

1936

Kenya

No. 38259/1

SUBJECT

CO 533/475

Estimates

Investment of Trust Funds in Land

Estate of Miss Bright Williams

Previous

Main File

Subsequent

1937

PS to Private Secretary

Enclosed in my letter & enclosures from Messrs 2
Walter Young drawing attention to action of the

Nominal
land
estates.

Public Trustee in Kenya in advancing trust money
of a Miss Bright-Williams upon mortgage of land &
calling for alteration in law which makes this possible.

This is a complaint regarding the administration by the Public Trustee in Kenya of the capital left in trust for a Miss Bright-Williams, a minor. It is said that the Public Trustee invested the £7,800 inherited by Miss Bright-Williams in 1928 in two mortgages, one of £5,500 and another of £2,000 at 7% interest. The investments have not been successful. The farm in respect of which the £2,000 was advanced has long since been abandoned, and it is alleged that no buyers could be found for the property. The mortgager of the larger property is still carrying on farming operations but is paying a reduced interest on his mortgage. The Public Trustee is said to be unable to dispose of this mortgage investment in spite of the fact that the present value of the farm is estimated at £10,000.

As regards the legal position of the Public Trustee, Rule 11 of the Rules issued under the Public Trustee Ordinance (No. 7 of 1925) says:-

"It shall be lawful for the Public Trustee to invest trust moneys in his hands in any of the following securities viz:-

- (a) Any investment authorized by law for the time being in England as a trust investment;
- (b) Any investment in the purchase of or a first mortgage or mortgages or a first charge or charges secured on immovable property within the Colony up to one half of the value thereof, as estimated after due enquiry, and which

mortgage

mortgage, mortgages, charge or charges shall be registered with the Registrar of Documents or the Registrar of Titles:

Provided that when the immovable property is leasehold a period of not less than fifty years of the term of the lease shall be unexpired:

(c) Fixed deposits in banks approved by the Governor.

Messrs. Wotton and Young impute no impropriety on the part of the Public Trustee but their complaint is directed at the local law which permits the Public Trustee to invest trust funds in investments which Trustees in England properly advised would hesitate to do. Realizing that Miss Bright-Williams would have no case in law in view of Section 24(6) of the Public Trustee Ordinance, Messrs. Wotton and Young ask that her fortune be made good to her upon compassionate grounds.

It is most unfortunate that Miss Bright-Williams finds herself in this unhappy position. Since she came of age the Public Trustee has offered to transfer the mortgages to her, but she has been advised to refuse to take them over. That being the case it seems that nothing can be done for her unless the Kenya Government desire to create an awkward precedent. There is a somewhat similar case in 3813/42/36.

I submit for consideration a draft despatch to the Governor of Kenya and draft letter to Messrs. Wotton and Young.

C. H. ...

7.5.36.

I agree that these representations will be for careful consideration, not only in relation to Kenya but, later on, in relation to the Colonies generally. The first thing to do is however to refer this to Kenya & I think the Dep. Secy. go by air mail.

The volumes containing the Rules under the P.T. Dept are bulky, so I do not send them on. They are available for reference in 7 rooms if required.

J. J. ...
7/5

I much hope that it will be found possible to do something for Miss Bright-Williams. As Messrs Wotton & Young say, her case appears to call for the sympathy of the Government and practical assistance.

9/5/36

H. Duncan.

Yes: it is a bad case. I have passed the drafts but would like to file back to minute further on the last aspect. In this connection the papers about the ... and ... of ... to see if ... point about ...

air mail
11/5/36

2 To Kenya 512 - cons 11 MAY 1936
(w/c of null in 1)

13/9

\$ To Watson Young (encl to
D Ansa) - 12 MAY 1936

PROCESSED UNDER STATUTE

I send this on again because some of the remarks made by the Solicitors are of general importance apart from the particular question which has arisen.

The Public Trustee Ordinance was produced in 1925 and the necessity for it arose from the fact that the Registrar-General had always been appointed by the Courts in Kenya to look after the estates of minors and so on. The Colony produced the Ordinance and as regard to the Trust work bases it on the United Kingdom Law. The operative section is No.17 which says that subject to the Ordinance and the Rules made thereunder, the Public Trustee may, if he thinks fit, act as an ordinary trustee and be appointed trustee by a court of competent jurisdiction. There is nothing in the Ordinance which lays down what he may invest in, but that point is covered by rules made under the Ordinance. Rule 10 empowers the trustee to invest money coming into his hands in any investment authorised by the instrument or authorised by Rule 11 and Rule 11 authorises the Public Trustee to invest trust moneys in -

(a) Any investment authorised by law for the time being in England as a trust investment;

(b) Any investment in the purchase of or a first charge or charges secured on immovable property within the Colony up to one-half of the value thereof.

So far as I can find out the Rules were not submitted for examination and as the provision in question follows United Kingdom Law I do not think the point would have been taken that investment in land in Kenya is not on the same footing as investment in land or mortgages in this country.

In this particular case the value of land has deteriorated considerably; at the present time it is almost impossible to sell and the unfortunate ward has lost all her money.

We have invited Kenya to consider the whole question and it may be that having regard to conditions in that Colony they will see fit to stop the Public Trustee investing in local mortgages.

So far as I can see, the only sound reason for allowing the Kenya Trustee to invest in local lands would be political. The settlers would argue that if the Public Trustee in England can invest in mortgages there is no reason why the Public Trustee in Kenya should not be allowed to do the same, in order to foster the idea that land in Kenya is a good and valuable security. Similarly, if at present Government suddenly proposes to prevent the Public Trustee investing in local land, this would be held as good evidence that Government does not trust the future of white settlement in Kenya. I don't think Government does or should, but one has never been able to say so and to say so in public would create a very bad political impression.

Handwritten notes:
I don't think the
to be sound
2/5/36

The

The remarks made by the Solicitors in the third part of their memorandum (pages 1 and 2) are, I think very sound and very practicable. The remark about land in Kenya and its value, on page 3, is probably not so sound. The Public Trustee would not invest in anything except a properly worked and running farm. Such a farm, having been cleared and in cultivation, would have a certain value apart from the farm, even though that value may not be realisable at present.

The remarks as to the status of a Public Trustee on page 5 are also well worthy of consideration. There can be no doubt that in the public mind a Public Trustee does carry a certain Government guarantee. Analogy with the Public Trustee here is hardly in point, because, with the very large sums which the Public Trustee in England controls and the very large choice available for investment, it is possible to average things out. In Kenya the Public Trustee has the choice between Trustee securities in this country or local land, and with rates of interest what they were in Kenya and what they still are, there is no doubt that investment in mortgage ^{would} ~~would~~ be probably the most high yielding form of safe investment that could be thought of.

The remarks about the Agricultural Indebtedness Committee are quite interesting as showing what a non-prejudiced outside examiner thinks of the proceedings. It is also worthy of note that their opinion as to the

return

return of better times in Kenya as regards prices compared with the 1927 level is much the same as the view which we took here. Things may be and are a little better than they were two years ago, but I think the days of the boom must be regarded as over.

The difficulty about Government financing the farmers as suggested in page 7 is that Government has not got the money to do it and that the alternatives were no assistance at all, thereby allowing the farming industry to go, or endeavouring to reach some agreement between the creditors and debtors with Government oiling the wheels. It will probably be better for private lenders and trustees to postpone their rights because, as has been pointed out above, if their rights are exercised (i.e. the right of foreclosure) they will get nothing or very little. We know that out of the funds advanced by the Land Bank about 40 per cent. has been used to pay off mortgages, so that possibility is fully present to the minds of the people on the spot.

It is hardly the case, as suggested on page 8, that the idea is to put present mortgages behind Government. That is the result, but the theory is that Government should not risk its money except with a first mortgage and therefore, if the farmer is to be assisted by Government, the existing creditors must agree to take second place.

The Action has been taken to submit the case to the Governor, but in view of the ^{rather} ~~rather~~ ^{many} ~~many~~ ^{interests} ~~interests~~ involved I send on for examination an interesting document.

J. S. G. King

11.5.1936

It is a bad case, & I think that the right course is for the Govt to say up, possibly transferring the mortgages to the Agricultural Advances Account & to alter the law.

It will no doubt be said that this will be blackening the face of Kenya's credit, but that is not correct. What has blackened the face of Kenya's credit is the failure of the two mortgages. The casting of the law blackens the face of Kenya's Public Trustee, which is a more serious, & a different, matter.

A. L. M. Thomson
14/5/36

I would rather not express any view upon the moral obligations of the Kenya Government until one has some particulars of this farm, its history and condition when the mortgage was advanced, and whether and what enquiries the Public Trustee made, and if he obtain an independent valuation, and, if so, what the independent valuer had to say.

I can well believe that mortgages on land in Kenya should not be included in investments authorised to be made by Trustees.

HB 16.5.36.

We shall I think have to wait for the Kenya reply before any decisions can be come to. It is a very bad case; and in my view land mortgages are not a suitable form of investment in Colonial territories. The reasons--apart from the conditions special to Kenya--are sufficiently obvious. I agree that the Govt: should compensate, on the facts as we now know them; but clearly any decision as regards that matter will depend on the practical consideration of what a decision in this sense would lead to, in Kenya to-day. It might involve a liability-potential-which the Govt: could not face.

2. Probably the first step, which could be taken now, will be to see how the law as regards this matter stands generally. We all agree that mortgages--however safeguarded--on agricultural land are not suitable investments for trust funds. I'd limit such investments to trustee securities, as defined for the U.K, and to Colonial Govt: stocks. (The details could be settled, when we had the U K Acts before us.)
3. It might be worth while following up the despatch by a s.o. common: asking for the information Sir G. Bushe refers to. Unless that is done, we may find that the official reply does not go into any detail as regards this particular transaction.
The 19th: May, 1936.

Library (Legal)

May be, please, have statement of the provisions of Colonial laws generally in to the house of

Trustees to be sent to Public Trustee (if any) and money in mortgages of land

Real estate?

[On the basis of Kenya Trusts,
there is no doubt a general
Trustee Ordinance will
be the Public Trustee Ordinance
law with]

Wade 20.5.36

I submit two statements herewith -

- 3a (1) Showing the power possessed by trustees in various Colonies to invest trust funds on mortgage.
- 3b (2) A similar statement for Public Trustees.

Generally the trustee legislation of the Colonies is based on the Trustee Act, 1895 (56-57 Vic.C.53). This Act was repealed and replaced by the Trustee Act, 1925. The powers possessed by trustees in Ceylon, Federated Malay States and Straits Settlements with regard to investment of trust funds on mortgage are interesting. I annex herewith a copy of the Federated Malay States Enactment. Some colonies and protectorates have, as yet, no local legislation about trustees and in others e.g. Mauritius the law is based on French principles.

As regards the powers of Public Trustees the Federated Malay States and Straits Settlements both have novel legislation and I attach a copy of the

Federated

Federated Malay States Enactment as it has been recently consolidated. Trinidad permits the investment of funds in the hands of the Public Trustee in any mode of investment authorised by law for the investment of trust funds. In Zanzibar the words "after due enquiry" are added in the Rule authorising the investment of trust funds on mortgage.

J. H. Thompson
23.5.36

Mr. Thompson's note will be most useful. It shows at all events that Kenya is not done, and I don't know who would have said in 1925 that real estate was more important than elsewhere.

Much with regard consideration of the question will be necessary before we "state" Kenya for its legislation. See also Sir G. Buxton's Report. J.H.T. to Mr. Wade.

Wade
25.5.36. a.m.

AIR MAIL 4 2/6/36 To Mr. Wade - copy - 29 MAY 1936 (3/1)

Later
Mr. Wade to see
Consider legislation
when Mr. Wade has
seen

See vol
herewith

5. Masera, Wotton and Young. ----- 19th June, 1936.
Acks. No. 3 with thanks and comments on the position
of Miss Bright-Williams; enquires where they can obtain
copy of Public Trustee Rules made under the 1925 Ordoo.

Mr Duncan

The rules are only in volumes but I think
we may let them have them on loan. The 1928 &
1929 amending rules are of no importance.

Immunity is conferred on the Trustee by § 24 (6)
of the Ordinance and we might perhaps refer to that
but are not asked for an opinion.

The suggestion that Kenya should repay the
mortgage is hardly practicable I fear but Govt
may be able to make a grant.

Draft herewith.

V. E. Flood
22-6.

6. Wotton, Young ----- 22 June, 1936
Ref. 5; state that they have now received copies of
Rules from the Public Trustee in Kenya

It is somewhat difficult to know
exactly what the Kenya people have sent the
solicitors. The Rules, as published in 1925,
were amended twice in 1926 and again in 1927.
The amendment of 1927 is, however, the only
important one as it deals with the point at
issue, namely, the Kenya Public Trustee's
power to invest money in local mortgages.
The Rules do not deal in any way with the Public
Trustee's liability, which is entirely governed
by the Ordinance of 1925, Section 24(6). I
think we might reply as per draft herewith.

