditors.

I have no hesitation in saying that the debtor has given an undue preference to a man against whom he had prima-facie a good claim in Law. If he could not have recovered the money otherwise, he should have sued for it or at the very least taken the best legal advice available. He has not attempted to do either. Such conduct appears to me to be an act of bad faith with the object of obstructing the decree-holder in the execution of the decree.

The order of the Court is for the debtor either to pay the amount of the decree or to find satisfactory security for it forthwith, or in default to be committed to Civil Imprisonment for six months.

(S/d) E. R. Logan.

19th. September 1906.

~~I hereby certify that
this is a true copy
of the original~~

Sd/- E. R. Logan.
Town Magistrate.
WATSON
5-10-06

1. Sept. 1906

1. Rickland for decree-holder; Mr. Allen for judgment debtors
 2. Rickland mentions the order made by the Court on 18th Sept 06 in regard to the appointment of Mr. Rolly as receiver & states that Mr. Rolly is unable to act.

After discussion it is agreed.

- 1) that Mr. F. A. Wood be appointed interim receiver of the business of McCall & Smart and that he open a fresh account at the --- National Bank of India situated in his own name as receiver.
- 2) that all monies now in the *full* or hereafter received over the counter in respect of the business done by McCall & Smart prior to 20th Sept 06 be handed over daily to Mr. Wood as receiver and that any sums received provisionally by Mr. ~~McCall & Smart~~ Rolly in the capacity of Receiver be handed over by him to Mr. Wood, and that out of such sums received by Mr. Wood, Mr. Wood is to pay off the liabilities of the business of McCall & Smart incurred previous to the 20th September 1906.
- 3) that Mr. McCall is to find the capital for carrying on the business of McCall & Smart from the date hereof until the 1st Oct. 1906 & is to have a first charge on the business of McCall and Smart in respect of any such capital found by him.
- 4) that in the meantime Mr. Wood is to ascertain the position of the business of McCall & Smart, its value as a going concern & its assets & liabilities, with a view to an equitable arrangement between Mr. McCall & the judgment ~~debtor~~ creditor on Oct. 1st
- 5) that Mr. Wood's remuneration is to be fixed by the Court at a later date.

(S/d) E. R. Logan.

21-9-06.

22nd September 1906.

Mr. Buckland for decree holder

~~Mr. Buckland~~ applies for a notice ~~to~~ to be issued and served on the judgment debtor to appear before the Court on 27th September 1906 at 10 a.m. to shew cause why the the money due to the debtor from Lord Delamere under the indemnity bond dated 12/4/06 given by Lord Delamere to the judgment debtor should not be attached.

Also for a summons under section 267 Civil procedure Code to be served upon Lord Delamere to enable him to examine Lord Delamere in the said matter.

Mr. Buckland files affidavit of decree holder in support of his application.

O R D E R.

Issue notice and summons as asked for 27th Sept 1906.

Sd/- N. R. Logan.

25-9-06.

Mr. Buckland for decree holder.

Mr. Allen for judgment debtor.

Mr. Harrison for Lord Delamere.

Arthur Thomas Smart duly sworn states.

I have nothing to add to the statement made before this Court on 17-9-06.

Xrd. I have not got the document of release of indemnity - nor a copy of it. I gave it to Lord Delamere a day or 2 before 17th September - Saturday or Monday; it must have been Monday Morning.

Mr. Allen states that he does not object to the attachment of any debt which is due to judgment debtor from Lord Delamere.

Hugh Chalmers Lord Delamere duly sworn states.

I entered into agreement on 12th April with Smart by which he agreed to sell to me property which he had already sold to Smart and which I understood that Smart was annoyed with Grant for going for him for damages and wanted to make some arrangements to annoy Grant and had no particular feeling if he sold me the document or not, and wanted to let me out if he could. When the agreement was made, no suggestion was made that it might be fraudulent. I took advice in a Solicitor's office; Mr. Allen's advice. I believe Smart also took Mr. Allen's advice. When Smart originally sold me the land he said he had got it, but he had not got it, he had only put in an application for it, so I said very well you had better put it in my lawyer's hands and in that way Allen has been working for both of us.

Xrd by Harrison.

When I entered into the contract of release I was

advised

advised that Smart could not sue me on the indemnity. I knew that Smart had not defended the case properly. I have heard that he has made some arrangement with Grant as to getting something more than the ^{price} piece of land had been previously sold to me by Smart. I agreed to ~~indemnify~~ indemnify Smart against any action which might be brought against him by Grant provided he defended the case to the best of his power (Copy of agreement is on file and is not disputed by Mr. Harrison.) I was absolutely under the impression that I had bought the land from Smart for the first time.

BY THE COURT.

I say that the defence was not bona fide and therefore that I do not owe the money to Smart.

BY BUCKLAND.

I told Smart that the indemnity which I had given him was not worth £.50, as he had not put up a bona fide defence and I gave him £.50 for it to save me further trouble he gave me a release which I think is in Mr. Allen's office. I suggested him £.5 first of all. I think I told Allen ~~that~~ to tell Smart that he had got to appeal. I did not tell Allen to appeal on behalf of Smart.

The Court rules that inasmuch as the sum claimed as a debt to the judgment debtor from Lord Delamere is disputed by the latter the proper course is to appoint a receiver under section 503 Civil Procedure Code to test the liability of Lord Delamere by an action *vide* Toelae Gopal and others v. John Antone XI Bombay Reports p.448

Mr. T. A. Wood is appointed Receiver.

Ed/- N. R. Logan.

F7-9-06.

Mr. Allen
 Mr. Buckland. } on appointment of Mr. Wood as receiver
 of the butchery business of McCall &
 Smith.

Mr. Allen mentions this matter in Court after notice to Mr. Buckland.

Mr. Allen points out that Mr. Wood's appointment as receiver was only to last from September 20th to October 1st and in that time Mr. Wood was to ascertain the financial position of the business of McCall & Smart with a view to an equitable arrangement between Mr. McCall and the judgment debtor.

Mr. Allen points out that Mr. Wood's position is now irregular as the time has elapsed during which he was to act.

Mr. Buckland states that Mr. Wood has not yet been able to ascertain the financial position of the business as there are believed to be liabilities which have not yet been ascertained.

After discussion adjourned for Mr. Buckland to consider the position and make further application to the Court.

34/- E. R. Logan.

19 October 1906.

20th October 1906.

Mr. Buckland for decree holder states that he does not wish to take any further steps in execution of the decree at wairehi and applies for a certificate of what has been done in execution of the decree by this Court the Court from which the decree was sent for execution.

Order.

O R D E R

**Certificates to be sent as asked for under sec.223
Civil Procedure Code.**

Sd/- H.R.Logan.

20th October 1906.

IN THE ~~District~~ Registry of the High COURT

AT Nairobi

315

EAST AFRICA PROTECTORATE.

CIVIL CAUSE No. 5 OF 1906.

Charles Grant

Plaintiff.

versus.

Arthur Thomas Smart

Defendant.

DECREE.

Claim for ~~Rs~~ 36,750

This cause coming on 16th, 17th & 18th July and 21st August

1906 for final disposal before J. W. Bart
acting Principal
Esquire/Judge, in the presence of H. W. Buckland
on the part of the plaintiff and B. G. Allen

on the part of the defendant, it is ordered that the defendant do pay
to the Plaintiff the sum of Rupees Thirty ^{two} thousand nine
hundred and fifteen and annas six only being the amount of damages
allowed with on ~~to~~ 1000/- part of the purchase money at the rate of 9% to
date of it and costs

	Rs.	as.	p.
Principal	34900	-	-
Interest	49	8	-
Costs	961	6	-
Cost of Decree	4	8	-
Total	36915	6	-

Copy to
H. W. Bart
21/8/06
Received

(S)

J. W. Bart
acting Principal Judge.

True Copy
J. W. H. Parkinson
ag. Registrar

Dated this 21st day of August 1906.

High Court

Certificate given under Section 224
of the Code of C. P.

316

IN THE ~~In District Registry of~~ ^{High} COURT

AT Nairobi

EAST AFRICA PROTECTORATE

CIVIL CASE No. 5 1906

Town Magistrate
No. 2
1st Sept 21st 1906
Received

Charles Grant Plaintiff.

versus.

Arthur Thomas Smart Defendant.

I hereby certify that no satisfaction of the final Decree passed in the
above Suit on the 21st day of August 1906, has
been obtained by execution within the Jurisdiction of this Court.

Given under the Seal of the Court, this 6 day
of September 1906.

(B-)

J. N. H. Parkinson
Acting Registrar
High Court
East Africa Protectorate.

the District Registry of the High
IN THE COURT FOR EAST AFRICA AT ~~MOGADISHU~~
Nairobi

317

CIVIL CASE No. 5 OF 1906.

Charles Grant

} Plaintiff.

versus.

Arthur Thomas Smart

} Defendant.

8/8

SIR,

I have the honour to inform you that the Plaintiff in the above cause has obtained a decree against *the defendant* for Rs. *35-9/15/-* and costs.

The Plaintiff has now applied under the provisions of Section 223 of the Civil Procedure Code that the decree may be sent for execution to the *Town Magistrate's Court at Nairobi* and I forward herewith the documents prescribed by Section 224 of the Code.

Please note that upon being filed in your Court the Plaintiff can proceed to obtain execution under this decree as if it had been made in your Court (v. Sections 225, 226, 228, 230, of the Code)

*True copy sent
to
at 5/2 Sept 1906
K...*

I have the honour to be,

Sir,

Your obedient servant,

W. H. Parkinson
Acting Registrar
M. M. Judge.

To:

*The Town Magistrate
Nairobi*

IN THE Town Magistrate COURTAt Nairobi

318

EAST AFRICA PROTECTORATE.

APPLICATION FOR EXECUTION OF DECREE § 235 C. P. C.

Transfe decree No 4/06Original CIVIL SUIT No. 5 of 1906 of the Dist. Reg
of the High Court at NairobiParties Charles Grant v. Arthur Thomas SmartDate of decree 21st August 1906State if appeal has been preferred NoState if there has been any settlement subsequent to the decree NoState if there has been previous application for execution NoState amount due under decree with interest, if any, or other relief granted
Principal No 34,900/- Plus Interest - No 49/81- Plus
the further costs as underState amount of costs
No 968/14/- Plus the cost of the transfer of decree and
application for execution

State name of person against whom enforcement is sought

Arthur Thomas Smart
(The Judgment debtor herein)

State mode in which the assistance of the Court is sought

To issue notice under Sec 2418 Civil P. Code calling upon the
debtor to appear before Court and show cause why execution on his
movable & immovable properties in Nairobi should not be
granted

Verification

I Charles Grant, the decree holder herein,
declare that what is stated above is true to the
best of my knowledge, information & belief

IN THE TOWN MAGISTRATE'S COURT AT NAIROBI EAST AFRICA

319

PROTECTORATE

Transfer Decree No.4 of 1906.

Original Civil Suit No.5 of 1906 of the District
Registry of the High Court at Nairobi.

CHARLES GRANT.....Plaintiff.

versus.

ARTHUR THOMAS SMART.....Defendant.

I, Charles Grant the above named plaintiff hereby
appoint Mr. H.W.Buckland Pleader to appear and act for me
in the above suit.

Dated 10th day of September 1906.

Sd/- Charles Grant.

Stamp No 250
date 10-9-1906
(1) C. Grant

Notice to show cause why Execution should not issue. Sec. 248 of the Code of C. P.

EAST AFRICA PROTECTORATE.

320

IN THE Town Magistrate COURT AT Nairobi
Transfer Decree No 4/06

Original CIVIL SUIT No. 5 OF 1906. of the District
 Registry of the High Court at Nairobi

Charles Grant) Plaintiff.
) *James Miller*

versus.

Arthur Thomas Smart) Defendant.
) *Judgment debtor*

To,

Arthur Thomas Smart
Judgment-debtor herein
Nairobi

Whereas Mr. H. H. Buckland, Pleader for the Decree holder herein has made application to this Court for execution of decree in Civil Suit No. 5 of 1906 of the District Registry at Nairobi, this is to give you notice that you are to appear before this Court on the Thirteenth day of September 1906, ^{at 10 a.m.} either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

Given under my hand and the Seal of the Court this 10
 day of September 1906.

M. E. R. Logan
 Dist. Judge.
 East Africa Protectorate

(25)
 Recd
 1906
 11/10

THE DISTRICT REGISTRY OF THE HIGH COURT AT NAIROBI.

Civil Case No. 5 of 1906.

321

Charles Grant.....Plaintiff.

versus.

Arthur Thomas Smart.....Defendant.

I Charles grant the plaintiff above-named make oath and say ~~as follows~~:-

1. That on the 21st day of August last I obtained a decree in the above suit against the defendant Arthur Thomas Smart.

2. That on the 13th day of September I applied to this Court for execution of the said Decree and this Honourable Court on the application of Ms. Allen as representing the defendant granted the defendant a weeks time within which to file his appeal and find security failing which execution to issue.

3. That by an agreement dated 12th day of April 1906 Lord Delanere has indemnified the defendant against all damages and costs in respect of this action.

4. That I was yesterday informed by the said Lord Delanere and his statement was confirmed subsequently by the defendant himself that they had entered into an agreement whereby the defendant has released the said Lord Delanere from such indemnity. The said Lord Delanere also stated to me that the defendant would not appeal and that he was leaving the jurisdiction of this Court for the Argentine Republic.

Sd/- Charles Grant.

Sworn at Nairobi
the 18th day of Sept 1906

before me.

Sd/- H. R. Logan
Town Magistrate.

In the Town Magistrate's Court of the East Africa

Protectorate at Nairobi

Thangor beerce no 4 of 1906

Original CIVIL SUIT No. 5 1906. of the Arch. Reg. of the High Court at Nairobi 386

Charles Grant

Plaintiff
Accountable

VERSUS.

Arthur Thomas Smart

Defendant
judgment debtor

To,

The Manager

National Bank of India Ltd

Nairobi

Sir,

The Plaintiff having applied for an attachment of certain property now in your hands viz. a sum of Rs 750:0:0 lying in your Bank to the credit of Arthur Thomas Smart the Judgment debtor herein

I request that you will ~~hold the said~~ please pay the said sum of subject to the further orders of this Court, Rs 750:0:0 in this Court to the credit of the above action, and such payment shall lawfully entitle you to debit to the current account of the said

A. T. Smart

I have the honour to be,

Sir,

Your most obedient servant,

Edw. E. Logan

Resd. Judge,
East Africa Protectorate.

Nairobi

18

September 1906

323

National Bank of India Limited.

NAIROBI, 19th September 1906

The Assistant Judge,

Nairobi.

Dear Sir,

We are in receipt of your letter of even date, enclosing an attachment order for the sum of Rs. 750- paid into account of A.T.Smart, and requesting us to hand you this sum.

We beg to inform you that the balance of this account now standing at A.T.Smart's credit with us is only Rs. 186-, a cheque for which sum we send you herewith receipt of which please acknowledge.

Yours faithfully,

Sd/-

Ag: Agent.

no registered
receipt
but 18-9-06
Received

IN THE Town Magistrate's Court OF THE EAST AFRICA

324

PROTECTORATE AT NairobiTransfer Decree Act of 1906

CIVIL CASE No. OF 190 .

Charles Grant Plaintiff.A. J. Smart Defendant.Whereas A. J. Smart

in the above case has been ordered to find security to the amount of Rs. 1000 0 0 ^{for his personal appearance in} until execution or satisfaction of any decree or ~~costs that may be passed against him~~ Court tomorrow at 10 A.M.

I Samuel McCall

do hereby bind myself as security in the sum of Rs. 1000 0 0 ^{A. J. Smart that he will} for the due compliance of the defendant/ ~~with any order that may be~~ appear in the Court tomorrow morning at 10:0 in default ~~made against him in the above suit and do hereby undertake if called on by~~ of the Smart's appearance I Samuel MacCall undertake ~~to pay into the Protectorate~~ H. M. Judge of the East Africa Protectorate to pay into the Protectorate ~~to forfeit to His Majesty the King the sum of Rupees 1000/-~~ ~~only~~ ~~by the Court to pay.~~

Dated this 18 day of September 1906

WITNESS.

H. M. Buckland
Collector
Nairobi

Adj Samuel McCall

East Africa Protectorate 325
September 19th 1906

Received Civil prisoner A. T. Smart

(Sg) S. R. Hill
S.

N A I R O B I .

326

British East Africa.

19th September, 1906.

To,

The Town Magistrate.

Nairobi.

Sir,

GRANT. v. Smart.

With reference to this application for execution in respect of the interest of the defendant Smart in the Butchery held in partnership with Mr. McCall I have suggested to Mr. McCall in view to protecting himself and to saving complications that he at once open a fresh bank account and new books. In making this suggestion I do so on behalf of Mr. Grant the decree holder.

Yours faithfully

Sd/- H.W. Buckland.

IN THE DISTRICT REGISTRY OF THE HIGH COURT AT NAIROBI.

Appeal No.4 of 1906.

A.T.Smart.....Appellant.

(Orig: Judgment debtor.)

(versus.)

Charles Grant.....Defendant

(Orig: Decree holder.)

J U D G M E N T.

In this appeal the appellant seeks to reverse an order of the Town Magistrate, Nairobi made under section 503 P.P.R. in proceedings for attachment of certain properties brought by the decree holder Grant v. Smart.

The decree was sent to the High Court for execution by the Nairobi Court and the first step taken was a notice under sec.248 C.P.C. why such a step was taken is not clear

Among the alleged assets of the judgment debtor was a sum due under an indemnity from Lord Delamere to the Judgment debtor.

This sum was not attached but a summons was issued under sec.267 and during the course of the hearing in such summons Lord Delamere denied his liability. Upon that the learned Magistrate appointed a receiver under sec.503.

It has been argued by the pleader for the respondent that the course followed is a quicker one than if he had formally attached the alleged debt with the same result i.e. that the debt is denied and a receiver is in consequence appointed (vide Teela; Geelal & others v. John Antone XI Bombay 448).

Section 503 enacts that a receiver may be appointed for the realisation etc., of any property: the subject of a suit or under attachment.

In this case the property has not been attached and it certainly is not the subject of the suit.

From

From the argument for the respondent it would appear that he relies on the fact that if the spirit of the law has been followed deviation from the latter should not prevent him succeeding.

There is more, I think, in this case than mere deviation from the latter. To enable the judgment ~~debtor~~ creditor to deal with any property in the judgment debtor's possession or due to him in a suit of this nature, the first and essential process is attachment in execution. It is impossible without attachment to bring the property ~~for which a receiver~~ in this particular case within sec. 503 as property for which a receiver could be appointed. Attachment is a formality, the absence of which vitiates the appointment of a receiver in respect of it, such property not being the subject of the suit, the appeal must succeed with costs.

