

EAST AFR PROT

31431

JUL 9 1915

31431

Gov's Depy  
SerringTHE EAST AFRICAN PROTECTORY TERRITORIES  
1915

1915

9th June

Gov's Depy  
SerringRecommendation of Mr. J. Bell (see notes  
referred for passing over by the [unclear] proposal  
approved [unclear] [unclear] of East African [unclear]  
Surveyor.Gov's Depy  
Serring

2901 Tappan

Added on file

4-7-15

Tappan Mr. J. Anderson Off

He seems a good man - but I  
 am afraid I have not met with  
 of Mr. Tappan. However the reputation  
 as a [unclear] before the [unclear] [unclear] to  
 [unclear] has consistently [unclear] [unclear] [unclear]  
 [unclear] before him [unclear], but he  
 has [unclear] [unclear] (his father was  
 a [unclear] [unclear] who got into  
 financial difficulties) & [unclear] about  
 him, & his father, to the [unclear], the  
 Safety Council, (Industrial Council,  
 [unclear] [unclear] [unclear], & [unclear] [unclear]  
 & [unclear] him a [unclear].

? [unclear] of his [unclear] [unclear]  
 I will refer to Mr. Tappan [unclear] [unclear]  
 [unclear] [unclear] [unclear] [unclear] [unclear]  
 at [unclear] [unclear] [unclear] [unclear] [unclear]

Annot 622 2 July 5

File  
3911Gov's Depy  
Serring

Large (original) claim  
which is refused and  
all the claim is left  
to the original owner  
to the best of his power  
will be established which  
will be paid in money  
the case before you  
of the same I shall be  
glad if you will inform me  
of the amount of the  
claim and the name of the  
owner of the same which  
you have in mind and  
the name of the  
person who is  
now acting as  
agent for the  
claimant in  
London  
I believe you had  
of large amounts of  
money which will be paid  
and is successful  
they have a right and  
have only possibility for

use against the Govt  
then will be established  
by an ex gratia  
settlement with  
Congress

I have etc.

~~SECRET~~ DONAR LAW.

32790



4/21  
32790/15

SAS

414



5<sup>th</sup> August 15

Ans'd 46052

DRAFT

(Cont.)

Belfield  
MINUTE.

- Mr. P. ...
- Mr. ... 4/8/15
- Mr. ... 4
- Mr. ...
- Mr. G. Fisher
- Mr. B. ...
- Mr. J. ...
- Mr. ...
- Mr. ...

Sir,

I have the honour to acknowledge the recd. of your draft despatched no. 63 of the 7<sup>th</sup> of June<sup>\*</sup> on the subject of the claim made by Major G. Hon. R. D. Carnegie for compensation for loss due to his surrender of land in the Lemoh valley and to the delay which has occurred in the allotment thereof, in exchange, of land in Lanfonia.

I believe that in the absence of your testimony General you prefer that except in regard to the specified area of 2000 ...

	Former Claim		Present do.	
	£	s.	£	s.
Brought forward ....	1407	0	839	10
Loss in calves at Lumbwa, an E.C. fever area, when they might have been in Laikipia, a clean area, 120 calves at £2 per head. ....	240	.	120	.
Loss thro' being unable to grade up cattle in an E.C. fever area, 230 cows halfers, and their calves, born since June 1909 which might have been sold & broods, at £7 per head. ....	1540	.	.	.
9 horses died at Lumbwa, from Leptocystitis, which horses would have gone to Laikipia. ....	220	.	50	.
Loss of own time, 4 years 9 months, at £1 per day. ....	1730	.	100	.
Buildings on Gotik Farm, abandoned when Lemek Valley was vacated. ....	15	.	15.	.
Deerwood's wages on Gotik Farm 1 year ...	24	.	24	.
Deerwood's food and wages do. do. ....	40	.	40	.
Contingencies of my plans, based on assumed security of tenure for 99 years, and a scheme of farming operations, dating from 5 years back rendered null and void. ....	800	.	750	.
Total	£2718		£1758	10
Compensation for improvements Lemek ...			100	.
by present claim ...			<u>2008</u>	<u>10</u>

Attached to Major Carnegie's letter of

March 30th, 1916.