V. E. Flood
22-6

Mr Flood

Agrees with the terms of the attached draft letter.

25/6/36

A. Duncan

7 20 Wotton & Young (5000 and) - 30 June 36
in act

8 Wotton & Young ----- 27 36
Offers to supply copies of copies with
Public Trustee, Kenya. Messrs. Harries
Matthews, Solicitors of Nairobi. Complete
generally regarding the administration of
Public Trustee

The reference to Rule " in No 7 was
of course unintentional & was
made with the object of showing
Messrs Wotton & Young that it
is lawful for the Public Trustee
to invest trust funds in mortgages.
They, however, have thought that
we were writing reference to
Section " of the Ordinance. No
has been done.

N.B.
Consider page
when reply recd to
No 2
Milepost to sea

? Ask & say that their further
representations will be made in
mind when the reply to the
despatch which was sent to
the Governor on the 11th of May
is received.

V. E. Flood
25/6/36

Mr. Flood

I should have thought that the reason for
our reference in No. 7 to Rule 8 was
obvious; and I cannot understand why
the Solicitor should imagine that we
meant section 11 of the Ordinance.

I have, the attached draft puts the matter right.

8/7/36 A. Duncan

J.L.O. 8-7 am.

To Wotton & Young (samed) 11 JUL 1936

To Kenya - 528 (ref. 7.8) 21 JUL 1936

DESTROYED UNDER STATUTE

~~Wotton & Young 18.7.36~~

~~ack. 9.11.36~~

~~Letter 11/7/36~~
~~above ref. 7.8~~

Cancelled

AK

N.B.

12. Wotton and Young. 29 July, 1936.
Transmits copy of reply received from the Public Trustee
of Kenya and of answer made; comments on the proposals
put forward, and requests C.O. assistance in obtaining
a fair settlement.

It appears from the earlier correspondence
that Miss Bright-Williams' patrimony was invested by
the Public Trustee in two mortgages, i.e.:-

- (A) £2,000 advanced on a farm said to have been
long since abandoned:
- (B) £5,500 advanced to a Mr. A. Douglas on the
security of farms 2,808, 2,809 and
2,814 Nyeri.

Miss Bright-Williams wants her capital. The
P.T.'s proposal, which is set out below, relates only
to the advance of £5,500 (mortgage B). The
repayment of the mortgage of £2,000 (mortgage A) is
not mentioned.

The proposal is that Mr. Douglas should
apply to the Land Bank for an advance of £3,500. (It
is not clear whether the application will be made under
the new Conciliation Board arrangement, or under the
ordinary long-term advance arrangement). If he
secures the advance he will repay £3,500 of the
£5,500 mortgage, leaving an amount of £2,000 on
mortgage secured on farm 2,814, to be repaid by
instalments over a period of five years, with interest
at 3%. The P.T. says that farm 2,814, which
comprises 3,654 acres, was valued at £7,308 and that
it provides good security for a mortgage of £2,000.
Messrs. Wotton And Young are doubtful about this.
They seem to think:-

- (a) that the security of farm 2,814 is
insufficient:
- (b) that the interest is insufficient having
regard to the security.

They want advice as to Miss Bright-Williams'
position in the event of the mortgagor's bankruptcy.

K. J. J. J.
K. J. J. J.
K. J. J. J.

Mr. Flood

I should have thought that the reason for
our reference in No. 7 to Rule 8 was
obvious; and I cannot understand why
the Solicitor should imagine that we
meant Section 11 of the Ordinance.

I enclose the attached draft for the mortgage.

8/7/36 M. Duncan

2107 87

To Wotton & Young (sands) 11 JUL 1936

To Kenya - 528 (No. 7.8) 21 JUN 1936

DESTROYED UNDER STATUTE

~~Wotton & Young 12.7.36~~

~~also of Mr. Duncan~~

~~Robert H. Young~~

~~at once 21/7/36~~

Cancelled

12. Wotton and Young.----- 29 July, 1936.
Transmits copy of reply received from the Public Trustee
of Kenya and of answer made; comments on the proposals
put forward, and requests P.T. assistance in obtaining
a fair settlement.

It appears from the earlier correspondence
that Miss Bright-Williams' patrimony was invested by
the Public Trustee in two mortgages, viz:-

- (A) £2,000 advanced on a farm said to have been
long since abandoned;
- (B) £5,500 advanced to a Mr. A. Douglas on the
security of farms 2,808, 2,814 and
2,814 Nyeri.

Miss Bright-Williams wants her capital. The
P.T.'s proposal, which is set out below, relates only
to the advance of £5,500 (mortgage B). The
repayment of the mortgage of £2,000 (mortgage A) is
not mentioned.

The proposal is that Mr. Douglas should
apply to the Land Bank for an advance of £3,500. It
is not clear whether the application will be made under
the new Conciliation Board arrangement, or under the
ordinary long-term advance arrangement). If he
secures the advance he will repay £3,500 of the
£5,500 mortgage, leaving an amount of £2,000 on
mortgage secured on farm 2,814, to be repaid by
instalments over a period of five years with interest
at 5%. The P.T. says that farm 2,814, which
comprises 3,554 acres, was valued at £7,308 and that
it provides good security for a mortgage of £2,000.
Messrs. Wotton and Young are doubtful about this.
They seem to think:-

- (a) that the security of farm 2,814 is
insufficient;
- (b) that the interest is insufficient having
regard to the security.

They want advice as to Miss Bright-Williams'
position in the event of the mortgagor's bankruptcy,

X. J. J. J. J.
value = 100
not for

and suggest that the advice should amount to practically a warranty that her capital will not be lost. They are at a loss to understand why no arrangements have been made as regards the repayment of the mortgage for £2,000 on the farm said to have been long since abandoned (mortgage A).

It is obvious that the P.T. is endeavouring to meet Miss Bright-Williams' request for the return of her capital. Under the arrangement now proposed she would get £3,500 cash and another £2,000 with interest spread over five years. *(Provides that the Land Bank accepts the mortgage offer.)*

As regards the question of security for the £2,000 left on mortgage, nobody could give a warranty that the money will not be lost. But it is inconceivable that land value will fall to such an extent that property valued at £7,300 will not realize £2,000 or such amount of the mortgage as may be unpaid. Presumably the repayment of the mortgage on farm 2,814 - it is a first mortgage - would rank before any other claims in bankruptcy. However, until we receive a reply to No. 2 I do not think we can return any adequate reply to Messrs. Wotton and Young. I send a copy of No. 12 *(Specifying the enclosures)* to the Governor by air mail for observations, ref. the Secretary of State's despatch No. 322 of the 11th of May, and ask when a reply to that despatch may be expected. Inform Messrs. Wotton and Young that the Secretary of State is in

communication

communication with the Governor of Kenya regarding the proposals contained in the P.T.'s letter.

C.A. Bright-Williams

4.8.36.

The reply to No 12 might be to the effect that, pending receipt of the Gov's answer, the S.G.S. papers not to express any views on No 12. to the Gov. on proposal.

J.J. Casini
4/8

J.J. Casini

5/8

at once

15 La Wotton, Young (P.T.) - 10/5/1936

To Kenya 609 (2/2 12/10/1936) (10/5/36)

Anglin's Mail 10/8/36

R.S.O.

Handwritten initials and marks

10 516 1936

** If Mr. Bright-Williams dealt with land in one year or two he would have no difficulty in securing that - or change things 5.10.36*

No 2

15. Wotton and Young.----- 14.8.36.
 Transmits copy of further letter received from the
 Public Trustee of Kenya on this case, and requests
 assistance in obtaining their settlement.

Subject is that Miss Wotton Young
 wishes the Kenya P.T.D. want
 that I am to send her as
 first security for a mortgage of
 £2000 (see 1st call to No 2)
 Clearly we can't give them
 any guidance

? Send copy of No 18 to for Review
 Ref. No. by the Mail of. for
 Comm (Ross has been
 ack'd by etc.)

C.P. Rowland
 17.8.36

Mr Duncan

2 So moved

I feel that the solicitors are trying to get advice out of
 us on the value of the farms etc which we can't give
 them as it is for the S of B to give guidance to people in
 such cases. Therefore it would I think be as well to
 not to give them any advice as in a position to
 give any advice on the value of farms etc or
 to give any guidance as to their dealing with
 public trust etc.

210 Kent 17.8.

Mr Flood

I agree that we should proceed as per subject.
 (We may get let the Solicitors know that we are sending a copy of this
 letter to the Governor by this post.)
 8/8/36 A. Duncan

210 Kent

18

16 So Wotton + Young (15 hand) - 22 AUG 1936
 DESTROYED UNDER 11

4.8.36
 (16) (15 hand)
 (17) (15 hand)

To Kenya 654 (nos 15 + 16) A/1 24 AUG 1936
 Amos 27

18. Wotton and Young.----- 24.8.36.
 Acks. no. 16 with thanks; considers, for reasons set out,
 that Miss Williams should not accept any proposal that
 does not come direct from H.M. Govt.

Mr Duncan

They appear to be trying to manoeuvre for
 position the goal being set out in the last of the letter
 i.e. to get the C.O. (in the name of H.M.G.) to assume
 responsibility. We can't.

I think we had better

? Ask next to say that while the S of B. realises the
 difficulty of the situation and appreciates the careful
 and courteous way in which they have dealt with
 the case, the matter is eventually for the best of
 Kenya, not this Dept.

and copy com. to box LF air mail

210 Kent

Mr Flood

I agree.

27/8/36

A. Duncan.

Sir C. Bottomley

In view of possible further representation
 I think you should see

210 Kent

I agree. They are a little nervous etc
 as they know we are looking for the jobs
 what

report (it is assumed).

As proposed, but in sending
X/one copy to the P.T. and it may
be desirable to send an copy
to the 2nd Sub-Committee.

Oct 27. 8. 36

19. To Wotton and Young.-----18 and----- 31.8.36.

DESTROYED

20. Governor No.416.-----12.8.36.
No.2 and; summarises history of the case, and
comments on the points raised in the memo. in No.1;
under the circumstances, does not consider that the
Government should make compensation to Miss Williams.

The despatch traverses
the history of the Bright-
Williams case & seems to afford
an adequate defence of the
transactions of the Public Trustee
despite their unfortunate result.

That the despatch does
not do, however, is to make
any concrete suggestions for
restoring Miss Bright-Williams
fund is impracticable. As to
the mortgage on Mr Harper's
property, it seems most
unlikely that more than
the £888 secured on the new
agreement to which the P.T.
is a party will be realisable
in the near future.

As to the mortgage on
Mr Douglas's property, we know from
(15) & (16) that £3,500 out of the
total of £5,500 can be restored if
Mr Douglas can transfer that
part of the mortgage to the General
Bank. It is a pity that the
whole £5,500 cannot be repaid &
there are perhaps grounds for
pressing the Govt. to explore
further the possibility of effecting
the complete discharge of this
mortgage.

But, in the first place, we
need the advice of the legal
Advisers.

G. S. Evans

2-9-36

21. Wotton and Young.-----2.9.36.
Ack. receipt of No.19, and note position of H.M. Govt. in
the matter, but consider that steps should be taken to
prevent injustice in this, and similar cases.

I think we should

(a) acknowledge No.19 as sent herewith; and

(b) send copies of Nos. 19, 21, and draft

herewith, to Kenya I.P. (194) as already copied

and then recirculate for consideration.

J. J. G. Evans
3/9

30 notes a young (194) and

SEP 1936

DESTROYED

at 1.1.1937

It is unfortunate that it has taken so long to re-circulate this file. I understand that the delay was caused by the subsequent receipt of the further Dep. provided in No. 20 (was registered on 38259/36) & the copying of minutes for registration on that file.

I agree that the Gov. has disposed of the suggestion of Messrs. Walter & Young that (given the circumstances at the time these investments were made) the investments were not such as a prudent trustee would have made.

I am also inclined to agree that the fact that experience since 1920 has shown that the investment of Trust monies in Kenya is undesirable, & that in the light of this experience such investment has been discontinued by the P.T., is not in itself a sufficient reason for the assumption by Govt. of financial responsibility for an failure of investments wh. were made at a time when there was no reason to anticipate that land values in Kenya would be

subject to such violent fluctuations. On the other hand I very much doubt the wisdom of the course proposed by the Gov. viz to postpone an amendment of the Rules on the ground that this amendment might be regarded as tantamount to an admission of Govt. of responsibility for the result of these investments.