Sd/- J.W. Barth.

9-X-1906.

IN THE DISTRICT REGISTRY OF THE HIGH COURT OF THE EAST
AFRICA PROTECTORATE AT NAIROBI.

Civil Case No.5 of 1906.

CHARLES GRANT.....Plaintiff.

versus.

ARTHUR T. THOMAS SMART,....Defendant.

Charles Grant the above named Plaintiff make oath and says;

1. That on the 21st day of August 1906 I obtained a decree in the above suit against the defendant herein for the sum of Rs. ~~3000~~^{34900/-} with interest and costs.
2. That by an agreement dated the 12th April 1906 a copy of which is on the file of this Court one Lord Delamere indemnified the said Defendant against all damages and cost in this action upon the terms and condition therein mentioned and I crave leave to refer to such Agreement.
3. That on the 13th day of september 1906 the plaintiff applied to this Honourable Court for execution of the said decree and the defendant appeared before this Honourable ^{at} and applied through his Solicitor Mr. B.G. Allen for a weeks time within which to communicate with the said Lord Delamere in view to filing an appeal or arranging for payment.
4. That on the 19th day of September 1906 on the application of the plaintiff the defendant again appeared before this Honourable Court and stated that he had entered into an agreement with the said Lord Delamere whereby in consideration of the sum of Rs. 750 he had released the said Lord Delamere from his liability under the said agreement for brevity sake I crave leave to refer to the records of this Honourable Court.
5. That such agreement and release if the same exist is fraudulent made in bad faith for inadequate consideration

and

and is an undue preference and made for the purpose of defrauding the plaintiff out of the amount due under the said decree

6. That the defendant save and except the indemnity and security of the said agreement of the 18th April 1906 given by the said Lord Delamere has no other available assets and is an insolvent.

7. That the amount of the said decree payable by the said Lord Delamere under the said agreement may be attached under an order of this Court and pursuant to section 268 sub-section(d) of the Civil Procedure Code.

Sd/- Charles Grant.

Sworn ~~made~~ at Nairobi.

the 25th day of September 1906

Before me.

Sd/- E. R. Logan.

Town Magistrate.

Stamp for
R. 22
2-10-06
K. M. M. M.

Notice to show cause why Execution should not issue. See 248 of the Code of C. P.

331

EAST AFRICA PROTECTORATE.

IN THE Town Magistrate's COURT AT Nairobi

Transfer Decree No. 4 of 1906
Original CIVIL SUIT No. 5 OF 1906 of the Dist. Reg
of the High Court at Nairobi

Charles Grant } Plaintiff.
} Decree holder

versus.

Arthur Thomas Smart } Defendant.
} judgment debtor

To,

Arthur Thomas Smart
Judgment-debtor herein
now in civil jail Nairobi

Whereas Mr H.W. Buckland decreeholder herein
has made application to this Court for execution of decrees
in Civil Suit No. 5 of 1906 ^(of the District Magistrate's Court) this is to give you notice that you are

to appear before this Court on the 27 day of September
1906, either in person, or by a pleader of this Court, or agent duly authorized

and instructed, to show cause, if any, why execution should not be granted, by attaching the
money in the hands of Lord Selamere, due from him, by you under the indemnity bond
dated the 12 April 1906 made between you and Lord Selamere

Given under my hand and the Seal of the Court this 26
day of September 1906.

(L.S.)

Judge E. R. Logan
Asst. Judge,
East Africa Protectorate

Stamped
Rs 38
out 2-10-06
481/10/10

Sd/ A. T. Smart

Served on Sir Arthur Thomas Smart at
on the 25/9/01

Sd/

Acting H^c Gaulton

Witness Summons, (Civil)

IN THE Town Magistrate's COURT
AT Nairobi

332

EAST AFRICA PROTECTORATE.

Transfer Decree No 4 of 1906

Orig. CIVIL CASE No. 5 OF 1906, of the Dist. Reg.
of the High Court at Nairobi

Charles Grant

Prosecutor.
Plaintiff
Decree holder

VERSUS.

Arthur Thomas Smart

Defendant.
High Judge's debt

The Rt. Hon. Hugh Cholmondeley

Baron Delamere

Nairobi

You are hereby commanded in His Majesty's name to attend the
Court on 27 day of Sept 1906 at 10:0
o'clock in the forenoon or as soon thereafter as the case can be heard as

witness in the above case to enable the decree holder to examine
you under Sec 267, Civil Pr. Code in the matter of the
affidavit filed by him this day, a copy of which is attached
herewith for your information

Dated this 25 day of September 1906

This Summons has been issued on
the application of Mrs H. W. Buck-
land for Decree holder

(L.S.)

H. E. Logan
Asst. Judge.

sd/ Belamere

Personal service

sd/ H Foster
25/9/

Returned to Town Magistrate
duly served

sd/

26/9/06

IN THE TOWN MAGISTRATE'S COURT
N A I R O B I

Transfer decree No.4 of 1906.

CHARLES GRANT.....Plaintiff.

versus.

A. T. Smart.....Defendant.

I hereby nominate and appoint G.H.Mead, A.M.
Byron and C.H.M.Harrison or any of them, of the firm
of Messrs Byron and Harrison Solicitors, to be my Soli-
citors and Attorneys to appear and act for me in the
above matter.

Dated the 27th day of September 1906.

Sd/- DeLamere.

IN THE TOWN MAGISTRATE'S COURT,
AT NAIROBI.

Transfer Decree No.4 of 1906.

Original Civil Case No.5 of 1906, in the District
Registry of the High Court at Nairobi.

Charles Grant,Decree Holder (Plaintiff,
versus.

Arthur Thomas Smart.....Judgment-Debtor.(Defendant.)

To.

Thomas A. Wood Esqr.,
N A I R O B I.

W H E R E A S, the interest of A.T.Smart, judgment
debtor herein, in the business carried on at the Central
Butchery in Nairobi in the name of McCall & Smart, has been
attached in execution of a decree passed in the above suit
of the High Court No.5 of 1906 on the 21st, day of August
1906, in favour of Charles Grant; You are hereby appointed
Receiver of the said property under Section 503 of the Code
of Civil procedure, with full powers under the provisions
of that Section.

You are required to render a due & proper account of
your receipts and disbursements in respect of the said pro-
perty in due course, & the ~~sum~~ remuneration to which
you will be entitled will hereafter be fixed by the Court.

Given under my hand & the seal of the Court, this
26th, day of September 1906.

Ed/- E. R. Logan.

Town Magistrate.

NAIROBI.

September 30th 1906
S. Thomas & Co.

In the Town Magistrate's Court.
at Nairobi.

Transfer Decree No.4 of 1906.

Original 803 Case No.5 of 1906, in the District
Registry of the High Court at Nairobi.

Charles Grant.....Decree-holder (Plaintiff).

versus.

Arthur Thomas Smart.....Judgment-debtor (Defendant).

To.

Thomas A. Wood, Esqr.,

N A I R O B I.

W H E R E A S, application was made by Mr. H. W. Backland, pleader for Charles Grant, the decree holder in the above case for the ATTACHMENT of monies, due to A.T. Smart, judgment-debtor herein in the hands of Lord Delaware under the indemnity Bond, dated the 12th, April 1906, in execution of the decree passed in the above original suit of the High Court on the 21st, August 1906, in favour of Charles Grant; A N D W H E R E A S, Lord Delaware was summoned under section 267 of the Code of Civil Procedure, to appear before the Town Magistrate's Court at Nairobi, on the 27th day of September 1906 A N D denied that any debt was due to the said A.T. Smart under the said Bond of Indemnity; Y O U A R E H E R E B Y appointed R E C E I V E R of the said property under Section 803 of the Code of Civil Procedure, with full powers under the provisions of that Sec.

You are required to render a due and proper account of your receipts & disbursements in respect of the said property in due course, and the remuneration to which you will be entitled will hereafter be fixed by the Court.

Given

Given under my hand and the seal of the Court, this
29th day of September, 1906.

(L.S.)
Sd/- E. R. Logan.

Town Magistrate

NAIROBI.

IN THE M.C. COURT	<i>Christi Cap</i>
ORIGINAL CASE NO.	<i>14</i> OF 1906
THIS DEED IS RETURNED MARKED	<i>A</i>
DECLARED TO BE THE PROPERTY OF	
SWORN BEFORE ME THIS	
15 DAY OF	<i>Sept</i> 1906
(s) for	<i>Regist.</i>

N A I R O B I.

EAST AFRICA,

337

17th September 1906.

Dear Sir,

GRANT v. ~~SECRET~~ *you*

I beg to refer to your interview with Lord Dalmeire on Saturday last when you requested him to secure payment of the amount of the decree obtained against you in this case, and to provide the expenses necessary to enable you to appeal.

His Lordship has considered your request and instructs me to say that he is entirely dissatisfied with the evidence you gave at the hearing of the above case, inasmuch as same did not tally with the evidence you led him to believe you would be able to give when he entered into the Agreement with you dated the 12th April last. Under these circumstances his Lordship does not consider himself bound by paragraph 3 of the said Agreement.

Apart however, from this question his Lordship is not satisfied with the decision given in the case, and could in no case reimburse you for the costs and damages you may be compelled to pay, unless and until you have appealed against the decision.

In order however to avoid the annoyance of resisting any claim you may fancy you have against his Lordship, he has instructed me to offer you the sum of £.50 in full settlement of any claim you may have against him under the said Agreement of 12th April 1906 between you and him.

This offer is open until 4 o'clock this afternoon, after which this is to be considered as withdrawn.

Yours faithfully.

Sd/- B.G.Allen.

A.T.Smart Esqr.,

IN THE DISTRICT REGISTRY OF THE HIGH COURT OF THE EAST
AFRICA PROTECTORATE AT NAIROBI.

Civil Case No.5 of 1906.

CHARLES GRANT.....Plaintiff.

338

versus.

ARTHUR THOMAS SMART.....Defendant.

Charles Grant the above named plaintiff make oath and says

- (1). That on the 21st day of August 1906 I obtained a decree in the above suit against the defendant herein for the sum of Rs.35,915-6-0 with interest and costs.
- (2). That by an agreement dated the 12th April 1906 a copy of which is on the file of this Court one Lord Delamere indemnified the said defendant against all damages and costs in this action upon the terms and condition therein mentioned and I crave leave to refer to such Agreement a copy of which is annexed to the Plaint herein.
- (3). That the Defendant save and except the indemnity and security of the said Agreement of the 12th April 1906 given by the said Lord Delamere has no other available assets and is an Insolvent.
- (4). That the amount of the said decree payable by the said Lord Delamere under the said Agreement may be attached under an order of this Court and pursuant to section 268 Sub-Section (A) of the Civil procedure Code.

Sd/- Charles Grant.

Sworn at Nairobi

this 10th day of October 1906.

Before me.

Sd/- H.R.Logan.

Town Magistrate.

IN THE Town Magistrates Court OF THE EAST AFRICA

PROTECTORATE AT Nairobi

Transfer Decree No 4 of 1906

Orig: CIVIL SUIT No. 5 OF 1906. of the
District Registry of the High Court at Nairobi

Charles Grant Plaintiff. *bona fide*

versus.

Arthur Thomas Smart Defendant. *Judgment Debtor*

To,

Arthur Thomas Smart
*Judgment debtor here in
now in Nairobi jail as a civil prisoner*

It is ordered that you the said Arthur Thomas Smart
be and you are hereby prohibited and restrained
until the further order of this Court from alienating or in any manner dealing
with the property specified in the schedule ~~hereto annexed~~ *at foot hereof*

Given under my hand and the Seal of the Court this 28 day
of September 1906.

interest of A T Smart
business carried on
Central Buttery Nairobi
name of McCuller

(5)

Edw E Logan
Act: Judge,
East Africa Protectorate

The 2 you took
month
sent to the
Received

NAIROBI.

340

EAST AFRICA,

February 13th 1907.

Sir,

Re Grant v. Smart,
Civil Case No. 5 of 1906.
Transfer Decree No. 4 of 1906.

My client Mr. A.K. Wood was appointed Receiver of the
interest of the above defendant in the business of McCall
and Smart by order of Court dated 28th September 1906.

Some time ago he furnished accounts and applied that
remuneration be fixed and discharge given, he has received
no reply and I should be obliged if you could inform me
on his behalf how the matter now stands.

I have the honour to be,

Sir,

Yours obediently

RA- R C [Signature]

for Osmond Tenks.

The Town Magistrate,

Lawyer
Lynch
Feb 27 - 2-17
Rec?

NAIROBI,

341

EAST AFRICA,

26th February, 1907.

Sir,

Grant v. Smart.

Reports have reached Mr. McCall and myself that proceedings either have been or are intended to be taken in this matter in regard to the Central Butchery which would affect my client's interests.

As no official notice has been given me I assume that the reports are without foundation.

Nevertheless I have the honour to request that no action shall be taken without due notice to my client or myself.

My client Mr. McCall has personally paid off a number of debts due by the firm of McCall and Smart in order to save his personal credit and he has carried on the business since September last entirely with his capital under a consent order made by you.

I have the honour to be,

Sir,

Your obedient servant.

Sd/- B.G. Allen

Town Magistrate,

12th October, 1906.

342

The Town Magistrate,

Nairobi,

Sir,

Civil Suit

GRANT v SMART

Please take notice of the withdrawal of my application herein on behalf of the plaintiff for an order of attachment against Lord Delamere in respect of the indemnity given by him to defendant.

Yrs Faithfully.

Sd/- H.W. Backland.

Plaintiff's Pleader.

STATEMENT OF RECEIPTS AND EXPENDITURE

in re account A.T.Smart Sept 20th 1906 - Feb, 1907 ²⁴³

	<u>Debit.</u>	<u>Credit.</u>
To amount in National Bank of India to credit A.T.Smart Sept 20th	117:14: 9	
To sundry accounts collected to date		
	1233:10: 0	
By cash for stamps, receipts &c		1:10: 0
Paid Bank for exch on Embassy		14: 0
Balance in hand at start.		1349: 1: 0.
	<u>1351: 9: 6.</u>	<u>1351: 9: 6.</u>
Balance at credit a/c A.T.Smart in M.B.I. Nairobi Rupees.		<u>1349: 1: 6.</u>

PROFORMA BALANCE SHEET.

Exclusive of certain Liabilities which
I am informed have not been proved

LIABILITIES.

The Hon. G.Cole for sheep	4361: 4. 0	
Messrs Galley & Roberts	340:14: 0	
<u>A S S E T S.</u>		
By cash at bank		1349: 1: 6.
Stock taken by Mr.McCall Sept 20 and fixtures		1542:13: 6.
Accounts due to the firm still outstanding as per day book.		3128:10: 0.
Due by Muhammad Bin net in book.		1450: 0: 0.
Do by Abdulla bin Salim Do.		450. 0: 0.
Balance	<u>3415: 7: 2.</u>	
	3117: 9: 2	3117: 9: 2

CREDIT estimated surplus Assets Rs. 3415: 7: 2.

Sd/- Thomas A. Wood.

Feb 21/1907
(Sd) Thomas A Wood

SCHEDULE OF OUTSTANDING ACCOUNTS DUE TO MAC CALL & SMART.

344

Sept 30th 1907 as taken from their day book.

A. Martin	22. 0. 0.	H. Densley	44. 5. 9.
John A. Kadir.	18. 14. 0.	H. Westray.	20. 9. 0.
Carveth	2. 2. 6.	<u>Capt. Middleton.</u>	18. 0. 0.
Abraham	3. 10. 9.	H. Stocker.	27. 0. 0.
A. J. Turner.	16. 2. 2.	S. Clarke.	6. 2. 0.
J. R. Clarke.	16. 1. 2.	Maj. Baileau.	26. 6. 0.
W. A. McGee.	15. 2. 2.	- Cocher.	17. 14. 0.
F. Grattree	12. 7. 0.	- Greenslade	71. 5. 0.
F. Montaire.	48. 13. 0.	S. W. Shin.	10. 10. 3.
Nazareth Bros.	127. 2. 2.	Alex. Low.	37. 2. 2.
Winnicot.	22. 6. 0.	F. S. Baker.	25. 9. 2.
J. H. Chapman	56. 6. 0.	M. Van Praagh.	50. 2. 2.
Mitchell	12. 3. 6.	H. C. Hepten.	9. 10. 0.
D. Franco.	53. 12. 2.	G. W. Shatt.	4. 10. 6.
J. C. Ross	3. 11. 6.	Standing.	4. 15. 6.
Hewrath.	2. 2. 2.	Colonial Stores.	76. 7. 2.
J. Outram.	60. 13. 0.	J. D. Haperaft.	2. 15. 0.
E. De La Rue.	1. 9. 0.	S. Ellis.	69. 14. 2.
W. Hald.	122. 6. 0.	H. Fein.	207. 3. 2.
P. J. Cramer.	25. 15. 2.	H. W. Baskland.	41. 7. 0.
H. J. Welffe.	20. 6. 0.	R. M. Smart.	28. 0. 9.
J. Ross.	64. 1. 2.	R. Bowers.	22. 3. 6.
G. A. Street.	12. 12. 9.	Tullock.	7. 9. 6.
Rev. C. E. Harlbert.	4. 0. 0.	R. F. P. Huebner.	13. 9. 2.
J. Beett.	2. 11. 0.	D. G. Ross.	6. 7. 2.
Mrs. Rolly.	15. 14. 2.	H. Walters (Waters).	18. 4. 6.
F. Smyth.	4. 9. 9.	T. H. Hewitt.	44. 13. 6.
W. B. Millar.	19. 12. 6.	Smuts.	4. 15. 0.
W. A. Gain.	9. 13. 0.	F. S. Clarke.	4. 4. 0.
H. E. Wright.	68. 5. 0.	Gailly & Roberts.	142. 4. 2.
W. J. King.	208. 15. 0.	- Bryan.	14. 3. 0.
Mrs. Grace.	100. 2. 2.	P. W. Maleny.	16. 9. 9.
A. Webb.	41. 1. 0.	- Hamcock	36. 0. 6.
Desley (Club).	40. 9. 0.	Mackinnon Bros.	7. 12. 0.
P. Gay.	42. 6. 6.	F. Watkins.	22. 2. 4.
Marcus Stanley.	128. 12. 9.	T. H. Galbraith.	1. 12. 9.
H. Hagenson.	22. 10. 5.	Mikington.	16. 0. 0.
G. Dean.	26. 6. 0.	Mrs. Godwin.	12. 2. 2.
W. M. Newland.	4. 0. 6.	E. K. Billeau Mass a/c 107.	4. 2. 2.
A. F. Church.	54. 0. 0.	Mrs. Anderson.	6. 9. 0.
Mrs. Noble.	26. 6. 6.	Mrs. Coulson.	16. 12. 9.
J. H. Hurst	4. 12. 0.	H. C. Smith.	4. 6. 9.
	1627. 6. 9.		1400. 3. 2.
		Forward	1627. 6. 9.
		Total.	Rs. 3125. 10. 0.