INCLOSURE

C O  
33790  
REC-22 JUL 15

Former Claim Present £s.  
£   s.   £   s.

on taking up land.

6 months' work on wagon road Ker...		
wards Sotik, with 2 teams oxen, and		
10 workmen. ....	130	
6 months' salary to assistant at £10	40	
transport of food, farming implements		
and stock, from Lumbwa to Lemek Valley,		
100 miles for 1 year 5 m. beginning		
of 1908 to end of May 1909	170	130
manager's salary for 1 year	120	

on vacating land.

8 weeks' hire of 12 oxen and cart,		
to remove goods at £1 per day.	42	42
8 weeks' wages and food for 5 boys	6	6
storage of goods at Amala River, and		
erection of building there, for storage	10	10
damage to goods stored at above	20	20
expenses in transporting sheep and		
estriches, over Mau forest for 120 miles	12	12
expenses building dip for sheep, Enderit R.	28	20
losses of live stock in transit	10	10
private manager for sheep for 4 years		
6 months, at £4 per month.	228	228
losses in sheep on new, unsuitable and foul		
land for 4 years 9 m., at rate of 20 sheep		
per month, at 7/ per head	399	288 at 2/ per head.
loss sheep and lambs in all		
loss of 18 estriches in transit, and		
at Enderit River, at 25 per bird	95	66 10
loss of my ostrich farm at Lemek	100	

Carried forward £1407 288 10

be made, over and above my claims as set forth now. I ask His Excellency the Governor to consider what compensation is due to one who has been kept out of his land for this long period, equal to twice that time in a growing colony.

It is a very real grievance, and as I have tried to show, the Government is wholly responsible for it.

My total claim now amounts to £1938-10-0 which is £3777-10-0 less than the original claim. In addition £100 was agreed upon, as compensation for improvements at Lasek, which brings my present claim up to £2038-10-0, or in round figures £2000, apart from what is granted as compensation for the delay in completing the transaction.

I feel sure that when His Excellency has considered the foregoing, and I say with all respect, placed himself in the position of a struggling colonial farmer, with very limited capital, he will come to a favourable decision regarding the matter.

I cannot feel that I am asking for more than for the settlement of a long-standing account.

I have, &c., &c.,

Edw. E. Carnegie.  
Major.

Also a transaction arranged to be completed in a certain specified time, cannot be said to hold good, when it is spread over a number of years, but calls for re-adjustment in favour of the person who entered into the arrangement to oblige the other side; which happened in my case.

In January 1906 I acquired the lease of the land in Lemek Valley. It is now over 7 years since that time. On June 3rd 1909, I was asked on what terms I would vacate the Valley, nearly 6 years ago. So that for this large period I have waited for the completion of the agreement. Six years' delay in the development of a farm is a serious matter in a colony.

Regarding my claims, an exception was taken to some of them (see yours S.2820 of May 30th 1914) I am prepared <sup>to meet</sup> the Government half way, and considerably ~~less~~ than half of them.

The enclosed paper shows 23 items, which I submitted to the Secretary of State for the Colonies. Beside the amount claimed in each item formerly, I have ~~shown~~ placed another column, showing what I consider a fair claim now, having cut out everything which appears uncertain.

I have entirely cut out items 1, 2, 4, 15, and 17, representing a sum of £1930. Other items have been cut down to a very low figure, such as no.19, reduced from £1730 to £100, the time occupied in actually vacating the land only being considered. Item no.23 is the only one increased, and may be said to embrace everything under items 15 and 17; besides a further period has elapsed since February 26th 1914, when I made the claim.

I would call attention to the fact that items 1 to 23 are all for losses incurred as the result of complying with Government's wishes, by vacating Lemek Valley.

The 50 per cent were land granted to me ~~was~~ so granted simply and solely in exchange for land vacated.

So far I have not asked for a penny's compensation for having been kept waiting nearly 6 years for the completion of the bargain, and I must say that considering this fact, ample allowance should be

Nyando

Lumbwa

March 30th 1915.