After all, quite apart from the case given on chart, Messrs. Walter & Young have made very strong representations on the general v. of being the desirability of authority vested in the P.T. to make such investments; & I am quite confident that they will not be satisfied & will continue to make representations, unless we come out into the open on the general v.

I should like to see you in a chair to give me the substance of the whole of this Dep. (except the Govt. proposal to keep same about the proposed amendment of the Rules); express the hope that the information given as to the investments will be made use to advise them

It is the hope that
nothing will turn
out better than
they have feared

clear on the proposals which have
been put before them by the
P.T. is ~~expressly~~ ~~expressly~~ ~~expressly~~
regret at the unfairness of
Miss Bright's ~~statement~~; but ~~it is~~
~~clear~~ by ~~reading~~ it clear
that the S. of S. shares the view
of the Gov. that there was nothing
in the experience of land values in
Kenya prior to 1930 to warrant
any doubts as to the desirability
of permitting the investment of
Trust funds in land in the Colony,
& that the fact that experience
since that date has shown that
such investment is in fact undesirable
is not in itself a sufficient
justification for the assumption
by Govt. of financial responsibility
for the ~~failure~~ failure of investments
made, in the circumstances existing at
the time they were made, were
made with reasonable prudence.

J. P. O'Sullivan
26/9.

[38259/26 can. I think, wait till
this file has been disposed of].

same though should give the Solicitors
the substance of No. 20, as Mr. Pashin
suggests; but should not commit the
S. of S. to any particular view.

It will be interesting to see what they have
to say in reply to the Governor's deputation.

29/9/36 H. Duncan.

yes but then you should assume
responsibility for the loss on the ground that it was
really a bad investment though permissible under the law
and made in good faith Kenya requires to admit any
liability, as the Solicitors will not be satisfied. They
may however see that matters are not quite as simple
as they appear

No. 20 Kenya Trust No. 234
In my opinion of 26/9 I suggested
that the Solicitors should give the substance
of No. 20, but not the recommendations in
view of them obviously & that I should
especially the agreement with the Trust.
When I came to prepare the S. of S. answer
it became apparent that, instead of the
two valuations, it would be nearly 5000
a convincing justification of the action of
the P.T., & that moreover if they were not

sent) it wd be necessary to include a good deal of material in them to make the position intelligible, thus materially increasing the length of a letter wh. will in any case have to be very long.

Mr. Duncan & Mr. Flood therefore agreed that the best course wd. be to ask the Gov. by tel. whether there was any objection to calling the Solrs to have copies of their valuations.

As I am about to go on leave I have prepared, for conveni., a 5pt. letter to the Solrs on the assumption that they may be allowed to have copies of the valuations. If, however, the Gov's reply is unfavorable, the 5pt. will require ^{some} alteration, wh. I have discussed with Mr. Gossett.

It will be seen that, by way of comment on para 12 of the Solrs memo I have included (para 17 of the 5pt) the substance of para 3 of No 6 on 35219/20. This seemed reasonable - viz of the reference to the Solrs by Mr. P. in the proposal that, if Mr. Douglas raises £3,500 from the Land Bank, they shld. open to the balance of £2000 remaining as a mortgage for 5 yrs. on a portion of his property.

J. J. Gossett
2/8

4. Governor tel. No. 24. No. 23 raised; no objection to collection of the value wh. enclosed in No. 20 being supplied to the solicitors.

This shows a lot of trouble I have had on Mr. Perkins' case.
8/10/26

Sir C. Bottomley

I think you should see the draft. It is not 1 year a very good case. The estate you had has lost a lot of her property and what is left is 'frozen'. It may come all right in 5 or 10 years but that is poor consolation to a young lady who wants her cash.

But Kenya & the Kenya Trustees acted in good faith and however unfortunate the result there is no reason why the taxpayer should be called upon to help. After all people lost a lot here in the same way - I did myself so I know about it - and no relief was accorded.

J. J. Gossett
15-16

I have handed the draft - it does not commit the S. of P. in any way. But I anticipate that the reply will have to go forward. Let us see.

13 10 26

20 Wotton + Young We send out to 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

To Kenya 834 (4/25 18, 19, 21, 22) + 25
(20 ahead)

Notes: precedents to note decision

27. Governor No. 537. ----- 14.10.36.
 Ref. Nos. 14 and 17 comments seriatim on the points
 raised by the solicitors on the proposed arrange-
 ment in regard to the mortgage on the farm.
30. Wotton and Young. ----- 29.10.36.
 Acks. No. 25 with thanks and promises full reply later.

No. 27. This despatch deals with Messrs
 Wotton & Young's comments on the
 proposed arrangement in regard to
 the mortgage on the Douglas's farm
 ? The foreman's share may be
 sent to the solicitors. I submit

Draft: A. G. Ross Smith
 2/11/36

No. 28. Pub by

I have put this in red, -
 in the hope that the letter may issue
 before we further alter promised
 - No 28 is prepared.

|| P. G. Ross Smith
 23/11

Yes: let them have it

J. S. G. Ford

3-11

29 To Wotton & Young

- 4 NOV 1936

30 Wotton & Young 16

(20. Nov) Re-states claim requesting
 that a ruling be obtained from the
 Foreman with all possible speed

Before meeting on No 30 I
 think that you should see that
 Messrs Wotton & Young have returned
 to the charge with some vigour.

We shall have to consider what
 we are to say to the Foreman,
 Kenya, to whom this letter
 will have to be referred, and
 in order to avoid a multiplying
 of minutes I suggest that
 this can best be done by
 our discussion in the Dept
 with Mr Duncan, if he is
 agreeable.

I send on

A. G. Ross Smith
 26/11/36

I agree that it wd. probably be best
 to discuss this; but I cannot a note
 setting out some preliminary views.

(31)

|| P. G. Ross Smith
 30/11

Mr Duncan.

Please see: it is a good full letter. Part is
 vitiated because £ 3,500 is the maximum of the Land Bank.
 But we can't argue it here nor do I want to write too much
 minutes. If we could have a discussion it might help

Anyhow I would like to give the solicitors more of an
 interim act. than a post card. If you agree will the Dept
 handle plan for it & we can then consider.

J. S. G. Ford

Mr. Flood

I am ready to discuss.

4/12/36 M. Duncan.

32 To Walter & Young (30 cases) . 8 DEC 1936

Mr. Parkin

Mr. Flood

Mr. Duncan has ^{suggested} ~~proposed~~ to me that it wd. be desirable for someone in the P.T.'s office to be brought into the discussion of the affairs of Miss Bright-Williams; and as a preliminary he suggests that copies of all our cases, with the Solicitors shd. be sent to the P.T.'s office. (It wd. not be necessary to send copies of the Gov's depts. as our substance has been fully embodied in our letters).

He also suggests that, as a part of a general character are involved, G.D. shd. also be brought into the discussion.

Mr. Parkin
8/21

I agree that you arrange please. The Solicitors have had an interim reply telling them it's a health affair so this is time.

V.S.W. Kent

8-12

33

To. P.T. office (10) - cases -

16-12-36

M. Howard

You also see the cases. This file (L 38233) is a set of general policy cases. They are indicated in No. 33. I assume that F.D. will wish to take part in the discussion on this Kinga case, & for this purpose I assume a special copy of the cases will be prepared. We know whether F.D. will be represented & if so, by whom.

J.P. Baskin
16/12

[I am not sure whether Economic Dept. wish to come into it again. But perhaps you will pass the file to P.D. Canice. I assume another set of the cases for this use if desired.]

W. Dawson

It is better to get a present set of files if you agree the papers should go to him to examine a more copy of the cases & then be passed to the Canice

M. Howard
21/12

W. Dawson

W. Dawson

W. Dawson & I will attend.

W. Dawson

36

W. Dawson

Dec. 36
18

Letter to Sir H. E. Fass, 24/12/36
to W. Dawson & M. Howard.

A when I have found the file 33. I go to C.D. to make 10 (copy) of No. 33. etc.

J.P. Baskin
24/12

W. Dawson

To Sir H. E. Fass (34 amend) 24/12/36

(Mr. Kinga order 28/12/36) Cont

36
59
K 80 34/36

OFBTR

I have sent a copy of the cases to the Canice with a note which says that the cases be represented by J.P.

No draft

Hand 361

19

38259/1/36.

December, 1936.

Dear Sir Ernest Pass,

Thank you very much for your letter of the 21st of December about the administration by the Public Trustee in Kenya of the estate of Miss Bright-Williams. As indicated in my letter of the 16th of December we should be most grateful if we could have the assistance of someone from your Office in a discussion as to what should be done about this particular case, and as to whether the Secretary of State ought to issue a circular despatch to all Colonial Governments on the propriety of allowing the investment of Trust funds in local agricultural land, and possibly as to the principles on which the business of the Public Trustee should be conducted.

I hope to arrange a meeting sometime early in January and if you would be so good as to depute someone

SIR H. E. PASS, K.C.M.G., C.B.; O.B.E.

someone to attend, and could let me know his name,
I could arrange a time which would be mutually
convenient.

As regards your question whether
Rule 11(b) was deliberately intended to provide a
means of assisting the farming community in Kenya,
it can be said quite definitely that there was no
such intention. As regards the powers of private
Trustees, I enclose a copy of the Trustee Ordinance
1929, and would draw your attention particularly to
Sections 4(c) and 7(1).

Yours sincerely,

Telephone: Holborn 4295.

Telegraphic Address:
Public Trustee London

Branch Office,
Arkwright House,
Fitzroy Gardens,
Manchester.



Public Trustee Office,
Boroughway,
London, E.C.4

21st. December, 1936.

~~100~~

Dear Paskin,

Amie (35)

Barnett has handed me your letter of the 16th. of December (38259/1/36) about the doings of the Public Trustee in Kenya. The points raised by the solicitors seem to me to be the wisdom of the Kenya Government; the handling of the case by one of its officers, and the question whether any moral obligation should be accepted by that Government to make good losses sustained by a beneficiary in the Trust administered by that officer.

Subject to any instructions I might receive from the Lord Chancellor, I do not think it is for us to express an opinion upon the wisdom of the policy of the Kenya Government or upon the conduct of one of its officers.

On the third point, we could officially tell you our practice, which is to apply to the Treasury for consent for leave to make an ad gratia payment

J. J. Paskin, Esq., M.C.,
Colonial Office,
Downing Street, S.W.1.

without, of course, admitting any legal liability in cases where we think it would be right to do so. These cases are rare and are naturally infinitely various. As an example, I may say that recently we had an action brought against us charging us with negligence. It was a case in which one of two innocent parties had to suffer for the fraud of a third. The case went to trial and the Judge suggested in the course of the proceedings that it was eminently a case for compromise. The Solicitor-General, who appeared for us, thought we should be well advised to make an ex gratia payment without admission of liability on the withdrawal of all charges. I applied for and obtained Treasury authority and the payment was made on these terms. *We could not of course accept a claim based on the depreciation of a bank investment.*

If my personal opinion on the first two points is of any value, it would be as follows, but I write without any knowledge of trust law in Kenya and I do not know whether the investment authorized by 11 (b) of the Rules of the Public Trustee Ordinance is an investment which would be open to the private trustee in Kenya under the law of that country, apart from any special clause in the trust deed.

I should myself deprecate very strongly legislation which gave me powers of investment which were not open to private trustees under the law, and if such powers were thrust upon me I should scrutinize with the utmost possible caution any proposed investment under ^{them} such powers. How far 11 (b) of the Public Trustee Ordinance was dictated by Government policy in Kenya, I do not know, but I feel sure that in this country no legislation devised to enable this Office to further Government policy would have any chance of success. The position may be different in a place like Kenya, but here it is of the highest importance not only that my investment policy should be entirely free from any suggestion of Government control, but that settlers and beneficiaries should know that it is so free.

All the above is, of course, on the assumption that an investment under 11 (b) would not be open to a private trustee and that its intention was to help the position of the agricultural community in the Colony, an assumption which I should hope is entirely unfounded.

As regards the conduct of the Public Trustee

in Kenya, what view the Court would take as to the meaning of the words "after due inquiry", I cannot, of course, say, but it would seem that such inquiry should not at any rate be less stringent than the inquiry a trustee is bound to make before he invests money upon mortgage under English law, for it would hardly escape notice that 11 (a) authorizes investment by the Public Trustee in Kenya of any investment authorized by law for the time being in England as a Trust investment. Section 8(1) of the Trustee Act 1925 requires a valuation not only by a person reasonably believed to be an able practical surveyor or valuer, but that such person should be employed independently of any owner of the property and the loan made under his advice. Under that Section ~~we~~, and I imagine any other trustee in this country, would refuse to consider ~~the~~ ^a proposition ^{for a mortgage} except on the advice of a surveyor or valuer instructed and employed by ourselves.