No allowance made for Bad and doubtful, some accs are also disputed.

Sd. Thomas A. Wood.

*True copy to
Nairobi
22-10-06
Nairobi*

NAIROBI,

345

British East Africa.

Oct. 20th 1906.

The Town Magistrate,

Nairobi.

IN RE ESTATE A.T.SMART,

Dear Sir,

I beg to report as follows:-

The books handed to me only contained records of outstanding accounts for meat sold, the Cash book contains a record of receipts, not showing from where derived, and part expenditure, I am left to assume that the difference between the two sides represents, money deposited to the credit of A.T.Smart in the Natl Bank, but no a/c has been kept of same neither can I find a pass book.

I have rendered assets to sundry Debtors totalling Rupees 3250-12-; exclusive of sundry accounts, which I assume are bad, as they are old outstandings; of which I have collected and lodged in Bank a total of Rs.274*7/-.

Mr. McCall took over on the 20th Sept Fixtures Hides &c to a value of Rs.1661/1/11 from which a sum of Cash Rs.117/14/9 must be deducted as this amount was subsequently handed to me and placed in Bank.

As there is no record of the firms liabilities, I have no means of ascertaining same, but I am informed from a reliable source that two debts alone amount to about Rupees 10000/- it is therefore apparent that the business is insolvent.

The position so far as I can ascertain is as follows

ASSETS.

Fixtures &c in the hands of McCall.	1542-12- 6
Outstandings estimated to realise.	2100-00- 0
Was h in bank.	392- 5 0
	<hr/>
	4035- 5- 5

Sundry amounts have I believe been paid by A.T. Smart to W.H. Smart the latter claims this represents part repayment of loans, I have no means of ascertaining the date or when paid, but I assume the Brother cannot legally be made a preferential Creditor.

LIABILITIES.

Unrecorded, but according to statements, far in excess of Assets. I have personally expended Rs.3/ in Stationery and Rs.1/13/6 stamps and about 30 hours work making out accounts so as I trust You will order a reasonable remuneration and release me from my duty as receiver. at the same time instructing me to whom I must pay over the cash collected.

Yours ff-ly

Sd/- Thomas A. Wood.

Judicial Department. 347

N A I R O B I.

October 22nd 1906.

Re Transfer decree No. 4 of 1906.

Charles Grant.....Plaintiff.

versus.

A.T.Smart.....Defendant.

Received from the Town Magistrate, Nairobi the sum of
Rupees One hundred and eighty six only on account
of the decree in the above case.

Rs. 186:0:0

Sd/- H.W.Buckland

Plaintiff's pleader

22/10/06.

Town Magistrate's Office,

N A I R O B I,

October 2nd, 1906.

Transfer Decree No.4 of 1906.

(Original Civil Case No.5 of 1906, of the District Registry of the High Court at Nairobi.)

CHARLES GRANT.....Plaintiff (Decree holder.

versus.

ARTHUR THOMAS SMART.....Defendant (Judgment Debtor).

Sir,

With reference to your letter No.218, dated the 6th September last, I have the honour to forward herewith an application of Mr.Buckland for decree-holder, a certificate under section 223, clause(d) para(3) of the Code of Civil Procedure.

The copies of orders passed by this Court in aid of execution are attached for your information to the said certificate, and please note that the costs incurred by the decree holder regarding these orders amount to Rs.39/-.

I have the honour to be,

Sir,

Your obedient servant.

Sd/- E.R.Legan.

Town Magistrate.

Nairobi.

To,

The Ag: Registrar,

High Court N.A.P.

M O M B A S A.

under Sec 223 (cl. d) (3)

Certificate given under Section 224 of the Code of C. P.

IN THE Town Magistrates Court COURT

AT Nairobi

EAST AFRICA PROTECTORATE

Original CIVIL CASE No. 5 1906 of the Prot. Reg.

of the High Court at Nairobi

Transferred Decree No 47/1906

Charles Grant

Plaintiff.

Decree-holder

versus

Arthur Thomas Smart

Defendant.

Judgment-debtor

partial

I hereby certify that ~~no~~ satisfaction of the final Decree passed in the above Suit on the 21st day of August (to the extent of Rs 150/-) ~~September~~ 1906, has been obtained by execution within the Jurisdiction of this Court.

Given under the Seal of the Court, this 20 day of October 1906.

Sd/ E. R. Logan

Town Magistrate
Nairobi

East Africa Protectorate.

To

the 4 copies of which are attached herewith
Certified that ~~no~~ orders have been filed in this Court for execution of the
Decree. and that partial satisfaction to the extent of
\$1860.00 has been obtained within the jurisdiction
of this Court
Dated this 20 day of October 1906.

Wm. B. Logan
9 Nov Magistrate
Registrar, Fair

HIGH COURT,
MOMBASA.

350

October 23rd 1906.

C/1044.

Civil Case No. 5 of 1906.

Sir,

I have the honour to be in receipt of your letter No. 506/06 of 22nd Instant enclosing certificate and copies of orders in the above case. I beg to draw your attention to the Circular issued on the 14th May 1906 on the subject of giving credit to pleaders.

I have written to Mr. Buckland to send me the Rs. 39/- out-standing.

I have the honour to be,

Sir,

Your most obedient servant.

Sd/- J.W.H. Parkinsen.

Acting Registrar.

The Town Magistrate.

Nairobi.

Town Magistrate's Office,

351

N A I R O B I,

October 31st 1906.

Civil Case No.5 of 1906.

Sir,

In reply to your letter numbered C/1946, dated the 23rd. Instant, I have the honour to point out that you misunderstood the latter portion of my letter No.504/06, dated the 22nd Instant.

My letter was written in order to inform you of the amount of the costs incurred by the decree holder and recoverable against the judgment debtor. These fees have been paid at the time when they were incurred. They are of course payable in this Court, and not the High Court.

I have the honour to be,

Sir,

Your obedient servant.

Sd/- E.R.Logan.

Town Magistrate.

The Ag: Registrar,

High Court E.A.P.

M O M B A S A.

Please send original records of the execution
proceedings in Charles Grant v. Smart.

S/- Parkinson

Acting Registrar..

Trans deposited
- 10/10/06
date 29-10-06
Received

NAIROBI,

EAST AFRICA,

353

5th March 1907.

Sir,

Grant v. Smart.

I have the honour to inform you that Mr. M'Call has determined to dissolve and wind up the partnership between him and Mr. Smart in the business of the Central Butchery as from September last and Mr. Smart has consented to a dissolution which indeed he could not very well resist under the circumstances which have occurred.

As the matter of the Central Butchery partnership has been before you in the proceedings in the above matter I think it only right to give you notice of the intended dissolution although I assume that the dealing of the partners between themselves is outside the purview of your Court.

I have the honour to be, Sir,

Your obedient servant,

Sd/- B. G. Allen

B. R. Logan Esqr.,

Town Magistrate,

Nairobi.

*Received
Nairobi
Feb 27 07
Kearney*

Town Magistrate's Court,

N A I R O B I, 354

6th March 1907.

No. /07.

Sir,

I have the honour to acknowledge the receipt of your letter dated 5th instant.

As the interest of Mr. Smart in the Butchery business is under attachment, you will no doubt see that the partnership can not be dissolved by a private arrangement between Messrs Smart & McCall only.

I have the honour to be,

Sir,

Your obedient servant.

Town Magistrate.

To.

E. G. Allen, Esqr.,

N A I R O B I.

NAIROBI,

EAST AFRICA,

March 6th 1907. 355

Grant v. Smart.

Sir,

I have the honour to acknowledge receipt of yours of even date with enclosure.

I have informed Mr. Allen that application is being made at Mombasa for the sale of Smart's interests in the butchery attached by my client Mr. Grant and suggested that the best course would be for Messrs McCall & Smart on the hearing of that application to consent to an order for dissolution and an account in order that Smart's interests in the business may be ascertained and sold.

I have the honour to be,

Sir,

Yours obediently

34/- *R. C. Grant*

for Osmond Tenks.

The Town Magistrate,

NAIROBI.

Warrant for Imprisonment in
Execution of a Decree.
Sections 339 and 349 of the Code of
Civil Procedure.

IN THE ~~Town Magistrate's~~ COURT OF THE EAST AFRICA

PROTECTORATE AT Nairobi

Transfer, Decree No 4 of 1906 of the Dist. Reg of the
CIVIL SUIT No. 5 OF 1906. High Court at Nairobi

Charles Grant Plaintiff.

356

versus.

Arthur Thomas Smart Defendant.

To The Superintendent of the Prison
Nairobi

Whereas in the sub above specified Judgment was on the 21st day
of August 1906, given in favour of the said Plaintiff
C Grant for the recovery of Rs 35915.6.0
from the deft Arthur Thomas Smart and the said
A T Smart on failure to satisfy the said Decree, was on
the 18th day of September 1906, ^{brought before the Court} ~~executed~~ in execution thereof.

You are hereby required to receive the said A T Smart into your
custody, and safely to keep him in the Civil Jail at Nairobi till the
18th day of March 1907, provided that ^{1st} ~~on~~ before the
19th day of October 1906, and of each succeeding month there
be paid to you by or on behalf of the said Plaintiff (C Grant) the sum
hereinafter stated as subsistence money for the said A T Smart
during such month and unless the said defendant Arthur
Thomas Smart
be otherwise discharged according to law: of which release or discharge you
are required forthwith to inform this Court.

The sum fixed for the subsistence of the above Judgment debtor is
Rs. 30.0.0 a month. A sum of Rs. 30.0.0 is forwarded with this
warrant being the amount of the said allowance up to the 18th day of
October 1906 and on failure of the Judgment creditor to pay on or
before the 1st day of the month of October, 1906 ^{on the same date} and of each succeeding
month the allowance due for the month following, it is ordered that you
discharge the said A T Smart from custody on the first day of such
month following.

Done at Nairobi 19 day of September 1906.

leaved

(125)

Ady E R Logan

Asst. Judge,
no. 356
East Africa Protectorate.

March 1907

Issue

1907
1907

In the Court of Town Magistrate, Nairobi.

Civil Case No. of 1908.

C. Grant.....Plaintiff.

versus.

A.T. Smart.....Defendant.

357

I nominate and appoint Mr. G.P. Stevens, Advocate and
Solicitor, to be my pleader and attorney to act for me in
the above case.

Sd/- Charles Grant.

Nairobi dated November 11th 1908.

just.

IN THE SESSION'S COURT OF THE EAST AFRICA

PROTECTORATE AT Nairobi

Year
CRIMINAL CASE No. 26 OF 1906

the Session holden at _____ on the _____ day of _____ 1906.

358

Prosecutor

Crown
(by _____)

Defendant

A. V. Smart
Lord Delamere
B. G. Allen
(by _____)

Date of hearing

Charge

Committing Magistrate

Part of Committing Magistrate

Place of Commitment

Original Criminal Case No. _____ of 1906 of _____

Signature

Nairobi

2nd February 1907.

Accused A. T. Smart
 Lord Delamere
 B. G. Allen.

359

Combe makes preliminary application applied to amend charges to Section 424 and abatement of same.

This seems a proper amendment on the depositions.

Order charges to be amended as requested.

on amended charges.

Smart not guilty Section 424

Lord Delamere not guilty Sections 189, 424.

B. G. Allen " " " 189, 424

Combe for Crown.

Burn representing Grant

Syren and Dalal for Lord Delamere

Harrison for Smart

Allen in person.

chosen by lot.

A. S. Cooper	no objection
G. H. Outram	" "
A. L. Martin	" "
R. J. Stacey	" "
J. W. Ward	" "

chosen by Jury

A. S. Cooper.

Jury sworn.

(Sgd.) R. W. Hamilton

Combe

Combe opens.

PHEROZSHAH PESTOMJEE NADIRSHAH, sworn, states
I am Court Clerk Town Magistrate's Court.

I produce the official records. 360

(Civil Case 1/1906 Dist. Reg. Nairobi High Court
{
Lord Delamere v. A. T. Smart

(Civil Case 4/1906 Dist. Reg. Nairobi " "
{
Lord Delamere v. A. T. Smart & W. H. Smart

(Civil Case 135/1906 T. M's Court Nairobi
(A. T. Smart v. Lord Delamere
& Tonks & Allen.

(Civil Case 5/1906 Dist. Reg. Nairobi High Court
(Ch. Grant v. A. T. Smart

(Transfer Decree 4/1906 to T. M's Court Nairobi
(Original civil case 5/1906 Dist. Reg. Nairobi H. Court
(Ch. Grant decree holder
(Original plaintiff v. A. T. Smart judgment debtor
original defendant.

(Civil Appeal 4/1906 Dist. Reg. Nairobi High Court
(Original transfer decree 4/1906 to T.M's Court
Nairobi
{
(A. T. Smart appellant) v. Ch. Grant Respondent)
(Orig. judgment debtor) (Orig. decree holder)

Bankruptcy Cause 1/1906 H. M. Court Mombasa
re A. T. Smart ex parte Ch. Grant.

I identify Smart and Lord Delamere as the
persons who gave evidence in Transfer Decree
4/1906.

Read over to witness.

(Sgd.) R. W. Hamilton.

CHARLES GRANT, sworn, states:-
in

I am plaintiff Grant v Smart case 1/1906 in
which I got judgment for Rs. 34,900 with interest

and costs against defendant.

361

I attempted to execute. The decree was transferred to Town Magistrate's Court Nairobi.

Mr. Rickland applied on my behalf for a rule against defendant. I was present in Court on 13th September the day of the application.

Mr. ^{Allen} appeared on behalf of Smart, and stated he had no authority to act for Lord Delamere, that he was away from the Railway and out of communication, that Lord Delamere had informed him he was going to appeal and he asked for an adjournment for two weeks in order that Smart might appeal or settle, the Magistrate granted one week's adjournment.

Two or three days after that I saw Lord Delamere in the Norfolk hotel. He stated that he had nothing more to do with it and that he had been released from liability or words to that effect. That was in the billiard room. About 20 minutes later A. T. Smart came in. I repeated Lord Delamere's conversation to him and asked if it were true. He stated it was. I asked who engineered the deal or words to that effect. He said Mr. Allen and Lord Delamere arranged the matter between them. On the following day I swore the affidavit filed in Transfer Decree 4/1906.

I know Mr. Allen's writing it is his signature to his letter of 17th September filed in the same case.

I have made several attempts to get execution, an application was made to get execution on the indemnity, which failed. I have also

attempted to get the money under the English Bankruptcy laws. I made these attempts believing the money was attachable as due from Lord Delamere to Defendant.

X X X BYRON.

(After being shown affidavit). The date I was told of the release was the 17th September.

There were several people present when Lord Delamere told me. There was nothing secret on Lord Delamere's part.

He told me defendant would not appeal. He never told me he would pay the amount of the decree to me.

I was aware of the terms of the indemnity bond when I brought the present proceedings. Up to the present I have not been able to get anything from defendant under the decree.

It would not be correct to say I never contemplated getting anything from defendant. I have no private arrangement with Smart outside what appears in the file. I had nothing but what appears in agreement of 3rd February (in file 8/1906) at that date I believed there to have been a verbal sale about 2 years previously by Smart to Lord Delamere of the land. I was justified in approaching Smart as he Smart informed me that the deal with Lord Delamere was off. This would be about 10 days before the agreement. He also said he had notified Marcus in the presence of his brother. I did not go to Lord Delamere to ask him if it was so. There was no

reason that I should.

I know Mr. J. N. Rayne. I would say that the verbal sale to Lord Delamere was known to others in Nairobi as well as to me.

The agreement dated 3rd February was not signed on that date. It was about the 7th I think.

The alteration of the date of the agreement was made at the time of signing it was dated back to the date of the first agreement, at my request. Between these dates Mr. Allen had told me the land belonged to Lord Delamere. I believe the draft agreement was then complete but not signed.

I N T E R V I E W

(Sgd.) R. W. Hamilton.

Mr. Allen also wrote me a letter which I received on the morning of the 5th. Filed in case 5/1906. After receiving the letter I signed the agreement.

I made no enquiries of Lord Delamere but I went straight to Smart. I also went to the Registration Office. There was nothing on the record. Mr. Allen showed me on the 5th the conveyance from the Commissioner to Smart, I went specially to Mr. Allen's office to see them. I would explain I went to see the plan attached to the documents not the documents themselves. I saw the plan.

It was not in my mind that antedating the

Evid. pp. 5, 6. (6)

Agreement would avoid the consequences of the notice given by Allen. It was to make the date agree with that of the original agreement. This was not tampering with a date to affect the interests of a 3rd party which I would consider wrong.

The agreement of the altered date is that referred to in my plaint in case 5/1906.

I expressed the opinion to Smart that he was not legally bound to Lord Delamere.

I was not endeavouring to deprive Lord Delamere of anything.

On the 28th June 1904 the price paid by Lord Delamere was £.500 and that I considered a good price.

It is more valuable now. I don't think I was aware at that date that it was delay in the Land Office that prevented Smart getting his conveyance from Commissioner. In discussing the matter with Smart I don't remember if he said anything about the deeds being at the Land Office. To the best of my recollection he said they were with Mr. Allen. So far as I am aware the first intimation Mr. Allen had of my purchase was on the 2nd February, and it was the first time I heard Lord Delamere had a legal claim to it.

Allen stated there was writing between Lord Delamere and Smart with respect to the land, which he refused to show me. I got a letter from Smart to Allen to show me the title deeds. I

Evid. pp. 6, 7. (7)

told Mr. Allen I had the order but I did not produce it. I think I must have asked to see the writing but I won't say that I did.

Monday 8th was the first day Mr. Burn knew of the transaction. I went from his office to Allen's. I got the letter from Smart that morning but I don't know exactly when. It was Mr. Burn who told me to make a search at the Registration Office.

I am not sure if I was in East Africa in June 1904. I did not endeavour between 3rd and 9th February to persuade Smart that he had an option to Lord Delawere which he might cancel.

After the 11th after seeing the Marcus Smart agreement I may have done so but not before the 10th.

After Smart left Allen, Mr. Burn asked for him.

On 3rd February I paid Smart £.1 and had 12 days in which to pay the first instalment.

I paid the Rs.1000 on the 7th after the notice from Allen. To any one reading the agreement it would appear that the Rs.1000 was paid on the 3rd February. Smart was under no obligation to complete till I paid the balance of the purchase money. I have not tendered payment.