403

INCLOSURE No 2  
7-65 June 7 1915

My dear Major, the Hon. S. F. Carnegie  
is Chief Secretary, N.A.P. Administration.

33730  
Rec'd  
Pb

As my claim for compensation, connected with vacation of  
made to the Secretary of State for the Colonies,  
and referring to my letter of February 28th 1914, to him, on this  
subject, also to yours, S.2820 of February 30th 1914, and my answer  
thereto, of November 3rd 1914, also to yours No. S.2820 of November  
3rd 1914.

In consequence of General Notice No.164 in the Official Gazette  
of March 24th 1915, which only reached me yesterday, I  
have altered my views as expressed in my letter of November 3rd  
1914, in which I said that I preferred not to discuss the question  
of compensation till the cessation of hostilities.

So it appears to be best that I should present my case forth-  
with, for the consideration of His Excellency the Governor, who  
may be glad to give a final verdict, without further loss of time.

It seems unnecessary to go over old ground, as my whole  
claims are set out pretty clearly in my letter of February 28th  
1914 to the Colonial Secretary, who, I have reason to believe,  
considers that I have suffered to a large extent, and also that  
the original terms of the agreement re relinquishment of Lench  
Valley, cannot be considered to hold good indefinitely.

I cannot alter my point of view that although this long  
delay may have arisen from causes beyond Government control, yet  
the delay itself is the direct outcome of past Government action.

In consequence of this delay, a situation arose which has  
caused me losses, and it seems but fair that I should receive  
compensation, as I view the matter entirely from a business point  
of view.

Also  
I have also...  
date of...  
1915



Hyande

Lumbwa

March 30th 1915.

409

From Major, the Hon. B. F. Carnegie  
to Chief Secretary, K.A.P. Administration.

C. O.  
33730  
Rec'd  
Pr

Sir,

Re my claim for compensation, connected with vacation of  
— made to the Secretary of State for the Colonies,  
and referring to my letter of February 28th 1914, to him, on this  
subject, also to yours, S.2820 of 30th 1914, and my answer  
thereto, of November 3rd 1914, also to yours, No. S.2820 of November  
14th 1914.

In consequence of General Notice No.164 in the Official Gazette  
of March 24th 1915, which only reached me yesterday, I  
have altered my views as expressed in my letter of November 3rd  
1914, in which I said that I preferred not to discuss the question  
of compensation till the cessation of hostilities.

So it appears to be best that I should present my case forth-  
with, for the consideration of His Excellency the Governor, who  
may be glad to give a final verdict, without further loss of time.

It seems unnecessary to go over old ground, as my whole  
claim has set out pretty clearly in my letter of February 28th  
1914 to the Colonial Secretary, who, I have reason to believe,  
considers that I have suffered to a large extent, and also that  
the original terms of the agreement re relinquishment of Lemak  
Valley, cannot be considered to hold good indefinitely.

I cannot alter my point of view that although this long  
delay may have arisen from causes beyond Government control, yet  
the delay itself is the direct outcome of past Government action.

In consequence of this delay, a situation arises which has  
caused no loss, and it seems but fair that I should receive  
compensation, as I view the matter entirely from a business point  
of view.

Also

*Handwritten notes at the bottom of the page, including the word 'Also' and some illegible scribbles.*

which will be quoted in numerous other cases.

3. I am in agreement with this view, for, though it is true that Major Carnegie has been placed at a disadvantage by delays which have arisen through no fault of his own, compensation cannot be offered to him as an act of grace without according similar treatment to other applicants for Laikipia lands who have suffered from the same causes, and this would entail an outlay which the Protectorate is not in a position to incur.

4. I therefore propose, unless otherwise instructed, to inform Major Carnegie that I am unable to entertain any portion of his claim except the £100 for permanent improvements at Lemek.

I have the honour to be,

Sir,

Your humble, obedient servant,

*H. Conway Beckett*

GOVERNOR.

3790



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GOVERNMENT HOUSE,  
NAIROBI.  
BRITISH EAST AFRICA.

5524

CONFIDENTIAL No. 53.

C O  
33790  
Rec'd  
Per 22 JUL 15

June 7th, 1915.