As regards mortgages of agricultural property generally, I may say that we are constantly making such investments, but their wisdom of course depends upon the nature of the Trust and the nature of the property.

14

A mortgage on land is not a suitable investment in cases where there is reason to suppose that a distribution of capital would be necessary, or that it may be necessary to raise money, within a limited time. As regards the property, while, of course, it is true that if the investment is lawful at the time it is made it does not become unlawful by reason of a fall in the value of the property, but it is also, of course, incumbent upon the Trustee making the investment to keep an eye on the mortgage and call it in if he has reason to believe that the property would be insufficient upon sale to realize the amount which was mortgaged. This involves the appointment of agents to inspect the property from time to time and it would not be difficult to imagine cases where the location of the property and its nature might make the investment unsuitable.

I don't think there is anything I can usefully add at this stage, but if you think I could be of any further help please don't hesitate to write to me again.

I should, however, see you at in May and at the beginning of September of this year Messrs. Wottons

& Young wrote to me about this case, but I merely acknowledged their letters and thanked them for the information therein.

Yours sincerely,

Ernest Fall

200 76

C. G.

38259/1/76

Mr. Paspin 15/12. f. Q'to for Mr. Paspin's signature.
 Mr. Duncan
 Mr.
 Sir C. Parkinson. *has seen & agrees.*
 Sir G. Tomlinson.
 Sir C. Bottomley.
 Sir J. Shuckburgh.
 Perm. U.S. of S.
 Parly. U.S. of S.
 Secretary of State

15 DEC
 16 11

Hand 24

Dear Barnett,

You were good enough to say that I might send to you the enclosed correspondence which we have had with a firm of solicitors in regard to the administration of a certain estate by the Public Trustee in Kenya. If you find that the matter is not within your province, perhaps you would be so good as to pass this letter on to the appropriate person in your Office.

2. I also enclose copies of the Kenya Public Trustee Ordinance. *We have copies of the*

Rules made under the Ord. but not a consistent form therefore enclose copies of Rules 10 & 11 which appear to be the only ones that

Briefly, the solicitors contend:-
 (a) that the Public Trustee of Kenya ought never to have been authorised by

Rule

DRAFT. CONSON.

H. A. BARNETT, ESQ.
 Office of the Public Trustee.

Corres. (see annexed Schedule)
Already copied.

P.T. Office. (Kenya).

cc. Rules 10 & 11 "

FURTHER ACTION.

appears to be relevant for the purposes of this correspondence

C. O.

Mr.
Mr.
Mr.

Sir C. Parkinson.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

Rule 11 (b) to invest Trust funds in mortgages on farm lands in Kenya:

(b) that, moreover, in making these particular investments the Public Trustee did not exercise reasonable prudence; and that generally the circumstances in which these investments were made show that the Public Trustee is very imperfectly acquainted with the principles on which his business should be conducted;

and (c) that the Government of Kenya is consequently under a moral obligation to make good the losses which Miss Bright Williams has sustained.

4. We should be most grateful to have the views of your Department on these contentions ~~in particular~~.

5. I have not thought it necessary to trouble you with the despatches received from the Governor since their substance has been fully embodied in the letters of the 16th of October and the 4th of November from the Colonial Office to the Solicitors.

6. The only relevant observation by

and also on any other points in the correspondence generally which you may think call for comment.

DRAFT.

(38259/2/36)

FURTHER ACTION.

the Governor which was not so included was to the effect that any admission of moral liability to make good the losses suffered by Miss Bright Williams would create a precedent which would make it difficult to resist other similar claims, should they arise. We have no information in the Colonial Office as to the total amount of the liabilities in which the Government of Kenya might thereby be involved, though we have before us one other case which has however not yet reached the stage of a claim for compensation in which the amount involved is £14,655.

7. You will see from memorandum 12 of the Colonial Office letter of the 16th of October that the Public Trustee of Kenya now agrees, in the light of

experiencing

experience, that the investment of Trust monies in agricultural land in Kenya is undesirable, that he has not in fact invested monies in such lands since February 1930, and that it is now proposed to amend the relevant Rule. One thing which we shall have to consider in the Colonial Office is whether the attention of all Colonial Governments should be drawn to the unfortunate results of permitting such investments in Kenya, and whether they should each be asked to consider, in the light of their particular local circumstances, whether the investments of Trust monies in mortgages on agricultural lands, or on other forms of immovable property within the Colony, should continue to be permitted.

8. It will probably be found necessary for the various issues which arise to be discussed by the various people in the Colonial Office who are concerned in these matters, and it would be most helpful if we could have the assistance at

any

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

any such discussion, of someone from your office. In any case however we should be grateful for a preliminary indication of the views of your Office on the issues raised in the Kenya case which is dealt with in the enclosed correspondence. If the Public Trustee would prefer his advice to be sought in an official letter, we will of course do so.

Yours sincerely,

FURTHER ACTION.

KENYA

PUBLIC TRUSTEE ORDINANCE.

Rules.

X X X X X X

Investment
of monies.

10. The Public Trustee may invest or retain invested money belonging to any trust and coming to his hands in any investment authorised by the trust instrument or (save as otherwise provided by that instrument) authorised by Rule 11 hereof for the investment of trust funds, and may (save as so provided) retain any investment existing at the date of the commencement of the trust: Provided that he shall not invest in or hold any investment in such manner as to expose himself to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

Authorized
investments.

11. It shall be lawful for the Public Trustee to invest trust monies in his hands in any of the following securities, viz.:-

- (a) Any investment authorised by law for the time being in England as a trust investment;
- (b) Any investment in the purchase of or a first mortgage or mortgages or a first charge or charges secured on immovable property within the Colony up to one half of the value thereof, as estimated after due enquiry, and which mortgage, mortgages, charge or charges shall be registered with the Registrar of Documents or the Registrar of Titles;

Provided that when the immovable property is leasehold a period of not less than fifty years of the

the term of the lease shall be unexpired."

(e) Fixed deposits in banks approved by the Governor.

X X X X X X

B

C. O.

Mr. Flood 1-12

Mr. Duncan 4/12/88

fs.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Dec 1936



Gentlemen

I am re to ack. the recd. of your letter of the 14th of Nov. regarding the case of Miss E. Bright-Williams & to thank you for the very full and careful statement of your views which you have furnished and which will be of great assistance in considering the matter further.

2. You will realize that your letter raises important questions of principle which will require close examination and that some time must elapse before a reply can be returned. I am however to inform you that a sum of £3,500 is the limit allowed to the Land Bank in making advances to be used for the purpose of reducing or discharging an existing first mortgage, in

DRAFT.

Messrs Wotton & Young.

Copy to Messrs Wotton & Young (17 Nov 1937)

FURTHER ACTION.

Revised to Mr. Jackson Flood

Sigs. J. B. W. Flood.

E

(30)

This letter falls into two parts:-

- (1) A justification of their views
 - (a) that circumstances in Kenya were such that authority ought never to have been conferred on the Public Trustee to invest Trust funds in mortgages on local farms.
 - (b) that (quite apart from this) the Public Trustee did not in fact exercise a proper judgment in making these particular investments. (They go further and say that, from their views as disclosed, neither the Public Trustee nor the Governor are sufficiently aware of the true principles on which a Public Trustee should act).
- (2) A demand that something should be done (and in paragraph 27 they offer a suggestion) to make good the losses of their client. This is coupled with a threat to take steps to have the matter ventilated in Parliament if the *Kenya* Government is not persuaded to devise some means of meeting what they consider to be their client's just claims.

As regards (1), they seem to me to have made out an unanswerable case. If this is agreed then the question for consideration is whether any obligations on the Government of Kenya to make good the losses suffered by Mr. [redacted] in the further minutes on No. 10 following 28th [redacted] this year there was a fairly [redacted] description that there is such a moral obligation in their minutes of 1974 and 1975. [redacted] Sir C. Bottomley [redacted] [redacted]

As to (2), the Government's [redacted] is no such obligation since (1) [redacted]

the circumstances of the time to cause it to be doubted that it was proper for the Public Trustee to invest trust funds in mortgages on local farms and (b) that in making these particular investments the Public Trustee acted in good faith and with reasonable prudence.

I am inclined to agree with the Solicitors that these arguments are not valid, if it is admitted that they are based on an inadequate appreciation of the principles which should govern these matters.

The Governor also points out that to admit moral liability in the case of Miss Bright Williams will open the door to many other similar cases. We have no information as to the total amount that would be involved, though we have particulars of one other case where the amount involved is £14,655.

As regards the second part of the letter, it is clear that the Solicitors want the matter referred to the Governor and that they will not, in the meantime, proceed to take political action. But they clearly want the Secretary to state to the Governor that he considers that Kenya is under a moral obligation to pay the debt.

It is clear that the threat of political action has caused the Governor to think that he must come for the Secretary of State to cease to act solely as a P.O. between the Government of Kenya and the Solicitors. We do not appear to have sufficient material, in the way of facts and arguments put forward by both sides, for the Secretary of State to come to a

35
conclusion as to the merits of the case. If the views expressed in the earlier part of this letter are accepted there can be no two opinions as to the conclusion as to the moral liability of the Government of Kenya; and if this was an isolated case I think that the Secretary of State would be justified in urging the Government of Kenya to find some means of making good these losses.

But it seems to me to be difficult to go quite so far in ignorance of what may be involved in other cases, and I suggest that the Governor should be requested to furnish full particulars of the amounts involved in all such cases. I must confess however that I have not been able to form any opinion on the question as to what would be the proper action to take in this particular case if it should turn out that the total consequential moral liabilities in other cases are very large.

As regards points of detail in the letter:- paragraph 24. In addition to No. 14 the paragraph at the end about the confidential character of some of the information given to the Solicitors, what I had in mind was

(a) that, in the Harper case, the valuation by Mr. Purdow was made for a third party and for the Public Trustee and I was entitled to think that the Secretary of State could properly agree to its public disclosure; and

(b) that I had a similar doubt as to the information about the ^{disclosure of the} private affairs of Mr. Douglas and Mr. [redacted] generally.

The question whether the Solicitors can be authorised to make public use of this information seems to be a matter for the legal advisers.

paragraph 27.

(38259/2/36).

X
If we go on this
so will not involve
P

paragraph 27. It is I think clear that the new maximum advance of £3,500 authorised by Section 4 of Ordinance XIV/1932 is the amount that can be advanced to any one borrower.

As regards procedure I am inclined to agree with Mr. Grossmith that the issues are so complicated and important that it would be best to discuss with Mr. Duncan (and ? Sir G. Bushe) when they have had an opportunity for considering this letter.

J. G. Caser
30/11

WOTTON & YOUNG,
SOLICITORS

EDWARD WOTTON
ALFRED ROBERT YOUNG
TELEPHONE RAMSGATE 370

EW/MB

Sir,

RECEIVED

19 NOV 1936

REGY

28, Cavendish Street

Ramsgate Kent

14th November, 1936

re Miss E. Bright-Williams
Ref. No. 38289/1/36

1. We have taken further time carefully to consider your letter of the 16th October last, which incorporated the observations of the Governor of Kenya on this case. We are unable to accept as well founded the Governor's opinion (to be deduced from paragraph 17 of your letter) that our client has no claim against the Government in respect of her losses. It is proposed, therefore, with great respect, further to examine in this letter the evidence in support of her complaints, and by all proper means to press for such recompense as in our opinion should be given on the basis thereof.

2. For the proper consideration of the observations which follow, it is thought that a re-statement of the grounds for our client's case should now be made. The

34
30

asked P.C. [initials]

*100
B.P. if not yours*

*25.
Answer B.2.
Bright-Williams - (over 1737)*

14th November, 1936

contd -

2.

observations of His Excellency the Governor set out in sections (1) and (2) of paragraph 17 of your letter are correct, but incomplete, statements of the basis of this claim. There must be added a further ground from which the other two grow.

3. This further count, from which arises in part the right and standing of our client to address His Majesty's Government, is that the Ordinances and Rules under the authority of which the things complained of were done were in themselves imprudent. The plain truth is that the imprudence which caused the loss had its origin in, and was made possible by an authority which we say - always with great respect - was ill advised.