I am not sure if the clause as to 7% was entered on my suggestion, on being reminded of

Evid. pp. 7, 8. (8)

my evidence I say I did ask it. What I really wanted was the 60 days delay. I thought Smart would be entitled to interest. Smart was willing to sell the land. I said I would give Smart 100 shares in a Lingham and Grogan Company. This was before the settlement. I never informed Lord Delamere of this. It would be before the 17th February I first made it. I offered the 100 shares in the timber Company in lieu of my not lowering the price to him of shares he wanted to take in a land Company I was forming and subject to his taking the shares in the land Company. This was before I brought the action for damages against him. It in no way affected the genuineness of Smart's defence.

I suggested to Smart the sale of the land to me. Smart was always willing to sell but one thing made him hesitate. Previous to my approaching him he told me he had made a verbal sale to Lord Delamere. He first informed me it was off between the 26th and 28th. It was the last day of January or 1st February he agreed to sell the land. The price was fixed on 1st February. He closed the bargain verbally on that day. I explain my evidence in the civil case by saying the agreement was only verbal and not written.

He refused to enter an agreement on the 2nd day. I think he said he would sign on the 3rd but he gave no reasons. I went back on the 3rd on that day he signed and received £. 1 and gave

a receipt. I had not the faintest idea then I would get into trouble with Lord Delamere.

I am not looking for sympathy in this matter but justice.

X XD HARRISON.

Smart did not tender me Rs.1000 after the judgment.

He offered it in his pleadings. I would have refused it to accept, it.

It was on my application Smart was arrested. I was present when he was examined.

Smart stated he had received £.50 for the release and that it was in the Bank but it wasn't

He also said he had a $\frac{1}{2}$ interest in the butchery.

The Receiver appointed to get in the outstandings got Rs.180 from the Bank.

As far as I am aware he had no other property at the time that could be reached. He made no attempt to conceal these facts.

The Court made an order for attachment and appointed the Receiver.

X XD ALLEN.

(My affidavit par. 2 of 18th September is correct)

My affidavit par. 3 of 28th September is correct also.

transfer decrees 4/06. My Affidavits neither contain my evidence of this morning with reference to Mr. Allen communicating with Lord Delamere.

My affidavits are in accordance with the Magistrate's notes.

I have sworn it today, because it is a fact. I did not consider it important then. Mr. Allen did deceive the Court as it is important this Court should know the facts. I will swear to the sense of my evidence. ^{by} Lord Delamere appealing I meant 'through ^{my} Court'. It would be correct to say that Mr. Allen made the application stating that he wanted to see Lord Delamere and that he, Lord Delamere, would either appeal or pay. I did not see the necessity for stating it before.

On Monday 5th February not early, before 12 I think I went to Mr. Allen's office. I was in and out of Mr. Burn's office several times that day in regard to this matter, I won't swear it was before 12 but it was before 1 o'clock I was at Mr. Allen's. I won't swear as to the hour. I could not contradict if 9 or 10 was suggested.

Mr. Burn usually comes to his office about 9.30. I think it was about 10 I went to Mr. Burn. Mr. Allen told me I should take separate advice from Mr. Burn as I understood him. He told me the sale was valueless as the land was already sold to Lord Delamere and I had better to take other advice on it. I repeated to Mr. Burn Allen's statement as to the land being already sold.

We discussed the matter.

If I said 9.30 or 10 as the time at Allen's

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We discussed the matter.

If I said 9.30 or 10 as the time at Allen's

office in case 5/06 that would probably be correct. The agreement of February 3rd was signed late on the afternoon of that day.

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My object was to record a binding agreement. On the 3rd I did not take legal advice, on Monday 5th I saw Mr. Burn.

To the best of my knowledge I would swear I instructed Mr. Burn to draft the more formal agreement before going to Mr. Allen's office or having notice from him.

The suggestion is wholly wrong that it was after getting the written and verbal notice from Allen. Mr. Burn and I considered the notice to be bluff. I have had considerable experience of buying and selling land.

It would not be usual to treat such a notice or for a lawyer to treat such a notice as bluff. It would be usual for a lawyer to ask for the deeds.

I am inclined to think Mr. Burn did ask for the deeds.

Allen refused to produce them.

It would depend on the lawyer what course he would then follow.

Adjourn to 4th February.

(Sgd.) R. W. Hamilton.

4th February.

Witness explains last remark, that I intended it to refer to Mr. Allen and if the lawyer was capable of bluffing.

On being told there was another agreement I would suggest my lawyer to take steps to find

out the truth, even if he believed it were black. I had full confidence in Mr. Burn then as a conveyancer and still have. 370

I have not found anything in the agreement of altered date that I did not wish put in it at the time. I have always been satisfied with it. He drew it up and on instructions from me.

My experience is that the vendor requires interest from the date of sale on the whole amount of the purchase price.

My experience is that the purchaser gets possession on the date of the agreement.

The sale in question was slightly different from others in my experience in a number of points. I knew of no reason why the 7% clause should have been inserted in the agreement. A provision that vendor may annul sale if purchaser does not complete is not usual in my experience and I would consider it of no importance.

I think the provision in the agreement refers to the purchaser failing to complete. I would not of necessity expect the words 'owing to the default of the purchaser' to be included.

I find it impossible to answer what I should expect as to a proviso for return of part paid purchase money if there was a clause in the agreement that the vendor could annul by notice and he did so.

I agreed to the wording of the last clause of the agreement. I think the clause is fair

the only point being, the forfeiture of the Rs.1000. I knew Smart had been sued by Lord Delamere case 1/1906 and we were both trying to defend it to the best of our ability. I expressed an opinion that the document between the parties constituted an option. At the time of the written statement being drawn I had probably seen the letters referred to in the plaint and Smart's receipt. My opinion was that the 'receipt' formed the basis of Lord Delamere's claim and constituted an option and Mr. Burn took that view. I believe the letters attached to the plaint were read and considered. I certainly came to the conclusion in spite of the letters and receipt that the receipt only constituted an option. I believe every line in the 'receipt' is in the nature of an option.

It is not true that I told Smart before 3rd February 1906 that I would not take action against him if Lord Delamere gave trouble over the sale. It was later than the 10th February I did so. Lord Delamere had then threatened proceedings. By that time it had come to my knowledge that Smart had made two statements to me that were not correct. But I do not think he deliberately deceived me. I did not consider they might cause me the loss of a very good bargain. If I had known there was a binding sale with Lord Delamere I would not have considered the matter. If Smart had not told me the bargain with Lord Delamere was off and he Smart had cancelled his instructions for sale I would not

Evid. pp. 13, 14. (14)
 have gone on with it. It was in reliance on Smart's statements I purchased the land. When I realised Smart's misstatements I thought there would be delay and trouble in my getting the land. If there had been a complete sale it would have been impossible for me to get the land.

I told Smart if he put up a straight fight against Lord Delamere and ~~last~~ I would not squeeze him but only ask the Rs.1000 deposit back. I then thought there was not the faintest possibility of Lord Delamere succeeding. I would not squeeze any man in a similar position who had acted in good faith with me.

I know Mr. Young and remember a conversation with him in a store in Victoria Street on this matter about 12th February 1906. I did not state to him that I would not take action against Smart if Lord Delamere kicked up a fuss, and that the agreement would be torn up, but I did tell him if Smart put up a ^{straight} fight I would not squeeze him I do not recollect a conversation with Allen shortly after Lord Delamere had sued the two Smarts and telling him if Lord Delamere made trouble I would tear up the agreement and not sue Smart, nor anything conveying that meaning. I do recollect a conversation taking place when I was in a rickshaw and Allen in the street.

I remember a conversation with Allen outside

Evid. pp. 13, 14. (15)

the Court House. I don't remember the date. I don't remember saying Lord Delamere had heard I was to give some shares to Smart in the Eldara Ravine Syndicate. To the best of my knowledge nothing was said about these shares, or shares at all.

The litigation I referred to as lengthy is myself v Smart and Lord Delamere v Smart I was practically a party. I have been unsuccessful to date in recovering the money. I instituted proceedings in this matter on 1st October, but further action was delayed by the Court till the issue of the civil proceedings.

If I had recovered my money it is doubtful whether I would have gone on with these proceedings I had no desire to proceed against Lord Delamere and Smart. I did against Allen, to get justice.

R. X.D.:-

I formed the opinion I did with regard ^{to} the receipt as a layman, and went to Mr. Barn for advice. I did not advise him he advised me and I expected him to argue the point in the case. I expected Smart to fight the case. I first heard of the settlement in front of the Court House on the 12th April.

Lord Delamere had not told me previously nor Smart nor anyone else. Mr. Allen was then aware I was the party really most interested and that Mr. Barn was representing my interests.

Evid. pp. 14, 15. (18)

After hearing of the settlement, application was made to make me a co defendant to resist Lord Belmore's claim, and defend my interests by defending Smart's title to the land.

The application did not succeed.

I sued Smart because he did not put up a straight fight against Lord Belmore and so injure me.

I went to Mr. Burn's office on 3rd February to get an agreement drafted; but Mr. Burn was not there .

It is not true that Mr. Allen put the idea into my head and as to the necessity of having an agreement. Mr. Allen got to know of the agreement from what I told him on the Monday. I believe I was the first to mention the matter.

I had a conversation with Lord Belmore before the old Magistrate's Court House as to my action in purchasing from Smart. Lord Belmore came over to me and said he did not blame me for what I had done and would do the same in my position and that he had no feeling against me, and further convinced me he was incensed against Smart.

The conversation with Allen outside the Court was to the effect I should go back to him and give him my legal business, and to work in with him in a business way. I supposed he meant with regard to land.

~~None~~

None

Further I had by
 you on the conver-
 sation with Lord
 Belmore.

Read over to witness.

(Sgd.) R. W. Hamilton.

Case for prosecution.

DEFENCE.

Byron reads and puts in Delamere's statement.

Harrison reads and puts in Smart's statement.

Allen reads statement.

I N T E R V I E W.

Allen continues statement, put in. He then asks to be allowed to add.

I wish to formally deny the allegation made by Mr. Grant in his evidence that I had obtained the adjournment in the Town Magistrate's Court by stating that Lord Delamere had informed me he was going to appeal (Grant p. 3) I wish to say I had neither seen nor heard from Lord Delamere at the time. What did occur is correctly stated in the Town Magistrate's order and Grant's two affidavits on the matter. With regard to the interview that I questioned Mr. Grant about this morning with regard to the shares. Mr. Grant stated that the purport of the conversation was my asking him to give me his business. I wish to say that that interview took place some 2 or 3 days after the release on the 18th September. A time when Mr. Grant was of opinion I had defrauded him of Rs. 25000, a singularly unfortunate time.

With regard to the point made by the Crown Advocate in opening that the settlement of the 18th April between Lord Delamere and Smart was

Just.

to the disadvantage of Lord Dalmeida and that it was impossible to conceive how a Solicitor could advise such a settlement if he had a good case. I wish to state my advice was neither asked nor given on the occasion. I received a peremptory message through Mr. Marcus to make out the agreement on the terms stated.

{Read over to accused; it
{contains a full and true (Sgd.) E. G. Allen
{account of his additional
{statement.

(Sgd.) R. W. Hamilton

None of the accused call evidence.

Combe sums up.

Agreement now drawn up. Smart goes behind everyone's back.

Grant applied to be made a co defendant.

Smart's defence was bona fide.

Release took place during adjournment obtained by Allen.

There was a demand due to Smart when the decree went against him.

Smart's only excuse as to want of bona fides is that he forgot something.

Page 20 Allen's statement.

a. No consideration for indemnity clause.

Agreement is filed as settlement of the action.

b. No evidence of a bogus agreement.

c,d. go out together with b. No evidence of false pretences.

Combe continued.

- f. Smart was 'compelled' to pay legally as long as the decree stood.
- i. Smart could have sued Lord Delaware on day of judgment.
- j. unnecessary.
- k. "
- l. Not a defence it is not suggested.
- m. already dealt with.

Adjourn to 5th at 10 a.m.

(Sgd.) R. W. Hamilton

S. 2. 07.

Dalal sums up.

Sections 124, 125 indemnity. There was no cause of action there was no payment and therefore in this case there was no claim or demand to which Smart was entitled.

Section 145.

This defence is good law. At the time of the release of the indemnity bond Smart was not legally entitled to any demand or claim as nothing had been recovered by him I therefore direct the jury to find a verdict of not guilty against all accused.

Formal verdict so returned.

I enter a verdict of acquittal of all the accused.

(Sgd.) R. W. Hamilton

S. 2. 07.

In the Sessions Court at Nairobi.

Criminal Case No. 204 of 1906

dit
(Original Criminal Case No. 204/06 of T. M's
Court Nairobi.)

G. Grant

v

- (1) T. Smart
- (2) Lord Delamere
- (3) B. G. Allen.

STATEMENT OF LORD DELAMERE.

IN THE SESSIONS COURT AT NAIROBI.

Criminal Case No. 26 of 1906.

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Original Criminal Case No. 308/06 of T.M's Court
Nairobi.)

Charles Grant

Prosecutor

(1) Arthur Thomas Smart

(2) Lord Delamere

Accused

(3) Bertram Gray Allen

⁶
Statement of Lord Delamere.

I HAVE ^{BARON} ~~HEARD~~ ~~OR~~ ~~CONSIDERED~~ ~~THE~~ ~~STATEMENT~~ ~~OF~~ ~~THE~~ ~~SECOND~~ ~~ACCUSED~~ ~~STATE~~ ~~AS~~ ~~FOLLOWS~~:-

1. I have read the statement made by Mr. B. G. Allen the third accused and so far as the facts related therein are within my knowledge same are true and correct and for the sake of brevity I beg that his statement may be considered as incorporated with this my statement.

Settlement of my cases against Smart.

2. The cases instituted by me against A. T. Smart and against A. F. and W. H. Smart for specific performance of agreements to sell their lands on Dagoretta road and near the Hospital Nairobi referred to in Mr. Allen's statement were fixed for hearing at Nairobi on the 15th April 1906.

Early in the morning of that day Mr. Marcus who had acted as Agent for A. T. Smart in the sale of the said lands called on me at the

(22)

Norfolk Hotel and told me that Smart was willing to let me have the lands provided I would withdraw the suits instituted against him by me and would pay him the original contracted price of £,800 for the Dageretti Road land and £,500 for the Hospital land and indemnify him against any costs or damages he might have to pay Grant for breaking the Agreement for sale of the Dageretti Road land entered into between them.

3. I consented to these terms and directed Mr. Marcus to call at Mr. Allen's office and ask him to prepare an Agreement on the basis suggested before he proceeded to Court that day.

Reasons for increased price of Hospital land

4. The original price arranged for the Hospital land was Rs.2500/- for 500 acres. While negotiations with the Land Office concerning the two pieces of land were running on for about 2½ years I learned through Dr. Atkinson that Smart was anxious to know whether I would insist on reducing the purchase money of the Hospital land in proportion to the acreage cut off by Government for a Military rifle range. On one occasion Dr. Atkinson was with me at Njorp and I asked him to tell Smart that I would give him £.1 per acre for the whole area of 500 acres of the Hospital land just the same as if portion of it had not been cut off by Government. I understand that Dr. Atkinson conveyed my message to Smart.

When I asked Dr. Atkinson to say that I

(23)

would give £.1 per acre I was labouring under a misapprehension. I had no papers relating to the matter at Njere and such a long period had elapsed that I forgot that I had purchased this land at Rs.5/- per acre, and that it was the Dagoretti Road land for which I had offered £.1 per acre. My real intention was to pay Smart at the original price of Rs.5/- per acre for the whole 500 acres as if portion of the land had not been cut off by Government.

5. After Smart had sold the Dagoretti Road land to Grant I learned that he thought he was entitled under the message I had sent by Dr. Atkinson to have £.500 for the Hospital land and as Mr. Allen had made a satisfactory arrangement by which I got the Dagoretti Road land freehold in exchange for portion of the Hospital land cut off by Government and as the land had by that time greatly increased in value I determined to pay Smart the £.500 he thought I had promised through Dr. Atkinson rather than that he should imagine I would go back on my word.

6. When Mr. Harcus told me at the hotel that Smart would transfer the two pieces of land to me on my paying him the £.500 each and withdrawing the suits I was well pleased and consented to the arrangement.

Release of indemnity by Smart.

7. I came to Nairobi on Saturday the 15th September in response to a wire I received from Smart.

(24)

I went to Mr. Allen's office and saw a copy of the Judgment given in the case of Grant vs. Smart and of the evidence given by Smart and inquired into the proceedings which had taken place. From the information I received it appeared to me perfectly clear that Smart had not bona fide defended the action.

8. I refused to pay Smart anything on foot of the indemnity clause for the following reasons

(a) I believed that he had not bona fide defended the action brought against him by Grant.

(b) If he did his best to defend the action then he had made a number of false statements to me when I gave him the indemnity to the effect that the Agreement between Grant and himself was a bogus one and that he would be able to prove this in any action Grant would bring against him.

(c) I learned from Mr. McCall, Smart's partner that Smart had told him that part of the arrangement between Grant and Smart was that Grant should give him a number of shares in Lingham and Greger's Forest Concession Syndicate. And he did not disclose this in his evidence.

(d) I found out that the Agreement between Grant and Smart had been signed on the 7th February, but that they had only dated it to the 3rd February, and I believed that this was done to avoid Mr. Allen's notice to Grant and Smart dated the 5th February.

9. On Monday the 17th September I called at Mr. Allen's office and asked his advice as to whether there was any objection to my settling Smart's alleged claim under the indemnity clause if I could arrange a price with him.

After considering the matter for some time and discussing the facts fully Mr. Allen gave it as his opinion that Smart had no valid claim against me whatever and that there was no objection to my settling with him. I therefore instructed Mr. Allen to write Smart offering him £.50.

Smart replied by letter the same day accepting the sum offered.

Reasons for Purchasing Release.

10. My reasons for giving Smart £.50 for release of a claim which I believed to be valueless was that I preferred to settle the whole matter by a small payment rather than have the inconvenience of having to defend any proceedings which Smart or his creditors might take under the indemnity clause especially as I wanted to go home to England on urgent business.

11. In dealing with Smart I acted bona fide on the advice of my Solicitor in a matter in which my own interests were concerned. I had no intention whatever of preventing Mr. Grant realising his decree against Smart.

Dated 2nd February 1907.

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11. In dealing with Smart I acted bona fide on the advice of my Solicitor in a matter in which my own interests were concerned. I had no intention whatever of preventing Mr. Grant realising his decree against Smart.

Dated 2nd February 1907.

Original Case No. 24 of 1906.

C. Grant

Complainant.

v.

(1) A. T. Smart

(2) Lord Delamere

Accused.

(3) B. G. Allen

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Statement of A. T. Smart.

In the Sessions Court at Nairobi,

Criminal Case No. 25 of 1904.

(Orig. Criminal Case No. 208 of 1904 of T.M.'s
Court Nairobi).

Charles Grant.....Prosecuter.