Sir,

With reference to my Confidential despatch No. 166 of November 9th, I have the honour to inform you that Major the Hon'ble R.F. Carnegie has now put in a revised claim for compensation, which I attach with a copy of his letter forwarding it.

2. The matter has been discussed with the Attorney General who considers it undesirable that we should admit any part of Major Carnegie's claim except the £100 for improvements at Lomek which we previously agreed to pay. He is of opinion that if Major Carnegie considers himself entitled to anything more than this he should take legal steps to obtain it, and that if Government admits any of his claims without question a precedent will be established which

THE RIGHT HONOURABLE

HERBERT DONALD LAW, F.C.I., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

Ho 274 - Africa No 1016

3790


 46  
 5524  
 GOVERNMENT HOUSE,  
 NAIROBI.

BRITISH EAST AFRICA

June 7th, 1915.

CONFIDENTIAL No. 63.



Sir,

With reference to my Confidential despatch No. 166 of November 9th, I have the honour to inform you that Major the Hon'ble R.P. Carnegie has now put in a revised claim for compensation, which I attach with a copy of his letter forwarding it.

2. The matter has been discussed with the Attorney General who considers it undesirable that we should admit any part of Major Carnegie's claim except the £100 for improvements at Lemek which we previously agreed to pay. He is of opinion that if Major Carnegie considers himself entitled to anything more than this he should take legal steps to obtain it, and that if Government admits any of his claims without question a precedent will be established which

THE RIGHT HONOURABLE

ARTHUR BONAAR LAW, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

D No. 276 - Africa No. 1016.

But since the latter case it will  
difficult to establish his personal liability  
in the case now before us, and it is  
to be expected he will be held  
in law.

Reasoning  
not binding  
in law  
16

The difficulty would also crop up if  
any one could be held liable to  
the Crown in contract.

The general principle is that a Crown  
is not bound by the contract  
of a private individual, and  
it is generally held that contracts  
made by him on behalf of the  
Crown are not binding on the  
Crown. (Mackay's Billings, 10  
W. 1000.)

The Crown may perhaps take the respon-  
sibility of his claim, a contract  
made by one of its servants in the  
belief, or what was his belief,  
that he was acting for the Crown, and  
not for himself, but it is  
not known how it can, without  
negotiating, the liability of  
the contract, be established  
in law. It is not of the  
office by which it was  
made.

This case  
is not  
binding  
in law

See the general contract in the  
contract and to see as I have  
mentioned no personal liability  
shall be held against it.

The Crown did not repudiate the contract  
which he was to make, and has not done  
so since, and I do not think that  
by repudiating his authority to make  
it was, 6 years after it was made  
and 3 years after he ceased to be  
Crown, it can fix any personal  
liability with regard to it upon  
him.

The contract still subsists, and the present  
Crown has succeeded to it. P. Corbett is  
a party to it in his capacity as  
representative of the Crown.  
Major Lamer's remedy, therefore, if any,  
is not by action against  
either the late or the present Crown,  
but by way of petition of right  
(or, rather, the analogous proceeding  
provided by the R.A.P. Petitions  
of May 18 1910).

25A  
2/8/15

As proposed  
at the  
Ch 3 15

of course, with the judgment in Kings  
Conveyance from & beyond them. It  
probably is with the conveyance out  
of the Court than they would if they  
were negotiating as "no goods"  
then

I think as my job to have some information  
about the "reasons the Court"  
that claim has already been and  
probably to be and - what would  
be needed

Before anything is done Kings  
Conveyance to be beyond remedy!  
would not be to the Court but  
of Kings Conveyance then, possibly  
against the Court and proceeds  
in the Court, from -  
through and not with,  
proceeds for one conveyed  
to Court then as no goods  
without with Kings  
Conveyance would

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As proposed by Mr. Bailey 22/7/15

Ind. L. 22/7/15

Mr. Bailey As the late Gov. was involved with  
this arrangement directly contrary to

page 2 of 4

his instructions from the Gov. would it  
Major Carver's claim be against the  
late Gov. personally and not against  
the Crown?

22/7/15

406

Mr. Bailey

You will be better acquainted  
with the precedent than I am.