4. The substance of our contention is that farm land in Kenya Colony never was, in general, at any time a suitable security for trust funds, and that no reasonably prudent trustee ever would have made such an investment: and we say that there was at all material times evidence of the truth

14th November, 1936

contd 1-

4.

valuer must be employed, and that he must have no privity of interest with the borrower. It is clear in such a case, that if the interest of one party should conflict with the other, the valuer is hampered in his judgment by his relationship with and obligations towards both, and the value of his opinion must for that reason be greatly decreased in the mind of a prudent lender. Moreover the price at which a farmer can by friendly negotiation sell a farm, and the price which is likely in Kenya to be bid for the same farm when sold by a mortgagee, are two very different things, we understand.

The farmer ought not to have been entrusted with the valuation, and no Rule or Ordinance should ever have been enacted or made which permitted such imprudent methods on the part of the Public Trustee. Such an action by a trustee in this country would be counted a breach of trust, and he would be held liable in equity to make good any loss. We do not impute any bias, but submit the Public Trustee

14th November, 1936

contd :-

5.

acted on wrong principles, and that the difficulty of obtaining a proper valuation, notwithstanding the Rules permit of enquiry only, should not have been got over as it was, but that the Public Trustee should have declined a security, however, apparently good, in respect of which he was unable, through local circumstances, to act on proper principles. The true worth of these estimates may be gauged from the fact that in reply to our enquiry the Public Trustee wrote us in November 1934 that the present-day value of Mr. Douglas's farm, as estimated by Messrs. Dalgety & Co., who act as agents for the sale of produce, (presumably the opinion of a single man who represents the firm, but on whom the Public Trustee evidently relies), was £10,000, and in a letter ~~was~~ year to us the Public Trustee corrects the figure to £12,000, yet nothing was apparently recoverable in 1934, and only £2,500 to-day which the land Bank are prepared to advance on having three quarters or more in value of the land as security. Could it be contended that in 1934 the Public Trustee would have been

14th November, 1936

6.

justified in advancing half the value, namely, £7,000, if a new mortgage were then contemplated.

7. From the fourth paragraph of your letter, it appears that a further £2,000 was advanced to Mr. Harper upon the same kind of valuation. In this case the valuer, "a practical farmer", owed no duty of care at all to the Public Trustee, as he was employed by the Standard Bank of South Africa. It is admitted, by the Public Trustee, that no professional valuer was available in the district. This haste to invest is further evidence of the divergence of the views and actions of the Public Trustee from the normal, and of the inadequacy of the then existing legislation.

The value placed on the property by valuers or advisers was the value which presumably in their opinion the property could be sold for by the owner thereof, but the value which the Public Trustee required to consider was the value at which the property could be sold in the event of the

49
14th November, 1936

contd :-

7.

failure of the borrower, and that value, according to our information, was nil, since nobody will buy in these circumstances. We submit, too, that the value mentioned in the Public Trustee Rules is the value which could be realised by a mortgagee. It cannot mean any other value. In support of this contention, we would again remark that the Public Trustee has advised us even recently that Mr. Douglas's farm is worth £14,000 in the opinion of Messrs. Dalgety & Co., whom he evidently relies on, yet he cannot apparently realise a £5,500 mortgage, nor find a transferee for the full amount ~~and~~ arrears of interest.

8. It is submitted that there was evidence available at the time these mortgages were granted, of the instability of the Colony, as well as the borrowers, sufficient to have forewarned both the Government itself and the Public Trustee against the action taken.

In 1927 the published statistics show that there was a heavy drop in exports, which was not made good in the

14th November, 1936

contd :-

9.

that it should not be called in before March 1932, was inadvisable and indiscreet. We are not aware of the exact date on which the Public Trustee gave notice calling in Mr. Harper's mortgage money, but we observe that apparently nothing was done until nearly a year had passed from the time when Mr. Harper left the country.

10. It is repeated that the rate of interest paid on the mortgages is by itself an indication of their unsafety at the time they were made. In paragraph 13 of your letter, the Governor says that 8 per cent. was "the normal yield of money invested in the Colony", and deduces therefrom that a security offering 8 per cent. interest must be considered as first class. This is equivalent to saying that any security is first class, the rate of interest from which is "the normal yield" in a particular community; so that, if His Excellency could be satisfied that the normal yield of interest upon mortgages of land in, say, the Sahara Desert, was 99 per cent., he would consider Saharan land to be a

14th November, 1936

contd :-

10.

good trustee investment : er, more obliquely, paraphrasing His Excellency as reported in your letter, that "a rate of interest of 99 per cent. is not indicative of the value of the security".

In 1929 the normal yield of first mortgages of land in England was, we think, not more than 5½ per cent., and the Banks gave 3 per cent. on deposit at the beginning of the year, 3½ to 4 per cent. in October, and 3 per cent. at the end of the year. In October 1929, the 5 per cent. War Loan was 101. The 8 per cent. rate in Kenya therefore indicated that the risk of investments in Kenya farm lands was considered, in Kenya itself, to be 45 per cent. greater than the risk which any prudent Englishman would take, or 27 per cent. greater after supposing that interest would be punctually paid and the rate reduced to 7½ cent. We notice that before the Public Trustee had the handling of our client's money it was on deposit at the National Bank of India Ltd., in Kenya, at 4 per cent.

14th November, 1936

contd :-

11.

We submit that the Public Trustee, if he had given reasonable consideration to the matter, would have assured himself that he could not get 7 or 8 per cent. for money on safe trustee investments at that time. He would have considered that trustee and Government securities were only bringing 5 per cent., and that the loans of his own Colony were not bringing in more, and further, that millions of pounds would have been available from London and other financial centres at the rate of 7 or 8 per cent. if in fact the security was a good one. We consider investments in farm mortgages, generally speaking, to be only comparable to investments in Preference or Ordinary Stocks of industrial companies, especially farm mortgages in Kenya. We can scarcely believe that a person in the position of Public Trustee, uninfluenced by any thought that money already within his country ought preferably to be retained and used therein, and uninfluenced by the indications of safety he may have read into the Public Trustee Rules dealing with permitted investments, could have chosen such

14th November, 1936

contd :-

12.

as a trust investment.

11. In Harper's case, it is clear from the fourth paragraph of your letter that he had present need to repay £6,000 already borrowed, and that the Standard Bank of South Africa Ltd. declined to make the advance to enable him to do so. With no evidence of value, other than the valuation of "a practical farmer", who was never under any duty of care to the Public Trustee, (his valuation was made for the Standard Bank), our client's money was used to make an investment which the holder thereof desired to be rid of, and the Standard Bank apparently considered undesirable.

12. The valuation of Mr. Harper's farm was not in any case favourable. It showed ^{and stated} that by reason of the extensive spoilation in previous years of the main crop (wheat), and on the fact that other types of crop ~~was~~ not established but only in the experimental stage, the value of the farm was difficult to establish. Wheat had been the main crop

14th November, 1936

contd :-

13.

of this farm prior to the date of the Public Trustee's advance thereon, but it is observed from the statistics that from the season 1925-1926, when the wheat crop in the Nakuru district was heaviest, it showed a steady decline year by year. This again should have been observed by the Public Trustee, had he taken due care, and, together with the other available information before referred to, should have been sufficient to cause him to refuse the loan.

13. The Public Trustee chose to invest in an industry which he knew to be of recent growth, and comparatively untried, notwithstanding that he had the whole range of normal and usual trustee securities from which to choose. It should be remembered that the development of land in Kenya Colony by Europeans, on a scientific basis, had begun less than twenty years before the date of the Public Trustee's unfortunate investments. In our opinion, it is questionable whether any reasonable man could believe, that land and a community which less than twenty years before had no order,

14th November, 1936

contd :-

14.

or real development, should be of the nature of trust security, as that term should be understood by men of the wide experience expected to be found in charge of a Public Trustee Department.

Such development as had taken place since the exploitation of Kenya Colony was interrupted for five years during the period of the European war, thus further retarding the growth of the Colony and the solidity of its resources.

14. It is reiterated that the Public Trustee exercised less than the proper standard of diligence when negotiating the loan on Harper's farm. It is not on record that he made any enquiry as to the borrower's original stake in the farm. What price did Mr. Harper pay for this farm? (if he was the original lessee, was that fact known to the Public Trustee at the time of the loan? The report of value upon which the Public Trustee acted was not made for the Public Trustee, but for the Standard Bank of South

14th November, 1936

contd :-

15.

Africa. There was thus no contractual relationship between the farmer who made the valuation and the Public Trustee, and it follows that there was no duty of care upon the valuer. For that reason, the valuation itself could not be relied upon by the Public Trustee to protect himself. When the farmer who made the valuation submitted it to the Standard Bank, it is likely that he wrote a letter with it, and we think that that letter, or a copy of it, should have been obtained, and the valuation should have been read together with the letter, if the true position was to be ascertained. For instance, the letter might conceivably have qualified the estimate of value in some way, such as by stating that it would be difficult to realise it by forced sale, or in some other way have had a bearing on the matter. If there was no letter, then obviously there was an interview, but the Public Trustee did not, so far as we knew, interview the farmer who made the report.

It was known to the Public Trustee that Mr. Harper

contd :-

14th November, 1936

16.

required the loan from the Public Trustee to repay an existing loan to a third party, which had presumably been called in. No enquiry appears to have been made as to the circumstances in which the first loan was being called in, or whether there were any arrears of interest. The fact remained, however, that the Standard Bank had declined to grant an advance. The reason for the Bank's refusal was presumably a doubt as to the value of the security offered. These facts should have been sufficient to put the Public Trustee upon enquiry, and, in our opinion, to have caused him to decline the loan. Even if the Standard Bank had been agreeable to lend to Mr. Harper, that would in itself have been no guarantee that the security offered was adequate for the Public Trustee. The policy of Banking organizations is to maintain movement, even if there are occasional losses, and it follows that they are prepared in certain cases to accept losses in trade and business which are to some extent speculative and for which overdrafts they usually charge a higher rate of interest

14th November, 1936

contd :-

17.

than a normal trustee security produces. They are also able, unlike a trustee, to follow to some extent the varying value of the personal covenant, by reason of the borrowers' accounts being before them.

15. It is submitted that the Public Trustee never took normal and usual care in enquiring into the value of the borrowers' personal covenants. In the case of the Harper mortgage, the Public Trustee did not, according to a letter which we have received from him, consider it necessary to enquire whether the Kuiru coffee estate, of which he knew Harper to be the owner, was charged. He nevertheless accepted the fact of ownership, as he did Mr. Harper's alleged Australian wealth and his agricultural appointment under the Government of the Colony, or tending to show that the borrower was a man of substance. It does not appear, however, that any enquiry whatever was made into Mr. Harper's personal status. This omission is the more regrettable when it is considered that the personal covenant is of great importance even where the real security

14th November, 1936

contd 1-

18.

offered is normal, and of even greater importance where that real security is situated in a locality and used in industry which are both comparatively immature.

16. There appears to have been impressive evidence of the unsatisfactory quality of the personal element, in the Douglas mortgage, at the time when negotiations for the loan were taking place. It appears that at this time, Douglas was obliged under a Bond, the amount of which is believed to be £1,000, to a Mr. Curry. Although the existence of a charge of this nature affects the value of personal security, we are not informed that the Public Trustee made any enquiry as to this Bond, or as to why it was taken, or if any arrears of interest had accrued. No enquiries seem to have been made as to whether Mr. Douglas had any other debts or liabilities of an appreciable amount. In the correspondence relating to the Douglas loan there appears a copy of a letter from the Land Assistant to Mr. Douglas concerning a proposal, then being considered, for conversion

14th November, 1936

contd :-

19.

of Mr. Douglas's farm to a grazing lease. In that letter, mention is made of a "stand premium". We do not know what this stand premium is, but it seems to be some payment which is due from time to time, and the correspondence also states that any survey fees which might be payable under the existing grant would continue to be payable in like manner under the then proposed new grazing lease. We enquired of the Public Trustee in January of this year whether any premium had to be paid at the commencement of the present leasehold terms, and whether any premium or further payment became payable in the future, and he replied to us setting out the rents of the farms and that he was not aware of any premium having been paid or of any premium becoming payable in the future. We are a little concerned as to what the outgoings may actually amount to.

17. An examination of the more important features of the circumstances of the negotiations for Douglas lease provides further evidence of an attitude in the Public

14th November, 1936

contd :-

20.

Trustee towards his responsibilities, which we in this country would regard as casual. We have it from him in correspondence that the Public Trustee made no stipulation as to how the £5,800 advanced should be applied, but he subsequently informs us that £800 out of the amount advanced was for survey fees and arrears of ground rent. Putting the survey fees at as much as £100, the fact is disclosed that a man who proposes to borrow trust money is already indebted to the extent of £700 for rent of the property which he proposes to put in as security. The conclusion which must be drawn, is that the proposed borrower had not for ten years, (with a rent of approximately £71 per annum) been obtaining sufficient return from the security to enable him to pay the primary charge of rent, and it was therefore reasonable to assume that he would be even less able to pay a secondary charge, such as mortgage interest. No enquiry, however, seems to have been made in regard to this by the Public Trustee, as upon our enquiring how much of the £800 represented arrears of interest, he says he is unable to give

14th November, 1936

contd :-

20.