VERSUS

- (1) Arthur Thomas Smart
(2) Lord Delamere
(3) Bertrem Gray Allen.....Accused.

STATEMENT OF A. T. SMART.

I A. T. Smart the first accused in this case
state as follows:-

1. I sold the 500 acres of land applied for by
me and situate near the former European Hospital
at Rs.5/- per acre at Rs.2500/- and the 500 acres
of land applied for by me and situated on the
Dagerratti Road for £.500 to Lord Delamere in 1904
and I authorized Mr. Allen to act nominally for
me but really for Lord Delamere in the necessary
negotiations with the Land Office to get my
title deeds completed. During the next 2 1/2 years
I, my brother W. K. Smart and my agent Mr. Marcus
attended at Mr. Allen's office from time to time
in connection with these negotiations.

2. On 23rd February 1906 my agent Mr. Marcus obtained an advance of Rs.1500/- on account of the purchase moneys of these two pieces of land for me from Lord Delamere and I gave a receipt therefor.

3. In January 1906 the sales to Lord Delamere had not been completed and the land had increased greatly in value.

Mr. Grant the Complainant in this case was an intimate friend of mine and we used to go about the town, hotels and bars together frequently. He knew of the sales to Lord Delamere at the time they occurred and we often talked over the matter together in the interval between 1904 and January 1906.

In that month he suggested to me I should sell the Bageretti Road land to him at a greatly enhanced price. I told him I could not do so on account of the previous sale to Lord Delamere. He inquired if I had signed any agreement in writing regarding the sale. I told him I could not remember doing so but that I had given some sort of receipt for the advance of £.100 I had received in February 1906 but I did not recollect what was in the receipt.

Mr. Grant then pressed me continually for some time to sell to him and assured me that if there was no writing Lord Delamere could not hold me to the prior sale. He said he had obtained Messrs. Burn, Fichat and Durhill's

advice on the subject and he was quite sure.

I was very eager to obtain the increased price offered by Mr. Grant but I was afraid Lord Dalhousie ^{could} enforce his claim and I persistently refused to sell to Grant.

Eventually Mr. Grant induced me to consent by promising that if Lord Dalhousie gave any trouble at all about his prior claim that he (Grant) would tear up the agreement to be made between him and me and would take no steps against me in any way. I was also to be allowed to keep Rs.1000/- deposit money even if I could not eventually give the land to him. He also promised to give me 100 shares in the Lingham and Grogan Nidama Forest concession in which he was interested.

4. I agreed to these terms and Mr. Grant paid me £.1 and I gave him the receipt Exhibit 1 on the file of Grant against me No. 5 of 1894.

5. On the 5th February 1894 I received a notice in writing from Mr. Allen warning me against dealing with the land. On the 7th February 1894 Mr. Grant took me to his lawyer Mr. Burn's office after I had put him off for several days and I there signed the agreement dated the 3rd February 1894 between Grant and myself Exhibit 2 on the file of Grant against myself No. 5 of 1894.

6. Lord Dalhousie then brought two suits one against me and the other against my brother and me for Specific Performance of the above mentioned sales.

At the Preliminary hearing in the Town Magistrate's Court Mr. Allen produced a letter to Mr. Marcus signed by me authorising Mr. Marcus to sell the Magretti land and a letter from Mr. Marcus to Mr. Allen stating that he had sold the land to Lord Dalmore.

7. The production of these letters and the statements of Mr. Allen at the preliminary proceedings greatly frightened me and my partner Mr. S. McCall took Mr. Shandy's advice in the matter and told me that in Mr. Shandy's opinion Lord Dalmore would win his case and he suggested that I should take the best advice procurable.

Mr. McCall then offered to pay my expenses to Newbasa to get further advice. I went there and saw Mr. Dalal whose opinion agreed with Mr. Shandy's and he advised me to settle the cases with Lord Dalmore if possible.

8. On the morning of the day on which the cases were fixed for hearing I went to Mr. Marcus' office and told him I would let Lord Dalmore have the two pieces of land if he paid me £.500 for cash and guaranteed me against any damages I might have to pay Grant. Mr. Marcus went to the Norfolk Hotel to see Lord Dalmore and subsequently told me Lord Dalmore accepted my offer. Later on he took me to Mr. Allen's office and after I had stated what the real arrangement between Grant and myself was Mr. Allen prepared the agreement between Lord Dalmore and myself settling the two actions.

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9. The reason I asked Lord Delamere £.800 for the Hospital land was that I had received a message from him through Dr. Atkinson sometime previously promising to pay me a £ an acre for the whole area for 800 acres originally sold to him by me although part of the land had been cut off by Government for a rifle range.

Subsequently Grant instituted his action for damages for breach of the agreement between us. I employed Mr. Allen to defend me. Before the date of the hearing of this case I tried my best at Mr. Allen's request to collect evidence of the real arrangement between Grant and myself but I could not find anybody who knew of the facts and I had nothing in writing to prove it.

10. At the trial I tried to defend the case as well as I could but I was very nervous and excited and I afterwards found that I had forgotten several matters that I might have stated. Judgment was given against me for about Rs.50000/.

Grant then applied to the Town Magistrate Nairobi for execution of the decree and Mr. Allen on my behalf obtained an adjournment to enable me to communicate with Lord Delamere and ask him to pay the amount of the decree or give me the necessary money to appeal. I immediately wired to Lord Delamere and he came to Nairobi and I saw him in Mr. Allen's office on the 15th of September 1904. He then accused me of not fighting the Grant's case properly and mentioned

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that I had said nothing in Court about the shares which Grant was to give me in addition to the purchase money and he refused either to pay the amount of the judgment or to pay costs of the appeal. Mr. Allen said that I was not entitled to anything from Lord Delamere under the circumstances.

11. On Monday the 17th September 1906 I received a letter from Mr. Allen offering me £.50 in settlement of any claim I might have against Lord Delamere. As far as I could understand I could get nothing from Lord Delamere and I had no money left to employ a Solicitor or fight my claim against Lord Delamere. I was in great trouble and did not know what to do and eventually I thought it better to accept £.50 than get nothing at all. I therefore wrote accepting Mr. Allen's offer and subsequently received the money and signed a receipt releasing Lord Delamere from the indemnity.

12. When accepting the £.50 I believed I was perfectly entitled to do so and that I was making the best arrangement I could with Lord Delamere.

Dated the 1st day of February 1907.

(Sgd.) A. T. Smart.

Criminal Case No. 24 of 1907.

C. Grant

Prosecutor

versus

(1) A. T. Smart

(2) Lord Dalmeida

(3) E. G. Allen

Accused

Statement of E. G. Allen

In the Sessions Court at Nairobi.

Criminal Case No. 26 of 1906.

(Orig. Criminal Case No. 308 of 1906 of T. M's
Court Nairobi)

Charles Grant.....Prosecutor,

versus

- (1) A. T. Smart
(2) Lord Delamere
(3) B. G. Allen... ..Accused.

STATEMENT OF B. G. ALLEN

I, B. G. Allen Solicitor the third accused
in this case state as follows:-

Purchase of 500 acres near Hospital

1. In March 1904 A. T. Smart the first accused
called at my office with his agent Mr. Marous,
and the latter stated that Smart wished to sell
500 acres of leasehold land near the/ then
European Hospital, a lease of which he had
applied for, and asked me as being Lord Delamere's
Solicitor, whether he would purchase. It was
eventually arranged that Smart would sell for
Rs. \$500/- viz. at Rs. 5/- per acre, Lord Delamere
to pay all Smart's expenses for survey fees,
stamp duty, registration fees, and legal charges
of obtaining Smart's lease of the land from
Government, and also the costs of assigning the
said lease to Lord Delamere.

2. I communicated the offer to Lord Dalmore and received a letter from him dated the 14th March 1904 that he would accept the offer if no conditions were attached and I beg to refer to the said letter which is attached hereto.

I immediately wrote to Mr. Marcus accepting the offer and I beg to refer to the original letter dated the 15th day of March 1904 which is attached hereto.

3. It was subsequently arranged that Smart should write to the Land Officer that I was acting for him in the matter of the lease so that I, acting really for Lord Dalmore, should push through Smart's lease and subsequently assign same to Lord Dalmore as quickly as possible. This letter is on the Land Office file.

Purchase of 500 acres on Dageretti Road.

4. On the 28th June 1904 Lord Dalmore informed me that he had purchased 500 acres of freehold land situate on the Dageretti road from Mr. Marcus, agent of A. T. Smart, the first accused, for £200 and instructed me to act for him in the matter.

5. On the same day I received a letter from Mr. Marcus acting as agent of the first accused, regarding the said sale, and enclosing a letter from Smart authorising him (Mr. Marcus) to sell this land for him.

I beg to refer to copies of the said letters

attached hereto, the originals of which are exhibits in the case of Lord Delamere versus A. T. Smart, Civil Case No. 1 of 1906.

6. It was subsequently arranged by Mr. Marcus and Mr. Smart that I should act nominally for Smart in negotiations with the Land Office in this matter also, for the purpose of getting the Conveyance from Government completed and the Transfer to Lord Delamere made with as little delay as possible.

7. On inquiry I found that Smart had only applied to the Land Officer to take the said land as a Homestead and not to purchase the freehold as stated in his letter to Mr. Marcus. I pointed out to Mr. Marcus and Smart that Lord Delamere might refuse to take the land at the same price under these conditions, and it was arranged that I should write him. I did so and Lord Delamere subsequently agreed to take whatever interest Smart might acquire in the land without any alteration of price.

Payment on account of Purchase moneys.

8. At the beginning of 1906 A. T. Smart was in want of money and his agent Mr. Marcus obtained an advance of Rs. 1500/- from Lord Delamere on account of the purchase moneys payable on feet of the above sales.

I beg to refer to the receipt given by the first accused on the occasion, a press copy of which is in Marcus' letter copying book, and a copy of which is attached hereto.

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Negotiations with Land Office.

9. Immediately upon the above sales being made I entered into negotiations with the Land Office with a view to getting both lands surveyed, and the documents in respect thereof completed without delay.

It was arranged that the Hospital land should be taken in the name of W. K. Smart brother of the first accused, as the latter had too many applications for land pending in the Land Office.

10. In June 1904 the Land Officer tried to cancel the grant of the Hospital land on the ground that it was required for Government purposes. Afterwards the Government tried to retain the land for a cattle quarantine camp, then they tried to reserve a right for the troops to fire over same, and lastly wished to retain the land for a rifle range.

11. Difficulties also occurred with the Land Officer in regard to the Dugretti Road land. First it was refused as Restricted Area. Then I asked for a freehold title instead, this was refused on account of the land being situated near Nairobi, and leasehold was offered instead which I refused.

12. These negotiations were protracted owing to delays in the Land and Survey Office for about 2 1/2 years when I eventually made an arrangement with the Land Officer whereby I agreed to his cutting off 120 acres from the Hospital land for use

as a military rifle range in consideration of his granting a freehold tenure of the Dagoretti Road land at Rs.2/- per acre.

This arrangement was submitted to A.T. Smart, W. H. Smart and Lord Delamere, and was approved by all of them.

13. In January 1906 the lease of the Hospital land to W. H. Smart and the conveyance of the Dagoretti Road land to A. T. Smart had been completed and registered, and I prepared the transfers thereof from W. H. Smart and A.T. Smart to Lord Delamere, and wrote Lord Delamere to send me the purchase moneys thereof less the Rs.1500/- already paid on account.

Considerable delay occurred in forwarding me the purchase moneys as Lord Delamere was continually away from Mjere at that time.

Notice to Grant of sale.

14. On the 5th February 1906 Mr. Grant (the complainant in this case) came to my office and asked to see the Conveyance from Government to A. T. Smart of the Dagoretti Road land. I refused to show him the document without an authority from Smart or Lord Delamere and asked him why he wanted to see it. He then stated that he had bought the land from Smart two days previously viz. on the 3rd February and wished to see the plan attached to the Conveyance.

I told him that the land had been sold to Lord Delamere between two and three years previously, as he and every other European then

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in the country was perfectly aware. He said he knew of the sale very well, but there was nothing in writing and that Lord Delamere could not enforce the sale. I assured that the agreement for sale was in writing and advise him to take legal advice before interfering in the matter. Eventually I showed him the plan as a matter of courtesy.

15. Although Mr. Grant stated that he had purchased the land two days previously I was of opinion that such was not the case, but that he had come to my office with a view to ascertaining my views as to the contract for sale between Smart and Lord Delamere before considering his intended purchase from Smart of the same land.

I am confirmed in that opinion by the fact that the agreement between Smart and Grant on which Grant subsequently sued Smart (and which will be referred to later) was admittedly ante dated from the 7th, the actual date of signature is the 3rd February.

I beg to refer to the said agreement which is attached to the file of Grant vs. Smart No. 5 of 1906 where the alteration of the date is apparent.

16. Immediately Mr. Grant left my office, I wrote both to him and to A. F. Smart giving them formal notice of the previous sale to Lord Delamere and I beg to refer to copies of the said letters which are attached hereto the original of the said letter to Smart is attached to the file in the case of Grant v Smart No. 5 of 1906.

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I also wired to Lord Delamere informing him of Smart's action and requesting him to send the purchase moneys forthwith.

Smart's refusal to complete purchases.

17. On the 8th February 1906 I went to the Smart's shop and tendered the balance of the purchase moneys of the two pieces of land and produced the transfers to Lord Delamere and requested them to sign these documents. They refused both to sign the documents and to accept the money.

Proceedings by Lord Delamere.

18. Lord Delamere instituted then ~~two~~ two suits in the High Court for Specific Performance of the said sales, one against A. T. Smart the first accused being case No. 1 of 1906 and the other against A. T. and W. R. Smart being case No. 4 of 1906.

The suits were fixed for hearing at Nairobi on the 18th April 1906 at, I believe, 11 o'clock. In each of the cases I was acting for Lord Delamere.

I was also engaged in the case of Grant vs. Oregon and Lingham on the same date.

19. On arriving at my office on the morning of the 18th April I found Mr. Marcus there who informed me that he had arranged a settlement of the cases between Lord Delamere and the Smarts overnight, and that Lord Delamere wished me to prepare an agreement recording the terms of the settlement. He stated that the terms were that

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Lord Delamere should pay Smart £.500 the original sum agreed upon for the Dageretti Road land and the sum of £.500 for the Hospital land, should withdraw the said two actions and indemnify Smart against any costs and damages he might have to pay if Grant sued him upon the agreement between Grant and him for sale of the Dageretti Road land.

20. I was considerably annoyed at such a settlement being made behind my back to the disadvantage of my client Lord Delamere who, in my opinion, was certain to win both his cases with costs; I therefore at first objected to prepare the agreement without Lord Delamere's personal instructions. I was however overruled by Mr. Marcus who requested me not to upset an arrangement which Lord Delamere, Smart and he himself (who were all clients of mine) considered advisable, and was influenced by the fact that I had to proceed to Court before 10 o'clock, and had I not prepared the agreement immediately I should have had no other opportunity of doing so before the cases were called on at 11 o'clock.

I therefore told Mr. Marcus that he must bring Mr. Burn, who was acting for both the Smarts, to my office as I could not deal with his clients without his knowledge. Mr. Marcus went to get Mr. Burn and the Smarts, but returned to say that the Smarts dare not to go Mr. Burn who

was acting for Grant, the person really interested in defending the suits by Lord Delamere against the Smarts.

Eventually I allowed Mr. Marcus to bring the Smarts to my office rather than disregard Lord Delamere's instructions to prepare the Agreement. Mr. Marcus went away and shortly afterwards returned with both A. T. and W. H. Smart.

21. I questioned both the Smarts very closely as to the relations between Grant and A. T. Smart in regard to the agreement for sale entered into between them for the sale of the Dagoretti Road land in the presence of Mr. Marcus, and was assured by them that that Agreement was entered into by Mr. Grant after he had received my notice of 5th February of the previous sale to Lord Delamere and with full knowledge that it might be impossible to carry out same owing to the prior interest of Lord Delamere and that there had been a secret understanding between Grant and A. T. Smart to tear up their Agreement if Lord Delamere successfully asserted his claim to the land.

A. T. Smart also stated that he had obtained the opinion of Mr. Ghendy, Pleader of Nairobi, and Mr. Dalal Pleader of Mombasa and that both agreed that he could not make good his defence against Lord Delamere.

I then dictated the draft Agreement between A. T. Smart and Lord Delamere dated the 15th April 1906 settling the the said two suits a

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copy of which is attached hereto.

22. Before proceeding to Court I directed my clerk to enquire the said Agreement and to read same to Lord Dalmeida if he called during the morning, and that if same was what Lord Dalmeida wished to have same signed by both parties. This was subsequently done during my absence in Court.

His Honour Judge Hamilton permitted the said two cases to be withdrawn on my stating that same had been settled between the parties.

23. Had Lord Dalmeida allowed the matter to end here the present proceedings could never have been instituted. Lord Dalmeida however insisted on my reading the terms of the last mentioned Agreement in Court as he was most anxious that the public should have full knowledge of the terms of settlement and that Grant had admitted the justice of his (Lord Dalmeida's) claim the case having excited considerable local interest. I was therefore compelled to read the Agreement in open Court and file an attested copy of same. In this way Mr. Grant obtained knowledge of the indemnity by Lord Dalmeida contained therein.

24. I beg particularly to refer to the recital in the said Agreement of 15th April 1906 between A. T. Grant and Lord Dalmeida in which Grant states Mr. Grant's knowledge of the sale to Lord Dalmeida, and I also beg to specially refer to the wording of clause 3 of the said Agreement

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in which it is stated that Lord Delaware agrees to indemnify Smart "against any costs and damages he might bona fide incur and be compelled to pay" in regard to any action which might be brought against him by Grant.

25. When preparing the said Agreement it was present to my mind that Smart had already disregarded his obligations to Lord Delaware in agreeing to sell the Dagoretti Road land to Mr. Grant and that he was at that moment to some extent overthrowing Grant by settling the action brought against him by Lord Delaware. It therefore occurred to me to be desirable to insert in the Agreement the recital above referred to and the other matters then alleged by Smart and to word clause 3 in such a manner that Smart could not afterwards make a secret arrangement with Grant to let Mr. Grant file a suit against him and prove damages to a large amount which would be recoverable against Lord Delaware and which they might afterwards share. I therefore inserted the words "and be compelled to pay".

The intention of giving the indemnity was that Smart should be reimbursed the amount of any actual loss he might sustain through being compelled to pay Grant damages and costs.

It was not the intention to place Mr. Grant in a better position than he was at that date by providing a sure fund out of which he would recover any damages he might be awarded against Smart.

Proceedings of Grant against Smart.