H. J. R.

22/7/15

Mr. Jackson

I do not see what proceedings Kings  
Conveyance would take against the late  
Governor personally

Certainly not a tort - that was done  
was done by way of an agreement  
between Kings Conveyance & the late Gov.  
and there was never any question of  
a wrong being committed by the  
late Gov.

If there had been, the Queen might have  
suffered but wrong was an act of  
Gov. - it was not done by virtue and  
under the hands of the authority  
of Gov. - or whether that act  
being done contrary to the intention  
of Gov. - or whether that act  
was a wrong for which  
he was personally liable

loss of 5 years or more if should accordingly  
it were then 2/100.

loss of stock etc alleged to be due to  
removal would, I judge, be largely  
included by the doctrine of remoteness  
of damages, and it might also be  
argued that such losses are covered  
by the grant of extension even for  
"debarment".

But the loss of 5 years' possession stands  
on a different footing.

I cannot help thinking that a Court of  
Equity would grant relief to a man  
who has surrendered land on the faith  
of a promise by A to grant him certain  
land in exchange, which land A  
at the time knew he had then no  
power to grant, and as to which  
the promise was given in  
relation disregard of the question  
when what time he would  
be able to fulfill it.

Even if the Court were to say, <sup>as I could not</sup>  
it would not  
be a very good advertisement for good  
methods of dealing with wills and  
land interests, and if Judge Caswell  
were to give the provision of the Court  
it probably is more than if it were  
to grant him some reasonable  
compensation, as a matter  
of grace, some other

rather better from your mind  
on equity but early 20000 was  
was promised in exchange to what  
27 years (including Judge Caswell's)  
deducted from the following  
and, as the law is still the  
same today in all these cases  
a grant of compensation to  
Judge Caswell of for a  
period about 20000 depends  
- from 2000 of his debt

It is true that 5 years' possession  
Judge Caswell admitted that the grant  
of 25 of value was worth the  
actual land surrendered and the  
deduction and as was still  
held on to the land the  
loss of 5 years' possession which  
has occurred here then is a  
great wrong, and from your  
I think it is accordingly  
warranted to have compensation  
in this regard.

Then the law of the case to have  
was asked for justice to be  
had to explain that the  
reference only to the time required  
is absolutely correcting the  
land, and if he is to be  
granted any thing for the

substantive way of making claims which  
are largely based rather than legal  
rights, and which depend on the Government  
admitted policy of proceeding that they  
had let the job and subsequently thought  
to have been part of the business.

But the details of the claim, which  
present various forms, and for which  
the great many of the claims, as I should  
not in \$305,000, relate to the original  
disturbance, and not to the delay in  
re-settlement, it cannot be regarded  
as covered by the original bargain  
between the parties, a matter to be decided  
by the arbitrator at least. The  
claim which I have made with  
most of them are hypothetical in  
character - it is difficult to prove  
that these claims, whether claims, or  
losses, which had during the delay  
would all have been of the same  
kind, and you must be satisfied that  
I feel doubtful about the loss of  
the time. The claim, with the  
£100 per annum, was to £100.

If it is agreed that in such a  
case the claim for loss through delay  
would require arbitration, it is  
not clear to think that we must  
accept the Government's view and not take

a line in Major Carnegie's case  
which would make it difficult to  
refuse other claims the details of  
which are not before us. It might  
be much less moderate.

Wed 23/7/15

As to A, Major Carnegie himself admitted  
that the grant of 50% of the area would  
disturbance, but did not admit that  
it would develop into (as you & I  
allowed - the £100) or perhaps less in  
annual - letter of June 14, 1910 - and  
no more - 30905/2 p 2

in Risley

Would you kindly look at  
this?

H. J. R.  
24/7/15

Wm. J. Anderson

There is a case of considerable hardship  
and if it stood alone I can hardly doubt  
that the Court would give Major Carnegie  
a substantial sum as gratuity or  
compensation - at any rate for the  
loss of time and opportunity and  
inconvenience which he has suffered by  
being kept out of the land which  
which was to be given him  
in exchange for the land  
to be surrendered.