Trustee towards his responsibilities, which we in this country would regard as casual. We have it from him in correspondence that the Public Trustee made no stipulation as to how the £5,500 advanced should be applied, but he subsequently informs us that £800 out of the amount advanced was for survey fees and arrears of ground rent. Putting the survey fees at as much as £100, the fact is disclosed that a man who proposes to borrow trust money is already indebted to the extent of £700 for rent of the property which he proposes to put in as security. The conclusion which must be drawn, is that the proposed borrower had not for ten years, (with a rent of approximately £71 per annum) been obtaining sufficient return from the security to enable him to pay the primary charge of rent, and it was therefore reasonable to assume that he would be even less able to pay a secondary charge, such as mortgage interest. No enquiry, however, seems to have been made in regard to this by the Public Trustee, as upon our enquiring how much of the £800 represented arrears of interest, he says he is unable to give

14th November, 1936

contd :-

20.

Trustee towards his responsibilities, which we in this country would regard as casual. We have it from him in correspondence that the Public Trustee made no stipulation as to how the £5,500 advanced should be applied, but he subsequently informs us that £800 out of the amount advanced was for survey fees and arrears of ground rent. Putting the survey fees at as much as £100, the fact is disclosed that a man who proposes to borrow trust money is already indebted to the extent of £700 for rent of the property which he proposes to put in as security. The conclusion which must be drawn, is that the proposed borrower had not for ten years, (with a rent of approximately £71 per annum) been obtaining sufficient return from the security to enable him to pay the primary charge of rent, and it was therefore reasonable to assume that he would be even less able to pay a secondary charge, such as mortgage interest. No enquiry, however, seems to have been made in regard to this by the Public Trustee, as upon our enquiring how much of the £800 represented arrears of interest, he says he is unable to give

14th November, 1936

contd :-

21.

us the information required.

18. The grounds upon which His Excellency withholds the information referred to in paragraph 16 of your letter are not, we submit with respect, satisfactory. His reply invites the adverse comment, that a frank disclosure of the required statistics would provide further evidence of the imprudence both of the Government of Kenya and the Public Trustee, in their policy of investment of trust money. We think that a comparison of the figures representing

(a) investments made by the Public Trustee in Kenya farm lands, and

(b) the aggregate funds invested by him in all classes of security in 1928-9,

might lead to the conclusion that the Public Trustee had failed to exercise his discretion in a manner to be expected of an ordinary reasonable man of affairs. We think that support for this conclusion would be found in a heavy preponderance of "domestic" or Kenya investments, and we should not be surprised to find that this characteristic of disproportion

14th November, 1936

contd :-

22.

grew with the increasing demands of Kenya farmers for loans to make good the increasing deficits of lean years, and to replace these funds which the more prudent investor was calling in as the signs of collapse became increasingly obvious.

19. In the estimate of value of Mr. Harper's farm assets of a nature other than land are mentioned, which have a considerable aggregate value. We observe from your letter that no attempt is being made to preserve the farm, beyond directing the occasional visit of a neighbouring farmer, and such supervision as may be exercised by certain squatting natives. It is presumed that no charge was taken over these moveable assets at the time of the loan? It would be interesting to know whether, having their value in mind, the Public Trustee ever contemplated a sale by arrangement or by process after judgment of these assets, or part of them, such as the cattle, to realise at least the amount of arrears of interest. No such intention appears from the correspondence.

20. A proposal was recently put forward by the Public

14th November, 1936

contd :-

23.

Trustee, presumably at the instigation of Mr. Douglas, that an advance of £3,500 should be obtained from the Land Bank and repaid to the Public Trustee, thus leaving £2,000 owing to Miss Bright-Williams. The security offered to the Bank comprised the whole of the three farms originally mortgaged, with the exception of Farm 2814, which, according to the particulars thereof contained in the original valuation, is of a quality and value inferior to that of the other two farms. The Public Trustee in writing to us about this proposal gives it strong support, whereas, in our opinion, upon the facts, he should have pressed for the Land Bank to take up a much smaller area than the two richer farms. When the aggregate value of these two farms is analysed, it is found that it is in all probability not less than £5,000, and possibly, if the Public Trustee's opinion is reliable, something nearer £10,000. The value of the 3,654 acres of farm 2814, on the other hand, is problematical, but an optimistic estimate could not, we think, place this value at more than £900 or £1,000, or roughly five shillings

14th November, 1936

contd :-

24.

an acre. A consideration of the Public Trustee's attitude to this proposal, therefore, evokes the thought, that he is not yet able properly to estimate the value of security, or that he is not greatly concerned to have it. It would seem that he has not a true appreciation of the meaning of the term, as applied to trustee investments. It should we think be clear to him, that if the Land Bank is prepared to advance no more than £3,500 upon the two more valuable farms, then the least valuable portion, (namely farm 2814) could not properly be considered as adequate security for £2,000, more especially as the Public Trustee knows that it is impossible, at the present time, to sell these farms, and almost equally impossible to lease them. Moreover, since it was part of this proposal that our client's £2,000 should not be called in for five years, it must be taken into consideration that the value of the security then may be either more or less than now, and that if Mr. Douglas gets into difficulties, he can apply to the Farmers Conciliation Board. What has to be considered by the Public Trustee before confidently recommend-

14th November, 1936

contd :-

ing the proposal, is whether at the end of five years, whatever the condition of farming in the Colony, Miss Bright-Williams can, for an absolute certainty, sell under her powers as mortgagee this farm for an amount sufficient to cover principal, arrears of interest and costs, or say £3,000. We believe that there would be some difficulty in obtaining bids on a forced sale, for one thing. The provisions of the recent Ordinance concerning the Farmers Conciliation Board are another thing to be reckoned with. It is possible that our client's rights might be postponed for a further five years. She would certainly not have the right to sell at the expiration of the five years if the provisions of this Ordinance were invoked. If things get worse instead of better, the value of the land which is unworked at present, and worth say five shillings an acre on a public sale, possibly might be nil. We, with the greatest respect, invite both Mr. Ormsby Gere and His Excellency the Governor to consider this recommended proposal of the Public Trustee as if it were a new investment of his own personal moneys at five per cent., as

*But if you
 will be
 do the
 thing
 in a
 way*

14th November, 1936

contd :-

26.

a trust for, say, his own child, and to inform us of his opinion thereon.

21. We are doubtful what effect upon the value of the securities concerned, and the possibility of obtaining payment of interest, the recently formed Farmers Conciliation Board may have, but it does appear that any positive effect will be against Miss Bright-Williams's interest, both capital and interest of mortgages being in certain circumstances postponed to unsecured creditors. We think it should be impressed upon the Public Trustee that it will be his duty vigorously to guard the interests of our client, if the machinery of the Board is invoked on behalf either of Douglas or Harper. As to Harper, we think that his absence from the Colony probably disqualifies him from obtaining any benefit through the Farmers Conciliation Board. This opinion is expressed with some diffidence, because our examination of the relevant Ordinance has been comparatively cursory.

22. We invite His Excellency to take such opinions as

14th November, 1936

contd :-

27.

are available, to test the truth of our allegations with regard to the undesirability of Kenya farm lands, as an investment, at the time the Public Trustee granted the Douglas and Harper mortgages, and also on the question of whether the 8 per cent. interest stipulated for was an indication of comparative unsoundness or not. The opinions might be obtained from the Public Trustee Department in this country, from the Trustee Departments of every leading Bank in the United Kingdom, from the Paymaster General of the Law Courts and from such Stock Exchange Brokers as His Excellency may consider to have the widest experience in the choice of trustee investments.

23. We have also had under consideration your letter of the 4th instant, and inasfar as any fresh matter arises therein for discussion, our reply thereto is as follows. A rate of 5 per cent. interest on the security suggested is, to our mind, inadequate. The security would not in the first place be accepted at all, under our advice, by any

14th November, 1936

contd :-

28.

client of ours, whether the money to be invested was trust money or not. Since the normal rate of interest in this country for mortgages for the amount proposed is 4 to 4½ per cent., we should expect a return from the security offered of 10 per cent., if the advance was to be made at all.

We find it difficult to treat with due respect His Excellency's attitude to the question of re-valuation. The principles governing loans of trust money on mortgage have as their basis, that the security offered is adequate, and that the opinion of a duly qualified professional valuer should be taken thereon. The proposal under consideration is virtually one for a new mortgage, and a valuation should be made before any opinion can be expressed as to the propriety of granting it. The proposition that the expense of such valuation should fall upon our client, is one which we should not expect to receive from any responsible person with a knowledge of affairs. The rule has always been that such valuations are made at the expense of the borrower. With

14th November, 1936

contd :-

29.

great respect, we are bound to remark that the Governor's opinions, as deduced from paragraph 4 of your letter, provide further evidence of the immaturity of judgment in these matters of His Majesty's Government in Kenya, and in view thereof it is not surprising that errors of policy in the investment of trust moneys have arisen and have been permitted to continue, to the damage of His Majesty's subjects.

24. In paragraph 20 of your letter of the 16th of October the suggestion is made that certain of the information in your letter is confidential in nature, and should be used by us with discretion. We are anxious that we should not be guilty of any breach of confidence, and should like it to be made clear to us, please, as to what particular items of information you desire to be treated by us in confidence, when we will give very careful consideration to our position. This may be important, if action has to be taken by our agent which will carry the consideration of the

14th November, 1936

contd :-

30.

circumstances before Parliament and public opinion in this country at large. At the same time, we feel obliged to point out that all correspondence and information in our possession will belong to our client, who will have paid our costs in the final event unless an arrangement suggested in paragraph ²⁷~~26~~ hereof or something similar is agreed to. Our client's rights are a matter of law as well as of common usage, unless we can be treated as carrying on our negotiations in the interests of both sides. We are therefore in a difficult position, but we are bound to contend on behalf of our client that no material information should be withheld from her advisers.

25. Our considered opinion of the merits of this case are embodied in the fourth paragraph of this letter, and we shall therefore advise our client to rest content with nothing short of full and timely recompense. There is no doubt in our minds that His Majesty's Government in Kenya, and the Public Trustee Department of the Colony, are account-

64

14th November, 1936

contd :-

31.

able for our client's loss. While it is scarcely possible for us to do more than we have already done to convince His Excellency, and Mr. Secretary Ormsby Gore, that our opinions are well-founded, it is possible for our client to appeal to Parliament through public opinion in this country, and the final failure of the methods already pursued would compel her immediately either to relinquish her claim, or to put her case as publicly as possible before His Majesty's subjects, who are logically the final Court of Appeal beyond the Officer of State.

26. We think that it would be comparatively easy for the Government of Kenya to meet our client's wishes. There is some authority in section 25 of the Public Trustee Ordinance of 1925 for the course, and we cannot see that any reasonable doubt can remain as to the justness of her petition, and, furthermore, it would appear to us that means of satisfying her demands are even ready at hand. It is not for us to suggest by what means the Government of Kenya

14th November, 1936

contd :-

32.

can best achieve this object, and it is therefore with diffidence that we do so, in the belief that if the ease with which matters can be arranged are appreciated by the Government, the possibilities will be increased of the matters at issue being settled in a manner satisfactory to all parties.

27. The Land Bank is already prepared to advance £3,500 upon a section of Mr. Douglas's security. We do not know if £3,500 is the limit which can be advanced by the Bank to any one borrower, or whether the limit applies to any one mortgage only. In the latter case, no difficulty should be experienced in obtaining a grant of £5,500, plus arrears of interest, from the Bank on Mr. Douglas's security. The same remarks are applicable, mutatis mutandis, to the ready means of repayment of the mortgage on Mr. Harper's farm. If the Public Trustee's realizations of these properties are to be relied upon, the security is ample for a private investor, and, therefore, more than ample for the Land Bank.

14th November, 1936

contd :-

33.

Even if the values put upon the securities by the Public Trustee can only be accepted as accurate if the values are regarded as "frozen", the security is still such as, by the objects and constitution of the Land Bank, would be rendered satisfactory investment for that institution, which, being a corporate entity, is not affected by the lapse of a few years. In the future event it might even be found that the surplus value in Mr. Douglas's farm balanced any deficiency in Mr. Harper's, and we suggest the combination of the two. The truth of this suggestion is clearer if it is considered, that the objects of the Land Bank must be primarily the assistance of agriculture, and, therefore, of farmers.