26. After the settlement above referred to Mr. Grant filed a suit in the High Court against A. T. Smart the first accused (Civil Case No. 5 of 1906) for damages for breach of the Agreement above referred to dated the 3rd day of February 1906 whereby Smart agreed to sell the Dagoretti Road land to Mr. Grant (copy attached).

27. Smart asked me to defend him in this case, and I stated my willingness to do so if his defence would not prejudice Lord Dalmeida under clause 3 of the said Agreement, I being Lord Dalmeida's Solicitor for all his business in this country.

On going into the matter we both agreed that Lord Dalmeida's interests were identical with Smart's defence and I thereupon agreed to defend Smart.

28. When retaining me both A. T. Smart and W. H. Smart assured me of the correctness of the recital contained in the above mentioned Agreement of the 18th April 1906 between A. T. Smart and Lord Dalmeida settling the two actions by Lord Dalmeida against the Smarts and that A. T. Smart would be able to prove that the said Agreement of the 3rd February 1906 between Grant and himself was merely a bogus document arranged between them that Grant was to take no action against him if he should be ^{unsuccessful} ~~unsuccessful~~ in refusing

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the land to Lord Selawere.

29. I was led to believe that these statements were true and that Smart had a good defence to the action.

(a) By a perusal of a copy of the said Agreement which appears to be drawn in an unusual manner in the following respects:-

(1) It is ante dated from the 7th to the 3rd February apparently with a view to escape my notice to Grant of the 5th February above mentioned.

(2) It states that the vendor shall, if possible, within 30 days deliver his Conveyance to Mr. Burn when both vendor and purchaser knew that the document was complete and retained in my office, and was therefore immediately available unless some other person than the vendor was interested in the land.

(3) The purchaser was to pay 7% interest on the purchase money if the purchase was not completed on the 3rd day of May 1896 even if the delay was caused by the inability of the vendor to complete the purchase (which appeared to have been shrewdly anticipated.)

(4) The vendor might annul the sale if same was not completed within 60 days from the 3rd May 1896 even if the delay was on his side.

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(5) Even if the vendor annulled the sale he should be entitled to retain the Rs.1000/- deposit money though for breaking his own contract.

(b) By the fact that Mr. Burn a Barrister of experience acting for both parties did not insist on Smart producing his Conveyances for perusal before preparing the said Agreement or require an explanation as to its non-production, or if he was informed that same was in my office that he did not at least take the precaution of requesting me to show him same and inquire from me the reason why same was being detained.

(c) By the fact that in a conversation I had with Mr. Grant on the road outside my office he admitted that he had promised Smart that if there was any difficulty with Lord Dalmore he would not hold Smart responsible and would tear up the Agreement between them but that as Smart had settled the cases brought against him with Lord Dalmore he was determined to make him suffer.

This appeared to me to entirely confirm Smart's story.

30. In preparing A. T. Smart's written statement of defence to this action I put forward the facts as stated by A. T. Smart to me, namely that the Agreement between him and Mr. Grant was expressly made for the purpose of getting the land, if possible from Lord Dalmore and if they should

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be unsuccessful in this that same was to be annulled, that Smart had found it impossible to sustain the action brought against him by Lord Delamere and had consequently annulled the Agreement between himself and Mr. Grant by notice as provided for in that document.

31. Before the date fixed for ^{the} hearing of this case I called A. T. Smart to my office to take a note of the evidence for the defence and ascertain the witnesses he wished to call I was then surprised to find that he could not, or would not, produce any evidence as to the alleged bogus nature of his Agreement with Grant (and which was his sole defence to the action) other than his own verbal statement.

At the trial A. T. Smart did not give any evidence tending to show that his Agreement with Grant was a bogus one and that the real arrangement had been carried out by his annulling the Agreement when he found he could not resist Lord Delamere's actions against him. None of the witnesses he instructed me to call on the occasion were able to give evidence on this point either.

In his Judgment the learned Judge characterized Smart as "a man of curiously short and uncertain memory".

Under these circumstances the action resolved itself into a question of the amount of damage Mr. Grant had sustained through the breach

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of the Agreement by Smart and the Judge ordered the Rs.1000/- deposited with Smart to be returned with interest, and awarded damages against Smart of Rs.2400/- and costs.

On the application of Mr. Grant this decree was transferred to Nairobi for execution on the 6th September 1906.

Proceedings for execution of Decree.

32. On the 10th September the Town Magistrate Nairobi on the application of Mr. Bushland on behalf of Mr. Grant directed a notice under Section 248 of the Civil Procedure Code to be served on A. T. Smart to show cause on the 15th September why execution of the above decree should not be granted.

33. On the 15th September I attended the Town Magistrate's Court on behalf of A. T. Smart and requested a short adjournment to enable Smart to communicate with Lord Dalmeida and ascertain if Lord Dalmeida would pay the amount of the decree under clause 3 of the above mentioned Agreement of 18th April 1906, or if he would supply the necessary funds for appeal.

After argument the Town Magistrate adjourned the application to the 20th September "for the Judgment debtor (A. T. Smart) to lodge his appeal if he intends to do so, if no appeal lodged execution to go on application".

34. When asking for the adjournment I bona fide

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believed that Lord Balamere would, either pay the amount of the decree or supply the funds for an appeal.

Immediately on leaving the Court I advised Smart to wire to Lord Balamere on the subject.

Release of Indemnity by Smart.

35. On Saturday the 27th September Lord Balamere arrived unexpectedly at my office. He said he had received a wire from Smart and asked me as to the proceedings at the hearing of the case of Grant against Smart and the subsequent execution proceedings. I informed him of all that had taken place and showed him a copy of Mr. Barth's Judgment (which he had not seen until then).

Lord Balamere inquired whether in my opinion Smart had bona fide defended the case as required by clause 3 of the above mentioned Agreement of the 18th April 1906 (copy attached). I stated that he had not given any evidence of the nature he had led both Lord Balamere and myself to believe he would produce as to the Agreement between Mr. Grant and himself being a bogus one, and that as regards the evidence he had given, his demeanour in the box was very hesitating and unsatisfactory and had made a bad impression on the Judge and I showed Lord Balamere the Judge's remarks to the effect that Smart was a man of curiously short and uncertain memory.

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I further gave it as my opinion that he had not bona fide defended Grant's action and that if he had been unable to give any better evidence on that occasion he must have obtained the indemnity in clause 3 of the said Agreement practically under false pretences as it had only been on account of his assurance that he could prove that the Agreement between Grant and himself was a bogus one that the indemnity had been given.

I further pointed out to Lord Dalmeida that under clause 3 of the said Agreement he had only to reimburse Smart for such costs and damages as he (Smart) might be compelled to pay Grant and that in fact Smart had not yet been compelled to pay anything and was unlikely to be compelled to do so as he had stated in Court he had no assets. I also informed Lord Dalmeida that I had so worded the clause in order to prevent the success of any secret arrangement between Mr. Grant and Smart whereby the latter should allow Judgment to go against him for a large amount to Lord Dalmeida's prejudice.

36. After fully considering the matter Lord Dalmeida stated that he did not regard himself as either legally or morally bound to pay the amount of the decree against Smart and instructed me to write Smart to come to the office. I wrote to Smart accordingly.

37. Lord Dalmeida and Smart both came to my

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office the same afternoon and Lord Belmore then told Smart that he was thoroughly dissatisfied with the defence he had made in Mr. Grant's action, and that the evidence he had given was not in accord with what he had promised Lord Belmore he could give, and that he (Lord Belmore) would not pay anything unless Smart appealed the case and fought the case properly. He particularly accused Smart of not having given evidence of a secret clause in the Agreement between Grant and him by which if they were successful in keeping the land from Lord Belmore Grant was to give Smart a number of shares in a timber concession at Kildua Ravine which Grant was entitled to receive from Messrs. Lingham and Grogan. Lord Belmore heard of this from M'Call Smart's partner.

Smart practically admitted that his evidence had not been satisfactory and said he had forgotten to mention in Court about the shares. He asked Lord Belmore either to pay the amount of the decree or to supply him with funds for an appeal. This Lord Belmore refused to do and the meeting terminated without any result.

38. Smart returned to my office subsequently and asked my advice as to what he should do as he was afraid that he would be put in goal if Lord Belmore did not pay the amount of the decree for him. He stated that it was impossible for him to appeal as he had no funds and the stamp duty alone on the appeal would be Rs.1000/-. I told

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him that his only course was either to allow the execution proceedings to take their course or to sue Lord Dalmeida on the indemnity clause if he thought he was entitled to payment under the circumstances. He asked me what he should do and I then told him that I was Lord Dalmeida's Solicitor and I could not act contrary to his interests, but that he (Smart) should take separate advice as if wished to take any steps against Lord Dalmeida.

29. On Monday the 17th September Lord Dalmeida again called at my office and immediately asked my legal opinion as to whether there was any objection to his settling with Smart his alleged claim under the indemnity clause. I told him I thought it was unlikely Smart would agree to a settlement. Lord Dalmeida said he would see about that himself. He wanted particularly to know whether there would be anything illegal in his making a settlement.

After considering the matter to the best of my ability I told him that in my opinion there was nothing to prevent him settling Smart's mere claim under the indemnity clause provided Smart would consent to do so.

Lord Dalmeida then directed me to write to Smart offering him £.50 in full settlement of his claim which I did.

I beg to refer to a copy of the said letter

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hereto attached the original of which is an exhibit in Transfer decree Case No. 4 of 1906 G. Grant vs. A. T. Smart .

40. The same day I received a reply from Smart accepting the offer a copy of which is attached hereto and to which I beg to refer.

41. In advising Lord Dalmeida that he was at liberty to purchase the release of the indemnity contained in clause 3 of the said Agreement from Smart I acted bona fide and to the best of my ability and I conscientiously believed and still believe that Lord Dalmeida was at the time perfectly entitled to do so, for many reasons some of which are as follows:-

(a) Smart had given no consideration for the indemnity clause therefore same could not be enforced at law.

(b) Smart had obtained the indemnity clause from Lord Dalmeida by alleging that he could prove the bogus nature of the Agreement between Grant and himself for the sale of the Dageretti Road land and could prove the real arrangement between them and thus defend any action which Grant might bring against him.

(c) He did not prove any such facts in the case brought against him by Grant.

(d) In my opinion his defense was not bona fide as he did not attempt to prove the facts he had alleged when obtaining the indemnity clause.

(e) If he had bona fide defended the case brought against ^{him} Grant then he must have obtained the indemnity clause by false pretenses, and the consideration for Lord Delamere giving the indemnity clause failed.

(f) That by the wording of the indemnity clause Lord Delamere only agreed to indemnify Smart against any costs and damages which he might "be compelled to pay". At the time of purchasing the release Smart had not been compelled to pay anything to Grant and as he had given evidence in Court that he had no assets and Mr. Grant had failed to find any assets of his there was no probability of Smart being compelled to pay anything.

(g) In my view at that time nothing whatever was due by Lord Delamere to Smart on foot of the indemnity clause and nothing could become due by him unless and until Smart had been compelled to pay something in satisfaction of Mr. Grant's decree.

(h) If Smart should thereafter have been compelled to pay something to Grant and thereupon made a claim for a reimbursement against Lord Delamere, Lord Delamere in my opinion would have had a good defense on the ground that Smart had not bona fide defended Grant's action or had obtained the indemnity clause by false pretenses and upon a consideration which had failed.

(i) At the time of purchasing the release no execution had been granted against Smart.

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(j) At the time of purchasing the release no attachment of the alleged debt due by Lord Belamere to Smart had been served on Lord Belamere.

(k) At the time of purchasing the release no notice of the execution proceedings in the case of Grant v Smart had been served on Lord Belamere.

(l) There was no privity or contractual relationship between Grant and Lord Belamere, and Lord Belamere was not in any way bound either legally or morally to provide for payment of Mr. Grant's decree.

(m) That even if I had advised Lord Belamere not to purchase the indemnity, neither Smart nor his decree-holder Grant would have been in any better position as in my view under the circumstances which had occurred nothing whatever was due or likely to become due under the indemnity clause from Lord Belamere to Smart.

Object for Purchasing the Release.

42. In discussing the question of the advisability of purchasing the Release from Smart the object Lord Belamere and I had in view was to avoid on Lord Belamere's behalf all possibility of litigation on the question of Smart's alleged claim. Lord Belamere was averse to enduring the annoyance of judicial proceedings and wished to go to England shortly on urgent business, while I felt sure that Smart or his Judgment creditor

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(Grant) would not drop the alleged claim without testing the matter in Court. It was therefore decided to be advantageous to Lord Dalmore to settle the question once for all by paying the small sum of £.50 although in my opinion nothing whatever was then due by him to Smart or likely to become due.

43. I wish to point out that there was absolutely no desire or intention either on Lord Dalmore's part or mine to prevent Grant realising the amount of his decree against Smart.

I contend that the purchase of the Release by Lord Dalmore did not in fact have that effect as Mr. Grant could only attach the alleged debt through Smart and nothing was due by Lord Dalmore to Smart.

Further execution proceedings by Grant

44. On the 17th September the very day the release of the indemnity was purchased by Lord Dalmore, Lord Dalmore informed Grant in the Norfolk Hotel of the fact that he had purchased same, thus no effort was made to conceal the fact or to deceive any person in regard thereto.

45. On the 18th September Mr. Grant obtained an order from the Town Magistrate, Nairobi for the attachment of any moneys standing in the hands of India, Nairobi in the name of A. S. Smart and he also obtained an order restraining Smart from disposing of his interest in the Central Butchery, Nairobi.

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46. On the 19th September Mr. Grant obtained an order committing Smart to civil imprisonment for 6 months for having given the release to Lord Delamere for £.50.

I am of opinion that this order could have been reversed had Smart appealed against it.

47. Lord Delamere was summoned before the Town Magistrate on the 27th September under Section 267 of the Civil Procedure Code for examination.

Lord Delamere denied that anything was due by him under the indemnity and admitted that he had purchased a release thereof and the Court thereupon appointed Mr. T. A. Wood receiver under Section 203 of the Civil Procedure Code to test the question of Lord Delamere's liability on the guarantee.

Appeal against Order appointing Receiver.

48. On the 9th October 1906 I appealed on behalf of Smart to the High Court against the Magistrate's order appointing Mr. Wood trustee, and after hearing the arguments of counsel on both sides the learned Judge allowed the appeal, and Mr. Wood was removed from being receiver.

Grant's Complaint of Professional

Misconduct against E. S. Allen.

49. On the 12th October 1906 Mr. Grant preferred a charge of professional misconduct against me to the High Court grounded on an affidavit in which he swore that his Solicitor Mr. Dickland had informed him that had proposed to Mr. Dickland that he and I should go in and work together in

the case of Grant against Smart and that if we did so this action would be as good as an annuity to us as we could keep it ~~is~~ going for a year and get all there was in it.

This charge was fully investigated by Judge Barth at the last October Sessions when he decided that same was groundless and I beg to refer to the ~~file~~ ^{file} relating to the said complaint Myself against Grant Defamation.

50. On the 3rd November last I wrote a letter to Mr. Grant demanding a public apology for the baseless charge he brought against me before Judge Barth and for other slanders which he was persistently circulating concerning me through the town, and threatening criminal proceedings in case same was not forthcoming. Mr. Grant refused to apologise and referred me to his Solicitor.

I thereupon took criminal proceedings against him for defamation in the Town Magistrate's Court Nairobi, and on the 27th November the Town Magistrate charged him with uttering defamatory statements against me and returned him for trial at these Sessions.

51. At the inquiry before the Town Magistrate Mr. Grant in his Statement of defence asserted that he had practically instituted criminal proceedings against Smart, Lord Salusere and myself and that he demanded and claimed that my complaint against him then proceeding should not be entertained pending the hearing of his criminal charges.

This was the first intimation I had that Grant had made any complaint against Smart, Lord Dalmeida and myself other than the charge of professional misconduct above referred to.

Further Application Proceedings by Grant.

52. On the 6th November Mr. Grant applied to the High Court at Bombay to attack the debt alleged to be due by Lord Dalmeida to Smart under section 260 of the Civil Procedure Code which application was adjourned to the next day.

On the 7th November His Honour Judge North intimated his opinion against making the order sought and Mr. Grant then withdrew his application.

Extraordinary Proceedings in the Present Case.

53. I beg to refer to the file in this present case of Grant v. Smart, Lord Dalmeida and myself.

The application for summons is dated the 7th December 1906. The summonses issued against the three accused are dated the 7th December 1906.

The affidavit on which the summonses were issued against us is dated the 1st October 1906. It will thus be seen that no steps were taken for 9 weeks after the very serious charges made by Grant against us were sworn to.

There is nothing on the file to show any reason why such serious offences were not dealt with by the Magistrate forthwith as was his duty according to the usual practice of the Court.

I am informed and believe that the Magistrate constantly refused to act on the complaint made by Grant dated the 1st October 1906.

84. It will be observed that Mr. Grant's complaint was not acted upon and the summonses in this case were not served until all the civil proceedings referred to above by Mr. Grant to obtain execution of his decree against Smart had failed and until I had presented him and had him returned for trial to these Sessions.

85. I allege that the summonses in this case were taken out against the accused out of revenge because the civil proceedings failed, and partly as a counterblast to my criminal proceedings against Grant for defamation.

Bankruptcy Proceedings by Grant.

86. On the 15th November last Mr. Grant filed a petition in the High Court at Madras to make Smart a bankrupt in order that the Assignee in Bankruptcy might fight the question as to Lord Selwore's liability on the indemnity given by him to Smart.

On the 29th November His Honour Judge Carter dismissed the petition with costs.

SUMMARY.

87. It will be observed from the above statement that all proceedings taken by Grant for the purpose of obtaining payment of his decree

against Smart from Lord Belamere have constantly failed and on the other hand that I, on Lord Belamere's behalf, have successfully resisted all such proceedings.

Dated 2nd February 1907.

(Sgd.) B. G. Allen.

(63)

March 14 1904.

Dear Mr. Allen

I shall be obliged if you will write and ask the Sub Commissioner for what reason my ^{cattle} well as others ~~cattle~~ are stopped coming down the road. I have done nothing at present.

When you get his answer kindly let me know. I shall also be obliged if you will write to Count M~~u~~nyadi and ask him why he sheats on my land without permission. I shall be obliged to him if he will write me some sort of apology or I shall take action against him.

I am

Yours truly

(Sgd.) Delamere

Will have the 500 acres in Nairobi if no conditions attaching D.

Nairobi.

East Africa

16th March 1904.

Dear Sir,

We beg to inform you that we have now heard from our client and he accepts Mr. Smart's offer for the 500 acres near the Hospital viz he will pay Rs.2,500 and all expenses of survey, Mr. Smart's lease etc on the understanding that the lease will be obtained for 99 years at £. 8 rent per annum, no conditions being attached thereto.