If the facilities of the Land Bank cannot be extended to cover any margin beyond a permitted aggregate advance of £3,500, the balance to be found by the Government of Kenya must, we suggest, be regarded as paltry, when compared with the object to be achieved by a settlement of this deplorable dispute. We beg respectfully again to place

14th November, 1936

contd :-

34.

before His Excellency and Mr. Secretary Ormsby Gore, the harmful effect upon the confidence of His Majesty's subjects in both the Government of Kenya, and the Public Trustee Department of that Colony, and all others, which would result from a public discussion and resultant public censure of the history of these transactions.

28. Without wishing to occupy the minds of His Excellency and Mr. Secretary Ormsby Gore with matters which may seem to them to be of small importance, we feel it our duty to mention that the conduct of this correspondence and the prosecution of our client's claim are involving her in expense, our own charges being no inconsiderable item, and we feel inclined to suggest that they should be taken into account in any settlement that may be arrived at, as well as all arrears of interest.

29. We should like to express our great appreciation of the courtesy and attention of your office. May we ask you, in obtaining a final consideration of the matters con-

14th November, 1936

contd :-

35.

tained in this letter, to obtain a ruling from His Excellency with all possible speed.

We are, Sir,

Your obedient Servants,

Wotton & Young

The Under-Secretary of State,
Colonial Office,
London, S.W.1.

C. O.

Mr. Grossmith.

Mr. *Atkin* 3/21

Mr. *Duncan* 3/11/36

Mr. *Flood* 3/11/36

Sir C. Parkinson

Sir G. Taplinson

Sir C. Bottomley

Sir J. Stuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

October, 1936
4 1936

DRAFT.

21

MESSRS. WOTTON AND YOUNG

Copy to Kenya 2 - (Jan 1937)

(1/2)

... the
letter from the ...
... of ... regarding ...
... of the ...
... inherited by Miss Bright-Williams,
and to inform you that the observations
of the Governor of Kenya on the points
raised in your letter of the 24th of
July have now been received.

BT

2. With regard to ~~your comments~~
on the proposed arrangement in respect
of the mortgage on Mr. Douglas' farm,
the Governor ~~states~~ *points out* that the ~~proposed~~
mortgage for £5,500 is secured on
approximately 10,750 acres, which were
valued for the purpose of the mortgage
at £21,308. He is advised by the
Public Trustee that, in the event of

Mr. Douglas

FURTHER ACTION.

Mr. Douglas's proposal being accepted by your client, and, of course, by the Land Bank, Farms Nos. 2808 and 2809, comprising an area of approximately 7,090 acres would form the latter's security for their advance, while Farm No. 2814, approximately 3,654 acres, which was originally valued at £2 per acre, would remain as your client's security for the £2,000 remaining of the original mortgage.

The former statement that the figures in it would appear from these figures, that

conclusions in your letter of the 29th

of July are *therefore* incorrect; and *as far as indicated -* the Governor *para. 13 of the letter from this Dept. you 16th of Oct. he is* suggests that your statement *is not* that the land *is* *unable to accept your view.* (25)

is now practically worthless *to not* justifiable.

In this connection I would *refer* reference to paragraph 13 of the letter from this Department of the 16th of October.

3. *The Finance is advised that in the circumstances the interest proposed at 5 per cent is reasonable and reasonable.*

4. The Governor states that if, as you appear to suggest, it is desired that a

re-valuation of the property should be made,

arrangements could be made accordingly at the

expense of the Estate. He points out that

the

G. G.

Mr.
Mr.
Mr.
Sir C. Parkinson
Sir G. Tomlinson
Sir C. Bottomley
Sir J. Shuckburgh
Perm. U.S. of S.
Parly. U.S. of S.
Secretary of State.

the legislation with reference to the position of secured creditors as defined in Section 2 of the Bankruptcy Ordinance, 1934) is contained in Section 34 of the Ordinance and the Second Schedule thereto, and ^{that} as the legislation is almost identical with

DRAFT.

that in force in England, the reference to preferential treatment of creditors in the event of the subsequent bankruptcy of Mr. Douglas is not understood. He ^{adds} suggests that it ^{will} be appreciated that the Kenya Government could not undertake to furnish any warranty on the lines suggested.

with regard to para. 4 of your letter of the 29th of July.

The Governor states that it is, of course, impossible definitely to indicate any period within which Miss Bright-Williams may expect to recover the balance of her capital.

FURTHER ACTION.

as indicated in paras. 13 & 14 of the
letter from this Dept. of Nov. 16th 1904; however,

adds that nothing further can be done

in regard to Mr. Harper's mortgage

until a sale of the farm can be effected.

The Gov. considers

~~no objection, however, that it is probable~~

that, with ^{the} return of better times, ^{it is probable that} the

mortgage on Mr. Douglas's farm will be

recovered in full ~~and that~~ the proceeds of

a sale of ~~the~~ ^{Mr. Harper's} farm will be

sufficient to cover the greater portion

of the mortgage.

The Gov. observes ^{am. etc.} that it

is ~~stated~~, of course, to be understood
that the term "mortgage" which has
been used throughout this correspondence
means a registered charge under
the Registration of Titles Ordinance
(Chapter 142 of the Revised Edition of the
Laws of Kenya) which is the only
method by which money can be
secured on land under this Ordinance
(vide Section 46 thereof).

J. E. W. Flood

(Signed) J. E. W. FLOOD

AIR MAIL

KENYA

No. 537



3829/1 2
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED

23 OCT 1936

C. O. REGY

14 October, 1936.

Sir,

I have the honour to refer to your despatches Nos. 809 and 654 of the 10th and 24th August respectively, and to previous correspondence on the subject of representations made by Messrs. Wotton and Young regarding the administration by the Public Trustee in this Colony of the property inherited by Miss E. Bright-Williams on the death of her father.

2. The enclosure in your despatch of the 10th August has been examined by the Attorney General and the Public Trustee, and I will now deal seriatim with the comments raised by Messrs. Wotton and Young on the proposed arrangement in regard to the mortgage on Mr. Douglas's farm:-

(1) As stated in paragraph 4 of Mr. Wade's despatch No. 416 of the 12th August, Mr. Douglas's mortgage for £5,500 is secured on approximately 10,750 acres which were valued for the purpose of the mortgage at £21,308.

I am advised by the Public Trustee that, in the event of Mr. Douglas's proposal being accepted by Messrs. Wotton and Young's client and of course, by the Land Bank, Farms Nos. 2808 and 2809 comprising an area of approximately 7,090 acres would form the latter's security for their advance,

while

THE RIGHT HONOURABLE W. ORMSBY GORE, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W. 1

while Farm No. 2814, approximately 3654 acres, which was originally valued at £2 per acre, would remain as Messrs. Wotton and Young's client's security for the £2000 remaining of the original mortgage. The figures given by Messrs. Wotton and Young are therefore incorrect; nor, see paragraph 18 of Mr. Wade's despatch, is their statement that the land is now practically worthless, justifiable. The Public Trustee adds that under the proposed arrangement there is, contrary to Messrs. Wotton and Young's presumption, no portion of the farm or farms which will not be mortgaged.

(2) I am advised that in the circumstances the interest proposal at 5 per cent is regarded as reasonable.

(3) If, as Messrs. Wotton and Young would appear to suggest, it is desired that a revaluation of the property in question should be made, arrangements could be made accordingly at the expense of the Estate.

The legislation with reference to the position of secured creditors (as defined in Section 4 of the Bankruptcy Ordinance, 1930,) is contained in Section 34 of the Ordinance and the second Schedule thereto, and, as the legislation is almost identical with that in force in England, the effect as to preferential treatment of creditors in the event of the subsequent bankruptcy of Mr. Douglas is not understood.

It will

It will be appreciated that the Government cannot undertake to furnish any warranty on the lines suggested.

(4) It is, of course, impossible definitely to indicate any period within which Miss Bright-Williams may expect to recover the balance of her capital, and it should be added that nothing further can be done in regard to Mr. Harper's mortgage until a sale of the farm can be effected. It is, however, probable, as stated in paragraph 13 of Mr. Wade's despatch, that with the return of better times the mortgage on Mr. Douglas's farm will be recovered in full and that the proceeds of a sale of Mr. Harper's farm will be sufficient to cover the greater portion of the mortgage.


3. Generally, in regard to the two final paragraphs of Messrs. Wotton and Young's letter, I have nothing to add to paragraph 12 of Mr. Wade's despatch.

4. It should, of course, be understood that the term "mortgage" which has been used throughout this correspondence means a registered charge under the Registration of Titles Ordinance (Chapter 143 of the Revised Edition) which is the only method by which money can be secured on land held under this Ordinance (vide section 46 thereof).

I have the honour to be,

Sir,

Your most obedient, humble servant,



Brigadier-General

G O V E R N O R

38 259/1/26

C. O.

Mr. Paeris 2/A.

Mr. Flood. 69-10/4

Mr.

Sir C. Parkinson

Sir G. Tomlinson.

Sir C. Bottomley

Sir J. Shackleton

Perm. U.S.A.S.

Exch. U.S.A.S.

Secretary of State

Sir,

I have to enclose the receipt of your despatch No. 24/16 in regard to the administration of the Public Trusts of the estate of Miss Bright Williams & to transmit to you the accy. copies of further copies with Messrs. Wotton & Young.

2 DRAFTS

Kenya

No. 8344

Gov.

To	Wotton & Young	24/8	(No. 18)
- do -		31/8	(No. 19)
To	Wotton & Young	2/9	(No. 21)
- do -		9/9	(No. 22)
To	- do -		(D.H.)

You will observe that I have not thought it expedient to attempt to withhold from you the fact that it is ~~recognized~~ ~~understood~~ that the ~~investments~~ investment of Trust monies in agricultural land in Kenya is ~~not considered~~ not desirable.

FURTHER ACTION.

(Sign)

38259 / 1/36.

75
25

G. O.

Mr. Packer 2/4 (V. minute)

Mr. Dumas 13/10/36

Mr. Flood 13/10

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

G.O.
H 13 OCT 1936

Recd (30)
Archd 28

1 OCT 1936

Gentlemen,

With ref. to the letter from the Dept. of the 9th of Sept., I am to inform you that the Gov. of Kenya has submitted the following observations on the administration of the ^{property} ~~estate~~ ^{integrated} of Mr Bright-Williams & on the various questions, in relation thereto, which were raised in a memorandum which formed the sub. to your letter of the 29th of April, addressed to the Prime Minister.

(22)

2 DRAFTS

Messrs Wolton & Young.

C.S. enclosures 10 2 to No. 20, of the Gov. agrees. Spare copies in envelope annexed).

Done 2/11/36

copy to Kenya

FURTHER ACTION.

Copy to Gov. All 52.

~~KENYA~~

NO. 416

RECEIVED

REGISTERED

REGI

August, 1936.

Sir,

I have the honour to refer to Mr. Thomas's despatch No. 512 of the 11th May, 1936, transmitting a copy of a letter addressed to the Prime Minister by Messrs. Wotton and Young regarding the administration by the Public Trustee in this Colony of the property inherited by a Miss Bright-Williams on the death of her father.

2. I propose in this despatch to confine myself to the administration of the Estate of Miss Bright-Williams and to address you separately on the more general considerations raised in the third paragraph of the despatch under reference.

3. Although Messrs. Wotton and Young do not contest the right of the Public Trustee to invest in mortgages of immovable property, and make no allegation of improper conduct against the Public Trustee, I consider it desirable, in view of their suggestion that Miss Bright-Williams should be given some form of ex-gratia compensation, to set out in this despatch a full statement of the administration of this Estate.

4. Miss Bright-Williams's father died in Kenya in 1917 leaving his daughter a sum of approximately

THE RIGHT HONOURABLE
W. ORMSBY GORE, P.C. M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

approximately £7,800. This amount was lying on deposit in the Supreme Court for a number of years at between three and four per cent, and the Court, in December, 1928, appointed the Public Trustee as Trustee of the Estate.

3. In March, 1929, the Public Trustee invested £5,500 in a first mortgage of a farm owned by Mr. A. W. Douglas comprising some 10,750 acres. The property is in the North Nyeri District about 15 miles east of Tizen township at an altitude of 6,500 feet, and is held on a lease of 999 years dating from 1919. This area was valued by an experienced farmer, ~~Mr. T. J. Murray~~, who was acting for the Mortgagor and the Public Trustee. A copy of ~~Mr. Murray's~~ valuation forms the first enclosure ^{to this despatch}. According to ~~Mr. Murray's~~ estimate the value of that part of the property subsequently mortgaged to the Public Trustee was £21,808, made up as follows:-

The whole of the area of 7,000 acres at £2 per acre ...	£ 14,000, and
5,584 acres of the area of 8,000 acres at £2 per acre ...	£ 7,808.