We shall be glad if you can arrange with Mr. Smart to call on us about 8 o'clock today.

Yours faithfully,

(Sgd.) Tenks & Allen.

Marcus Bag

Agent of Mr. *Smart*

Nairobi.

Copy letter from Mr. Marcus to Tonks & Allen
enclosing A. T. Smart's authority to sell 500
acres of land on Dagoretti Road.

Nairobi 28th June 1906.

Messrs. Tonks & Allen,
Solicitors, Nairobi.

Dear Sirs,

I beg to hand you herewith Mr. A. T. Smart's
authority to sell for him and his account his
plot of land of 500 acres known as hill top farm.
Lord Delamere has to-day visited the said farm
and has approved of it. Lord Delamere will pay
£.500 on Smart's cession to the former of all
titles and rights and has asked me to communicate
with you on the subject.

Mr. Smart will call at your office tomorrow
for the purpose of giving you instructions
regarding this deal.

I am &c.

(Sgd.) I. Marcus.

Stamp fee 8 annas. Registration fee Rs.3/-
East Africa Protectorate, Nairobi Registry

No. 5 B 1906.

Produced by Lord Delamere pp. Tonks & Allen and
registered at their request at the Registration
Office at Nairobi in the presence of

(Sgd.) W. Pailthorpe, Regn. Clerk.

Valid this 3rd Day of March 1906

(Sgd.) John Ainsworth, Principal Registrar.

Copy authority from A. T. Smart to Mr. Marcus
to sell 500 acres of land on Dageretti Road.

J. Marcus,

Dear Sir,

I authorize you herewith to sell for me and
my account my plot of 500 acres of land known
under the name of Hill top farm bounded on the
East by the Military and on the West by the
Dageretti Road for £.500 Five hundred pounds
sterling I giving the buyer a clean sheet of all
survey fees and dues and rents up to the date
of Transfer.

Yours faithfully,

(Sgd.) A. T. Smart

27. 6. 04.

I hold the above land freehold subject to
the transfer of One hundred acres of land (from
the 500 above mentioned) to Government at the
rate of Rs.4/- per acre and compensation for all
improvements should the Protectorate Government
require the said 100 acres within 3 years for
public purposes.

(Sgd.) A. T. Smart

27. 6. 04.

Copy

(57)

Copy receipt dated the 3rd day of February
1906 given to A. T. Smart by Lord Delamere
for Rs.1500/-.

3rd February 1906.

To

The Lord Delamere, Equator Ranch, Njoro
at the time at Nairobi.

My Lord,

I have the honour to hand you herewith my
Promissory Note for Rs.1500/- and to acknowledge
receipt of your cheque of the same amount given
me as a loan and as an advance payment on various
pieces of land I have sold to your Lordship the
transfer for which is now in the hands of the
East Africa Protectorate Government for consummation.
This advance of Rs.1500/- can be deducted
from any amount of money becoming due to me as
purchase money for any of the plots of land I
have sold to your Lordship. Should none of these
plots be transferred say within 12 months from
date, I undertake to repay you the said amount
of Rs.1500/- with interest added at the rate of
10% on year demanding payment from me.

I remain As.

(Sgd.) A. T. Smart.

Good for Rs.1500/-

On demand I promise to pay to the Lord

Delivered or order Rs.1500/- only for value
received in cash.

Nairobi 3rd February 1908.

(Sgd.) A. T. Smart

3. 2. 08.

Copy letter of 8th February 1906 from Tenks & Allen to G. Grant giving Notice of the sale of the Dagoretti Road land from Smart to Lord Delamere.

 Nairobi, February 8th 1906

3 p.m.

Dear Sir,

As T. Smart to You.

Referring to your interview with the writer just now when you informed him that you had purchased Mr. Smart's 500 acres on the Dagoretti Road for £.2000 on Saturday last.

We beg to inform you in writing as we have already done verbally that this land was purchased a considerable time ago by Lord Delamere and the Conveyance has been prepared and signed by Lord Delamere and only now awaits signature by Mr. Smart and payment of the purchase money by Lord Delamere.

We have wired to Lord Delamere and have no doubt that he will immediately apply for injunction against you and Mr. Smart.

Meanwhile we give you notice of the facts and warn you that any further dealing with the land or completion of the sale after this notice may cause you considerable expense

Grant Req.

Commercial Hotel, Nairobi

Yours faithfully,

(Sgd.) Tenks & Allen.

Copy letter of the 5th February 1906 Tenks & Allen to A. T. Smart giving notice of sale to Lord Delamere by him of the 800 acres on Dagoretti Road.

Nairobi, February 8th 1906.

Dear Sir,

You to Delamere.

Mr. Grant has just called and informed me that you have sold the 800 acres on Dagoretti Road to him for £.2000.

You are well aware that this is the land you sold to Lord Delamere a long time ago, and there is abundance of evidence in writing to that effect both in the Land Office, Mr. Marcus' and our office.

We fear you have made a serious mistake which will cost you dearly.

We have wired Lord Delamere and await his instructions.

Yours faithfully,

(Sgd.) Tenks & Allen.

T. Smart Esq.,
Nairobi.

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MEMORANDUM of an AGREEMENT made the 18th day of April 1906 between ARTHUR THOMAS SMART of Nairobi Settler of the one part and The Right Hon. HUGH CHOLMONDELEY BARON DELAMERE of Njere of the other part WHEREAS sometime ago the said A. T. Smart sold a piece of land containing 800 acres situate on the Degeretti Road near Nairobi to the said Lord Delamere for £.800 as the said A. T. Smart hereby admits AND WHEREAS sometime ago the said A. T. Smart sold another piece of land near the European Hospital Nairobi to the said Lord Delamere for Rs.2500/- as the said A. T. Smart hereby admits and one of the terms of the said sale was that the said Lord Delamere should pay the cost of Survey fees, the lease from Government to the said A. T. Smart and other expenses AND WHEREAS the said Lord Delamere has paid Rs.1500/- on account of the purchase moneys of the said two pieces of land to the said A. T. Smart AND WHEREAS the said A. T. Smart has refused to complete the said purchases and to accept the balance of the purchase moneys thereof and the said Lord Delamere thereupon instituted two suits against the said A. T. Smart in the District Registry of the High Court at Nairobi for specific performance of the said contracts for sale and for damages one of the said suits being numbered 1 of 1906 in the said District Registry and the other being numbered

4 of 1906 in the said Registry and said suits are fixed for hearing by the Principal Judge on the date of these presents AND WHEREAS by an Agreement dated the 3rd day of February 1906 and made between the said A. T. Smart and one Charles Grant the said A. T. Smart sold or purported to sell to the said C. Grant the said piece of land situate on the Dageretti Road for the sum of Rs.26880/- but the said Agreement was entered into after express notice had been given to the said C. Grant of the prior sale of the said land to the said Lord Delamere and with full knowledge by the said C. Grant that it might be impossible for the said A. T. Smart to defend any action which the said Lord Delamere might bring against him in regard to the said land AND WHEREAS after hearing the evidence produced by the said Lord Delamere on a preliminary application made by him in the said case No. 1 of 1906 for interim injunction and the ^{order} of the Court thereon the said A. T. Smart is satisfied that it is impossible for him to defend the said action with success AND WHEREAS the said A. T. Smart has approached the said Lord Delamere with a view to settling the said two cases so brought against him as aforesaid NOW it is hereby mutually agreed by and between the parties thereto as follows namely :-

1. The said A. T. Smart agrees to sign the

4 of 1906 in the said Registry and said suits are fixed for hearing by the Principal Judge on the date of these presents AND WHEREAS by an Agreement dated the 3rd day of February 1906 and made between the said A. T. Smart and one Charles Grant the said A. T. Smart sold or purported to sell to the said C. Grant the said piece of land situate on the Dagoretti Road for the sum of Rs. 84250/- but the said Agreement was entered into after express notice had been given to the said C. Grant of the prior sale of the said land to the said Lord Delamere and with full knowledge by the said C. Grant that it might be impossible for the said A. T. Smart to defend any action which the said Lord Delamere might bring against him in regard to the said land AND WHEREAS after hearing the evidence produced by the said Lord Delamere on a preliminary application made by him in the said case No. 1 of 1906 for interim injunction and the ~~order~~ of the Court thereon the said A. T. Smart is satisfied that it is impossible for him to defend the said action with success AND WHEREAS ^{the} the said A. T. Smart has approached the said Lord Delamere with a view to settling the said two cases so brought against him as aforesaid NOW it is hereby mutually agreed by and between the parties thereto as follows namely :-

1. The said A. T. Smart agrees to sign the

Conveyance to the said Lord Dalmeida of the said piece of land situate on the Dagoretti Road Nairobi which has already been prepared by Mr. B. G. Allen Solicitor, Nairobi and to obtain the signature of his brother W. H. Smart to the Assignment to the said Lord Dalmeida of the said land near the European Hospital which has already been prepared by Mr. B. G. Allen Solicitor, Nairobi.

2. In consideration of the agreement by the said A. T. Smart mentioned in the last preceding paragraph the said Lord Dalmeida agrees to withdraw the said two suits Nos. 1 and 4 in the District Registry of the High Court at Nairobi so as aforesaid filed by him against the said A. T. Smart and to pay the said A. T. Smart the sum of K.1000 for the said two pieces of land less Rs.1500/- already paid as aforesaid.

3. The said Lord Dalmeida agrees to indemnify the said A. T. Smart against any costs and damages he may hereafter incur and be compelled to pay in regard to any action which may be brought against him by the said C. Grant in respect of the said recited Agreement between him and the said C. Grant of 3rd February 1906.

The said A. T. Smart undertakes to hereafter defend any such case and resist any such claim for damages to the best of his ability.

4. Each part shall bear his own costs incurred to date in respect of the said two cases

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numbered 1 and 4 in the District Registry of the High Court Nairobi.

SIGNED by the said A. T. Smart)

in presence of

I. Marcus

D. D. Mehta

Clerk, B.G. Allen

Nairobi

Sd. A. T. Smart

SIGNED by the said Lord Delamere)

in presence of

I. Marcus

D. D. Mehta

Clerk, B. G. Allen

Nairobi.

Sd. Delamere

I hereby undertake and agree to execute the above mentioned Assignment of the land near the Cemetery to Lord Delamere.

Dated the 12th day of April 1903.

(Sgd.) W. H. Smart

Witness

I. Marcus

D. D. Mehta

Clerk, B. G. Allen, Nairobi.

Copy Release of Indemnity dated, the 17th day of September 1906 endorsed on Agreement of the 13th day of April 1906.

RECEIVED from Lord Delamere cheque value Rs. 750/- in full settlement of any claim I may have against him, for indemnity for damages and costs obtained against me in the recent case of Grant versus me or otherwise under the within written Agreement.

Dated this 17th day of September 1906.

(Sgd.) A. T. Smart

[Stamp]

l a.

Copy Agreement of the 3rd February 1906 between
A. T. Smart and C. Grant for the sale of the
Dagoretti Road Land.

AN AGREEMENT made this 3rd day of February
1906 between ARTHUR THOMAS SMART of the Central
Butchery Nairobi British East Africa Settler
(hereinafter called the vendor) of the one part
and CHARLES GRANT ^{of} Nairobi aforesaid Settler
(hereinafter called the purchaser) of the other
part. The said Vendor will sell and the said
Purchaser will purchase the fee simple possession
free from incumbrances of ALL THAT piece or
parcel of land situate near the Township of
Nairobi known as Provincial No.466 and regis-
tered in the Registration of Deeds office in the
office of the Sub-Commissioner of Ukamba Pro-
vince at Nairobi as 251 A of 1905 and delineate
on Land Office plan No.369 for the sum of
Rs.24250/- whereof the sum of Rs.1000/- shall be
paid within twelve ~~months~~ days from the 3rd day
of February 1906 and the residue on the 3rd day
of May 1906 ~~1906~~ at the office of Mr. W. A. Burn,
Barrister-at-law Nairobi when the purchase shall
be completed. The Vendor shall if possible with-
in 30 from the date thereof deliver his Conveyance
from His Majesty's Commissioner for the East
Africa Protectorate to ~~him~~ the said Mr. W. A. Burn
upon payment of the residue of the said sum of

Rs.26850/- at the office aforesaid the vendor will execute a proper assurance of the premises to the Purchaser such assurance to be prepared by and at the expense of the Purchaser. The possession will be retained by the Vendor down to the 3rd day of May 1906 or until the purchase is completed and as from that day all outgoings shall be discharged and the possession taken by the Purchaser and such outgoings shall if necessary be apportioned between the Vendor and the Purchaser. If from any cause whatever the purchase shall not be completed on the said 3rd day of May 1906 the Purchaser shall pay interest at the rate of Rs.7% per annum on the unpaid purchase money from that day until the completion of the purchase PROVIDED that if the said purchase shall not be completed within 60 days from the 3rd day of May next the Vendor may by notice in writing to the Purchaser annul the sale but shall nevertheless be entitled to retain the said sum of Rs.1000/- and any other sum paid on account of the purchase money but he shall not be entitled to any other compensation whatever. IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first above written.

SIGNED in the presence of)
W.A.Burn

} Sd. A. T. Smart

Barrister-at-law

} Sd. Charles Grant.

Nairobi.

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Stamp duty 8 annas. Registration fees 3/8/-.

East Africa Protectorate, Nairobi Registry
No. 29 of A 1906.

Produced by Mr. C. Grant pp. W. A. Burn and
registered at his request at the Registra-
tion Office at Nairobi in the presence of
W. A. Pailthorpe Registration Clerk.

Dated this 7th day of February 1906.

(Sgd/- H.R. Tate, for Principal Regr.

Copy letter of 17th September 1906 to A.T. Smart offering him £.50 in settlement of any claim he might have under the indemnity contained in the Agreement of 18th April 1906 made between him and Lord Delamere.

Nairobi, 17th September 1906.

Dear Sir,

Grant v You.

I beg to refer to your interview with Lord Delamere on Saturday last when you requested him to secure payment of the amount of the decree in this case and to provide the expenses necessary to enable you to appeal.

His Lordship has considered your request and instructed me to say that he is entirely dissatisfied with the evidence you gave at the hearing of the above case, inasmuch as same did not tally with the evidence you led him to believe you would be able to give when he entered into the Agreement with you dated the 18th April last. Under these circumstances his Lordship does not consider himself bound by paragraph 3 of the said Agreement.

Apart however from this question his Lordship is not satisfied with the decision given in the case and would in no case reimburse you for the costs and damages you may be compelled to pay unless and until you have appealed against the decision.

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In order however to avoid the annoyance of resisting any claim you may fancy you have against his Lordship he has instructed me to offer you the sum of £.50 in full settlement of any claim you may have against him under the said Agreement of 12th April 1906 between you and him.

This offer is open until 4 o'clock this afternoon after which this is to be considered as withdrawn.

Yours faithfully,

(Sgd.) B. G. Allen.

A. T. Smart Esq.

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Copy letter from A. T. Smart to Mr. Allen
accepting Lord Dalmore's offer of £.50 for
Release of the Indemnity mentioned in Agreement
of the 18th April 1906.

Central Butchery 17. 9. 06.

Dear Sir,

In reply to yours of this date, after con-
sidering the position I'm placed in, I'll accept
the amount you offer and hand over to you the
Agreement.

Yours faithfully,

(Sgd.) A. T. Smart

H. G. Allen Esq.

Nairobi, Solicitor.

Assented charge.

(Sgd.) R. W. Hamilton.

IN THE SESSIONS COURT AT NAIROBI,
EAST AFRICA PROTECTORATE.

The Crown.....Prosecutor.

versus

High Chelmsdaley Baron Delacere....Accused.

I Robert William Hamilton, do hereby charge you High Chelmsdaley Baron Delacere that on or about the 17th September 1906 in or near Nairobi one Arthur Thomas Smart did dishonestly release a demand or claim to which he was entitled to wit an indemnity given to the said Arthur Thomas Smart by you against any costs and damages the said Arthur Thomas Smart might bona fide incur and be compelled to pay in regard to any action which might be brought against the said Arthur Thomas Smart by one Charles Grant in respect of an agreement made between the said Arthur Thomas Smart and the said Charles Grant and dated 3rd February 1906 whereby the said Arthur Thomas Smart sold to the said Charles Grant a piece of land containing 500 acres and situate on the Dageretti Road near Nairobi for the sum of Twenty six thousand ^{two hundred} and fifty rupees and whereby the said Arthur Thomas Smart did commit the offense of dishonestly releasing a demand or claim to which he was entitled and that you on the said 17th day of September 1906 at or near Nairobi abetted the said Arthur Thomas Smart

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in the commission of the said offence and which said offence was committed in consequence of the said abetment and that you have thereby committed an offence punishable under Section 109 and 484 of the Indian Penal Code.

(Sgd.) R. W. Hamilton.

Attended charge.

(Sgd.) R. W. Hamilton.

IN THE SESSIONS COURT AT NAIROBI

EAST AFRICA PROTECTORATE.

The Crown.....Prosecutor,

versus.

Bertram Gray Allen.....Accused.

I Robert William Hamilton, do hereby charge you Bertram Gray Allen that on or about the 17th day of September 1906 in or near Nairobi one Arthur Thomas Smart did dishonestly release a demand or claim to which he was entitled to wit an indemnity given to the said Arthur Thomas Smart by Hugh Chelmsdaley Baron Delamere against any costs and damages and the said Arthur Thomas Smart ^{Smart} might bona fide incur and be compelled to pay in regard to any action which might be brought against the said Arthur Thomas Smart by one Charles Grant in respect of an agreement made between the said Arthur Thomas Smart and the said Charles Grant and dated 3rd February 1906 whereby the said Arthur Thomas Smart sold to the said Charles Grant a piece of land containing 600 acres and situate on the Dagoretiti Road near Nairobi for the sum of Twenty six thousand two hundred and fifty rupees ^{and} whereby the said Arthur Thomas Smart did commit the offence of dishonestly releasing a demand or claim to which he was

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entitled and that you on or about the said 17th day of September 1906 at or near Hairebi abetted the said Arthur Thomas Smart in the commission of the said offence and which said offence was committed in consequence of the said abetment and that you have thereby committed an offence punishable under sections 109 and 424 of the Indian Penal Code.

(Sgd.) R. W. Hamilton

Copy Telegram

To The Ag: Registrar High Court

N 72 Criminal Case No. 308 of 1906 accused
Arthur Thomas Stuart Lord Melmore and Herbert
Gray Allen committed on 19th December to take
their trial before next Sessions in Nairobi.

From Town Magistrate

Nairobi.

Town Magistrate's Office,
Nairobi,

11th, December 1906.

Sir,

Re: Criminal Case No. 108 of 1906.

G. Grant ----- Prosecutor,

Versus

(1) A. T. Smart,
(2) Lord Delamere, ----- Accused,
(3) E. G. Allen,

I have the honour to bring to your notice that the above case (preliminary inquiry) is set down for hearing on Monday next the 17th, instant, and all the original records of the High Court suits between Grant, Smart and Lord Delamere will be required in this Court on the said date.

I have therefore to request that you will please send, in return of said, all the files as referred to in your letter numbered G. 1014, dated the 29th, 1906, together with the file of Criminal Case No. 207 of 1906, Allen v. Grant, which was forwarded to you with this Office letter No. 577/06, dated the 1st, instant.

I have the honour to be,

Sir,

Your obedient Servant,

(sgd) E. R. Logan

Town Magistrate,

Nairobi.

To,

The Acting Registrar,

Town Magistrate's Office,

Nairobi,

29th. December 1906.

Criminal Case No. 222 of 1906.

Charles Grant ----- Prosecutor

Verger

- (1) Arthur Thomas Smart,
- (2) Hugh Chamberlain Karen Palmero, ----- Accused
- (3) Bertram Gray Allen,

Sir,

I have the honor to report that I have on the 18th day of December 1906 committed, to take their trial, before the criminal court of Session at Nairobi, the above said accused persons, on the charges specified on the attached sheet.

I beg to forward herewith the original records of this court, and shall be glad if you will please furnish a copy of same to the Crown Advocate.

I have the honor to be,

Sir,

Your obedient servant,

(and) H. P. Logan

Town Magistrate
Nairobi.

The AG: Registrar,

High Court E. A. P.

N O K E A S A.

C O P Y.

J. 224/06.

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Town Magistrate's Office,
Nairobi,
29th, December 1906.

Criminal Case No. 202 of 1906.

Charles Grant ----- Prosecutor

Verus

- (1) Arthur Thomas Smart,
- (2) Hugh Chalmers-Hay Baron Delamere, ----- Accused
- (3) Bertram Gray Allen,

Sir,

I have the honour to report that I have on the 19th day of December 1906 committed, to take their trial, before the sitting court of Session at Nairobi, the above said accused persons, on the charges specified on the attached sheet.

I beg to forward herewith the original records of this court, and shall be glad if you will please furnish a copy of same to the Crown Advocate.

I have the honour to be,

Sir,

Your obedient servant,

(Sd) E. S. Logan

Town Magistrate
Nairobi.

The AG: Registrar,

High Court B. A. P.

N O M B A S A.

Criminal Case No. 102 of 1906.

Arthur Thomas Smart, (Accused No. 1)

- (a) Fraudulent removal, &c., of property, Section 306 I. P. C.
- (b) Dishonest removal of property to prevent distribution among creditors, Section 481 I. P. C.
- (c) Dishonest removal of property, Section 484 I. P. C.

Hugh Cholmondeley Baron Selwore, (Accused No. 2)

- (a) Fraudulent claim to property, Section 307 I. P. C.
- (b) Dishonestly preventing a debt from being made available according to law for creditors, Section 482 I. P. C.

Bertam Guy Allen, (Accused No. 3)

- (a) Abetting Accused No. 1 in the commission of the offence of fraudulent removal of property, and accused No. 2 in fraudulent claim to property, Sections 149, 298 and 307 of the Indian Penal Code.
- (b) Abetting accused No. 1 in the commission of the offences of dishonest removal of property to prevent distribution among creditors, and dishonest removal of property; and accused No. 2 in dishonestly preventing a debt from being made available according to law for creditors, Sections 149, 481, 482 & 484 of the I. P. C.

(Sgd) H.R. Logan.

Town Magistrate
Mairah, 20.12.06.

COPY.

ORIGINAL.

No. 93.

Hearing Notice.

IN THE Sessions COURT 447
AT NAIROBI.

EAST AFRICA PROTECTORATE.

Sessions
CRIMINAL CASE No. 26 OF 1906.

(Original Criminal Case No. 308 of 06 T. M's. Court Nairobi).

Charles Grant *Prosecutor.*

VERSUS

(1) A.T. Smart.
(2) Lord Delamere. *Accused.*
(3) B.S. Allen.

To,

B. G. Allen

Take notice that the hearing of this case has been fixed for the 1st. day of February 1907 at 10 o'clock in the fore noon or as soon thereafter as the case can be heard at the Town Magistrate's Court of the East Africa Protectorate at Nairobi.

Given under my hand and the Seal of the Court this 7th. day of January 1907.

(sd) H. E. Logan
Town Magistrate
Nairobi.

Hearing Notice.

IN THE SESSIONS COURT

AT NAIROBI.

448

EAST AFRICA PROTECTORATE.

Sessions
CRIMINAL CASE No. 26 OF 1906.

(Original Criminal Case No. 308 of 1906 of T. M's. Court Nairobi

Charles Grant Prosecutor.

versus

(1) A. T. Smart

(2) Lord Delamere Acc.

(3) B. G. Allen

To,

A. T. Smart,

Through Head Jailor, Nairobi.

Take notice that the hearing of this case has been fixed for the 1st day of February 1907 at 10 o'clock in the fore noon or as soon thereafter as the case can be heard at the Town Magistrate's Court of the East Africa Protectorate at Nairobi.

Given under my hand and the Seal of the Court this 7th. day of JANUARY 1907.

(sd) E. E. Loman

Town Magistrate,
Nairobi.

Hearing Notice.

IN THE _____ SESSIONS _____ COURT
 AT NAIROBI. _____

449

EAST AFRICA PROTECTORATE.

Sessions
 CRIMINAL CASE NO. 26 OF 1906.

(original Criminal Case No. 308 of 1906 T. M's. Court Nairobi)

_____ PROSECUTOR.
 (Through Charles Grant)

1. A. T. Smart.

versus

2. Lord Delamere.

Accused.

3. B. W. Allen.

To,

The Crown Advocate,

NOMBASA.

Take notice that the HEARING of this case has been fixed for
 the 1st day of February 1907 at 10 o'clock in
 the forenoon or as soon thereafter as the case can be heard at
 the Sessions Court of the East Africa Protectorate
 at Nairobi

Given under my hand and the Seal of the Court this 2th
 day of January 1907.

(sgd) E. H. Logan.

Town Magistrate,
 Nairobi.

IN THE SESSIONS COURTAT NAIROBI.

EAST AFRICA PROTECTORATE.

450

Sessions
CRIMINAL CASE NO. 26 OF 1906.

(Original Criminal Case No. 508 of 1906 T. M's. Court Nairobi)

Charles Grant Prosecutor.(1) A.T. Smart.^{versus}(2) Lord Delamere. Accus. 2

(3) B. G. Allen.

To,

Charles Grant.

Take notice that the hearing of this case has been fixed for the 1st. day of February 1907 at 10 o'clock in the fore noon or as soon thereafter as the case can be heard at the Town Magistrate's Court of the East Africa Protectorate at Nairobi.

Given under my hand and the Seal of the Court this 7th. day of January 1907.

(Sd) E. E. [unclear]
Town Magistrate,
Nairobi.

2d. Chas Grant.

2d. Robert

Court Orderly

10 January 1904

Duly served by Robert Court Orderly
on Mr Grant on the 10th Jan
1904.

2d. P. P. Kaderohaw.
Court Clerk.

10
1 04

20/07.

Copy.

Town Magistrate's Office,

Nairobi,

January 11th. 1907.

451

SIR,

Re: Smart, Clarence V Allen.

Referring to this Office letter No. 2/07 dated the 5th instant I have the honour to request you to please forward the following files, whilst returning to this Court all the original records as enumerated on the list attached to the above letter.

I have further to request you to send these files up as soon as the Crown Advocate has done with them, as Mr. Allen desires to inspect all these original records by the first opportunity available to prepare the defence for Clarence Smart and himself.

I have the honour to be,

Sir,

Your obedient servant,

(sgd) H. R. Legg.

Town Magistrate,
Nairobi.

The Registrar,
High Court,
Nairobi.

(1) Done special 2nd 4/10/06. Forward in private
to Mr. Allen, 1st floor, 1st floor, 1st floor, 1st floor

Witness Summons

IN THE SESSIONS COURT

AT NAIROBI

EAST AFRICA PROTECTORATE.

452

Sessions
CRIMINAL CASE No. 26 OF 1906.

CROWN

[Empty box for name]

Prosecutor.

versus.

- (1) A. T. Smart
- (2) Lord Delamere
- (3) B. G. Allen

Accused.

To (1) Sydney Carlisle Ficht, Estate Agent Government Road,
NAIROBI.

(2) William Dempster Young, Photographer, Government Road,
NAIROBI.

You are hereby commanded in His Majesty's name to attend the
 Court on the first day of February 1907 at 10
 o'clock in the forenoon or as soon thereafter as the case can be heard as
 witness in the above case

Dated this 30th. day of January 1907.

This Summons has been issued on

the application of Accused

No. 3.

(sgd) J. H. Parkinson
 Acting Registrar,
 High Court.

Fees charged
 Rs. 4/-
 30.1.07.

East Africa Protectorate.

IN THE **SESSIONS** COURT

AT **NAIROBI.**

EAST AFRICA PROTECTORATE.

Sessions
CRIMINAL CASE No. **26** of 190 **8**

453

CROWN

Prosecutor.

versus.

- (1) **A. T. Smart**
- (2) **Lord Delamere**
- (3) **B. G. Allen.**

Accused.

To **H. H. David-son Esq.,**

NAIROBI.

You are hereby commanded in His Majesty's name to attend the

court on **2nd.** day of **February** 190 **7** at **10**

o'clock in the **forenoon** or as soon thereafter as the case can be heard in

reference to the above case.

Dated this **1st.** day of **February** 190 **7**

This Summons has been issued on

(sgd) **H. R. Logan**
Town Magistrate

application of **Srs. Accused.**

Received at 12.30 P.M.

(sgd) H.H. Davidson.

(sgd) Robert,

Court Orderly.

1st. February 1907.

Duly served by Robert Court Orderly on the Witness
on 1st. February 1907 at 12.30 P.M.

(sgd) P.F. Madirshaw

Court Clerk.

1.2.07.

IN THE HIGH COURT OF THE EAST AFRICA
PROTECTORATE.

454

AT NAIROBI.

- | | |
|-----------------------|-------------------|
| To (1) G.H. Golafinsh | (4) E.K. Keillean |
| (2) E. Pein | (5) Thos. Coulson |
| (3) W. Billings. | (6) A. G. Cooper. |

PURSUANT to a precept directed to me by the Court of Session requiring
 your attendance as an ^{Assessor}~~Juror~~ at the next Criminal Sessions, you are hereby sum-
 moned to attend as an ^{Assessor}~~Juror~~ at the said Court of Session at Nairobi.

at 10.0'clock in the forenoon on 2nd day the
 day of February 1907

Given under my hand and the seal of the Court this 1st
 day of January 1907

(sgd) E.R. Logan
 Asst. Judge.

(sgd) A. Fein
for H. Fein.

(sgd) W. Billings

(sgd) Thos. Goulson.

(sgd) A.S. Cooper.

(sgd) S. H. Sandfinch

(sgd) E. K. Bollean

(sgd) Robert Orderly

1st. February 1907.

Summons duly served on all Jurors mentioned hereof
by Robert Court Orderly on 31st. January and 1st.
February 1907.

(sgd) F.P. Mairshaw

Court Clerk

1.2.07.

IN THE H. B. M. COURT

of Appeal

For Eastern Africa
At MOMBASA.

EAST AFRICA PROTECTORATE.

CIVIL

~~CRIM.~~

} Case No. 1 of 1907

455

Charles Grant Appellant.A. T. Smart Respondent.

TAKE NOTICE that Judgment in the above appeal will be delivered at 10 a.m. on the 22nd. April 1907 at the High Court.

Dated this 20th day of April 1907.

(sgd) J.W.M. Parkinson,
Acting Registrar,
High Court,
E.A.P.

To.
1. G. Tonks Esq,
S. A. R. M. Syron Esq,
M o m b a s a.

No. 224.

H.B.M. Court,

Bombay, 4th May 1907.

456

Civil Appeal No. 1 of 1907.

Charles Grant ----- Appellant.

Verdict

A. Smart ----- Respondent.

Sir,

I have the honour to acknowledge the receipt of the file of the above case sent with your letter No. C/555 of 10th April last.

I have the honour to be,

Sir,

Your most obedient servant,

(sgd) Frances F. Esler.

Registrar.

Registrar,

High Court,

BOMBAY.

EAST AFR. PROT.

22176

22176

457

299

1909

June

Previous Paper

Bonuses to Officers

for performance of extra departmental duty
 Send copy Ans. issued to Dept. Station. That none
 will ordinarily be granted but requests as to how to
 pay bonuses in very exceptional cases look for covering
 sanction for payment of Rs 250 to the Officers of Agric. Dept.
Secretary 2100 Dept.

W. Read

at present we have fixed bonuses
 for officers who qualify in certain
 languages apart from that, none
 in any case first.

Taking the paragraphs of this resp. in view

(2) an officer's whole time is at the
 Govt's disposal -

(3) Yes: Mansuetti's case attached is
 a good illustration.

(4) The money is paid, so we have
 only to dot the i's & cross the t's -
 at the same time, the clerk was probably
 thoroughly pleased to get a little
 outdoor work & did not regard it as a
 disagreeable duty.

(5) No: the Sine Leave case
 attached

Subsequent Paper

36534

attached is an instance of
where such a bonus was
granted by a Governor without
good reason. The same might
happen again. However, there
will probably be other places
available for the same amount
to be used in a similar manner.

there

Reply to the above lines
may state that the
should indicate from what
source he proposes to obtain
the money. I say further with
ref. to Mr Evans' bonus, that
S & J's presume that it will be
out for the Cartage Co. instead
of the 1/2 per cent.

1908 21/8

at once
2/2
23/8

attached, is an instance of
where such a bonus was
granted by a Governor without
good reason. The same might
happen again. However, there
will probably be other cases
applied to the same treatment
to the same person -

Reply to the above points
says that the same
should indicate for what
since he proposes to return
the money. say further with
ref. to Mr Evans' bonus, that
it is presumed that it will be
sent for the same purpose, without
of the 1st of July.

1883 21/8
at once
A J L
23/8

Governor's Office,

Nairobi,

June 4th 1908.

EAST AFRICA PROTECTORATE.

No. 299

(Incl. 1)

My Lord,

I have the honour to transmit herewith a copy of a Circular issued to Provincial Commissioners and Heads of Departments respecting the payment of bonuses.

2. The Local Auditor has brought to my notice certain correspondence with the Government of Sierra Leone including Lord Elgin's despatch No. 299 of September 25th 1906 and Your Lordship's despatch No. 125 of March 20th 1908 from which I perceive that an officer's whole time is held to be at the disposal of the Government and therefore no bonus ought ever to be paid.

3. There are exceptional cases however in which an officer performs duties absolutely distinct from those contemplated in his appointment and in these I understand that Your Lordship permits certain deviations from the strict rule above mentioned. I would quote as instances the grants made to Mr. Brewell and Mr. Barnes for work in connection with

Rontgen

H.H. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES.

DOWING STREET,

LONDON, S.W.

Circular
Feb. 2nd

3/2/10
1/2/10

Montgen Ray apparatus and enclosures respectively.

4. In this connection I would ask Your Lordship's sanction ~~and~~ the payment of Rs. 205 to Mr. Evans, Clerk in the Agricultural Department, for shearing 5,100 sheep at the Kiyasha Farm. As Mr. Evans's ordinary duties are purely clerical Sir James Hayes Guller approved of his receiving the amount in question and I trust that Your Lordship will endorse the action taken in the latter.

5. I would also ask that, if Your Lordship sees fit, the Governor may be authorized to approve in future of such payments in similar cases without further reference.

I have the honour to be,
with the highest respect,

Yr. Servt.

Your Lordship's most obedient,

Wm. G. Guller.



INCLOSURE

When communicating
on this subject
please refer to
H.P.No.96
08

10 Dec 1909

Governor's Office,
Nairobi,
2nd February 1909.

484

22175

Copy.

Sir,

The question has been referred to His Excellency of the extent to which departmental officers should with the consent of the Head of their Department and without interference with their ordinary duties, be expected to assist other Departments without receiving any additional remuneration for so doing.

It must be looked upon as a general rule that a public officer is primarily a Government servant who can be called upon to perform any reasonable duties, but, while His Excellency cannot sanction the payment of any allowances or bonuses for such extra-departmental work, unless special provision is made in the Estimates, he will be prepared to consider, in exceptional cases of this nature the granting of a bonus from "Contingency" or "Reward and Gratuities" sub-heads.

I have the honour to be,

Sir,

Your most obedient servant,

Governor.

time, as laid down
in the second &
third paragraphs
of your desb.
under act^t.

2. With refer^{ce}
to the sum of Rs. 258
sanctioned by Sir
James Hays Sadler
as payment to
Mr Evans for
shearing 2,500 sheep
at Newaska farm.

~~It is not with a view~~
~~to the approval of~~
~~the expenditure~~
~~provided~~
that the amount
may be
met from the
Contingencies

Contingencies Subhead
of the Agricultural
vote, without causing
any cap. 463
I cannot
however approve of
the proposal that
the Gov. shd. be
authorized to sanction
similar
such payments
without reference to
me and I should
be glad if whenever
such applications
are transmitted,
you would indicate
from what source
it is proposed to
defray the expense
I have

time, as laid down
in the second &
third paragraphs
of your despatch
under ack^t.

2. With refer^{ce}
to the sum of Rs. 258
sanctioned by Sir
James Bays Sadler
as payment to
Mr Evans for
shearing 2,500 sheep
at Newaska farm.

~~It is not with a view~~
I am willing to
~~my approval~~
approve of the expenditure
~~to be incurred~~
provided
that the amount
may be
set from the
contingencies

Contingencies Subhead
of the Agricultural
Vote, without causing
any cap^{ts}. 463

I cannot
however approve of
the proposal that
the Gov. sh^d. be
authorized to sanction
similar payments
without reference to
the Board of Directors
as proposed. However
such applications
are transmitted -
if you could indicate
from what source
it is proposed to
defray the cost
I have

time, as laid down
in the second &
third paragraphs
of your despatch
under ack^t.

2. With refer^{ce}
to the sum of Rs. 258
sanctioned by Sir
James Stirling Sadler
as payment to
Mr Evans for
shearing 4150 sheep
at Newaska farm.

~~I am willing to~~
~~approve of the expenditure~~
~~on a personal~~
basis
that the amount
can be
met from the
Contingencies

Contingencies Subhead
of the Agricultural
vote, without causing
any cap. 46.
I cannot
however approve of
the proposal that
the Govt. should be
authorized to sanction
similar
payments
without reference to
the Govt. I should
be glad if you would
such applications
are transmitted,
you would indicate
from what source
it is proposed to
defray the expense.
I have