Mr. Douglas is actively managing this farm and has already paid £1,710 in interest. He owes arrears of interest amounting to £462 and this sum the Public Trustee hopes to secure from him in the near future.

4. In addition to the investment described above the Public Trustee, in June, 1929, invested £2,000 of the balance of Miss Bright-Williams's Estate

8.

in a first mortgage of £4,500 on a farm of a Mr. J.F.H. Harper. This farm is situated on the Mau Escarpment some 20 miles from Elmenteita Station at an altitude of about 8,000 feet and is held on a lease of 99 years dating from 1922. No professional surveyor or valuer was employed by the Public Trustee as no such valuer was available in the district, but in making the loan the Public Trustee relied upon a report on the value of the property made by ~~Mr. Eric Perdee~~ ^{who} ~~who is~~ a practical farmer ~~and~~ ^{has} been in Kenya for a long period. This report, a copy of which forms the second enclosure to this ~~dispatch~~ ^{letter}, was made a few weeks before the loan, on the instructions of the Standard Bank of South Africa, Limited, to whom Mr. Harper had applied for a loan of £8,000. ^{In support of the view} That this property was generally regarded as a valuable security at that time, ^{the Governor mentions} ~~is further evidenced by the facts that~~ before this loan was made, a loan of £5,000 had been made to Mr. Harper on the security of this farm, and that, subsequently, ~~Mr. W.H. Shapley and Mr. H.K. Schwartz~~ ^{advanced} ~~the sum of~~ £1,000 on another mortgage on this property ranking second to the mortgage of the Public Trustee. *The Governor also states that,*

In addition to the value of the security, Mr. Harper's personal covenant was at that time of considerable value as, in addition to interests in Australia, he was also the owner of a large Coffee Estate at Ruiru in the Colony.

5. Mr. Harper left Kenya about the end of April, 1951, leaving a manager, Mr. H.C.H. Townsend, in charge

19

charge of the property. Interest continued to be paid up to 1932, but in October of that year Mr. Townsend relinquished the management of the property. When default occurred numerous demands were made upon Mr. Harper, who always admitted the amount owed, and intimated his preparedness to transfer the property whenever called upon to do so. *It is however stated that,* By this time, however, by reason of the failure of the Australian source of his income, the world slump and local conditions due to drought and locusts, the value of Mr. Harper's personal covenant was nil.

For these reasons the Public Trustee, after full enquiries, satisfied himself that no useful purpose would be served by foreclosing or instituting bankruptcy proceedings.

The Gov. states that,
For G. When Mr. Harper abandoned his farm, every effort was made to lease it and the property was placed on the books of numerous Land Agents throughout the Colony. An offer to lease the farm was received in October, 1932, but as at the same time negotiations were in progress for the sale of the property, the proposal to lease was held in abeyance. Eventually the proposed sale of the farm fell through. In the meantime the offer to lease lapsed and, although strenuous efforts were made by the Public Trustee to get the offer renewed, he was unsuccessful.

A subsequent attempt to let the farm to Mr. Townsend also failed as Mr. Townsend was unwilling to rent more than a small portion of the farm.

Since Mr. Townsend left the farm it has not been cultivated and, beyond its occasional

inspection

5.

inspection by Mr. Posys Cobb, a neighbouring farmer, and the presence of two native squatters as caretakers, no attempt has been made to preserve it.

~~W~~

~~§~~ 7. On the 14th December, 1954, an agreement, a copy of which forms the third enclosure to this despatch, was entered into between Mr. Harper, the Public Trustee, and two other parties by which Mr. Harper undertakes to pay £8,000 to the Public Trustee out of the proceeds of a motor business in London provided that none of the parties take proceedings in bankruptcy or otherwise against him. The preliminary negotiations for the agreement were exhaustive and bankruptcy proceedings were threatened. Mr. Harper offered to file a petition in bankruptcy, but since the parties were of the opinion that he would obtain his release without such difficulty, it was decided not to take proceedings. Mr. Harper has so far kept up his payments under the agreement and it is hoped he will be able to complete it.

Of the sum of £8,000 to be paid to the Public Trustee under this agreement £2888 is on account of money due to Miss Bright-Williams. In the event of this sum being recovered in full there will then be owing to the Public Trustee on behalf of Miss Bright-Williams, in respect of Mr. Harper's mortgage, the sum of £1,118 together with arrears of interest at present amounting to some £700.

My name is...

~~§~~ Section 25 of the Public Trustees Ordinance sets out the position in regard to

Government's

8. ⁵ The Governor claims that

Government's liability for the acts of the Public Trustee. In investing trust monies in immovable property within the Colony the Public Trustee was acting within the powers conferred upon him by Rule 11 of the Public Trustees Rules (~~page 1440 of Volume II of the Subsidiary Legislation~~) as amended by ~~Subs~~ published on page 89 of the ~~Proclamations, Rules and Regulations for 1929~~ which reads as follows:-

" It shall be lawful for the Public Trustee to invest trust monies in his hand in any of the following securities, viz:

- (a) Any investment authorized by law for the time being in England as a trust investment.
- (b) Any investment in the purchase of a first mortgage or mortgages or a first charge or charges secured on immovable property within the Colony up to one half of the value thereof, as estimated after due enquiry, and which mortgage, mortgages, charge or charges shall be registered with the Registrar of Documents or Registrar of Titles.

Provided that when the immovable property is leasehold a period of not less than fifty years of the term of the lease shall be unexpired."

10r and that the limitations imposed by these Rules have been strictly observed. Both the farms upon which the money was advanced were leasehold with more than fifty years of the lease to run, both charges were first mortgages and both were duly registered.

In the case of the money advanced on Mr. Douglas's farm, the security was, at the time that the loan was made, estimated to be almost four times the value of the sum advanced.

In Mr. Harper's case the value of the farm and buildings apart from the stock and equipment was £9,250 which also satisfied the one-half rule.

9. It remains, therefore, for consideration whether the liability in connection with this Estate is (a) one to which the Public Trustee or any of his officers has in any way contributed or (b) one which either he or any of his officers could by the exercise of reasonable diligence have averted.

As regards (a) ^{The Governor is} ~~is~~ of the opinion that the Public Trustee or any of his officers have in no way contributed to the liability; as regards (b) ^{is} ~~is~~ ^{the Governor claims that it} is, of course, easy to be wise after the event and ^{that} it must be admitted that the result of the investments in this case has been unfortunate. ^{He considers however that} The question whether the Public Trustee acted with reasonable discretion or not must, ~~however,~~ be judged in the light of the circumstances prevailing when the investments were made. In the year 1929, it was impossible to foresee the world depression or the continuance of the disastrous phase due to the depression accentuated by droughts and locusts through which the Colony has passed during the past five years.

10. The Gov. submits that, The Public Trustee can in no way be held responsible for this calamity, but it is ^{submitted that it is} ~~is~~ to this factor alone that the depreciation of the value of the security in which the funds were invested must be attributed. Having regard to these considerations and to the value of the farms at the time the loans were made, ^{the Governor} ~~is~~ ^{considers} that the investments were such as a prudent

prudent man could reasonably have made and that the Public Trustee did in fact exercise reasonable diligence in investing the funds in this Estate.

12. ¹¹ ~~As regards~~ ^{upon} the memorandum which accompanied Messrs. Cotton and Young's letter to the Prime Minister, the Governor

~~I have no comments upon paragraphs 1 and 2~~ & offers the following observations:

¹² ~~He~~ ^{He} agrees, in the light of experience, that the investment of Trust monies in agricultural land in Kenya is undesirable and ^{he states that} the Public Trustee has not in fact invested monies in such lands since February, 1960. ~~In view, however, of Messrs. Cotton and Young's representations in the present case I have considered it undesirable to proceed with an amendment of the Rules forthwith since this action might be regarded as tantamount to an abdication by Government of responsibility for the result of these investments. HE has instructed the Public Trustee that investments should not in future be made on the security of agricultural land in the Colony and a suitable opportunity ^{should} be taken later to amend the Rules. ^{does not} ~~He~~ agrees that because part of the money advanced on the £5,500 mortgage was spent in paying off existing charges, it follows that the mortgagor was necessarily unsound as such a course is often adopted when the security is regarded as ample as it was in this case.~~

¹³ ~~He~~ ^{He} ~~Paragraph 4:~~ ^{The Gov. does not consider that it is not not} ~~he~~ presumed that the advances are wholly irrecoverable. The position

B

in paras 3-7 above.

position of the mortgages have⁵ already been fully stated. *considered* With the return of better times it is probable that the mortgage on Mr. Douglas's farm will be recovered in full and that the proceeds of a favourable sale of Mr. Harper's farm partly as grazing land and partly for cultivation, will be sufficient to cover the greater portion of the mortgage thereon. A rate of 8 per cent, which was the original rate of interest in both cases, is not indicative of the value of the security since that rate was the normal yield of money invested in mortgages in this Colony.

14
15 Paragraph 8. It is true that difficulty has been experienced in disposing of Mr. Harper's farm. During the past few years agriculture in Kenya has suffered from the fall in world prices, drought and locusts and few people have been ready to invest in agricultural land. *But* there is every reason to hope that with the continuance of the present favourable seasons it will be found possible to effect sales of farms at reasonable prices.

The Gov. considers however that

Paragraph 9: *The Gov. observes that* there are, of course, no grounds for the suggestion that the Public Trustee was in any way influenced by ~~the~~ Government in making these investments.

The investments made by the Public Trustee have, it is true, in these cases proved unprofitable, but *the Governor* *Public Trustee* ~~we~~ can not agree that ~~the~~ could reasonably have foreseen that the Colony was about to pass through such a difficult period.

The Governor states that the

~~16~~ ~~15~~ **Paragraph 7:** The Public Trustee, on ^{reason for the refusal to furnish} the advice of Government, declined to give to Mr. Hutton the statistics referred to in ^{his} paragraph 7 because these statistics did not deal specifically with either of the two mortgages in which ^{your} his client was interested.

~~16~~ **Paragraph 8:** This Government's reply to Messrs. Hutton and Young forms the fourth enclosure to this despatch.

~~16~~ **Paragraph 9:** No comment.

~~16~~ **16.** It would appear from Paragraphs 10 and 11: ^{The Governor observes that from the former it appears that Messrs. Hutton and Young base their claim for the payment of compassionate compensation to Miss Bright-Williams on the grounds:-}

- (1) that the investments made by the Public Trustee were such as Trustees in England would have hesitated to make;
- (2) that the general public have come to look upon investments made by the Public Trustee as in some way guaranteed, and that it is eminently desirable to maintain this confidence in the Public Trustee.

As regards (1) I have already dealt at some length with the circumstances in which the investments were made ^{his} and I have recorded my view that they were such as a reasonably prudent man could have made at the time.

As regards (2), while I am ⁱⁿ agreement with the view that it is highly desirable to maintain the confidence of the public in the institution of the Public Trustee, I am ^{he is} unable to accept the argument that

have been described in paras 3 & 4 above and, as stated in para 5, the Gov. has

that because an investment made with reasonable prudence by the Public Trustee has proved less successful than was contemplated, compensation is due to the person whose funds have been so invested. [If this argument were accepted it would logically open the door to requests for compensation from all persons whose money invested at a certain rate of interest subsequently yielded less than was expected.]

omit []
100, 11/10/30
A.D.
8

While ^{through the former} I view with the greatest sympathy the loss which ^{Miss Bright-Williams} this lady has sustained ^{she does} I do not feel that there is any obligation on this Government ^{of Kenya} to afford her compensation, [and ^{the} I am of the opinion that to do so would be to create a precedent which would make it difficult to reject claims of a similar nature in the future, should they arise.]

omit []
100, 11/10/30
A.D.

18. The remaining paragraphs of the memorandum will be dealt with in a separate despatch.

19. In conclusion, I transmit for your information a copy of a statement prepared by the Public Trustee showing the payments of interest and principal made to Miss Bright-Williams up to the 20th May, 1930.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. DE WILSON

GOVERNOR'S DEPUTY.

The proposals of the Agricultural
Indebtedness Centre have now been
embodied, with certain modifications,
in the Farmers Assistance Order

(No XVIII of 1936) a copy of which is
enclosed. The Gov. observes that
the deferment of the mortgagee's
right is not compulsory under
the Ordinance. It is clear however
from Sec. 17 of the Order that an
arrangement for the adjustment
of a farmer's affairs cannot be
conferred by the Farmer's
Co-ordination Board established
under the Order, unless the
Board is satisfied - five per cent
in value of the secured creditors
based on the assessed value
of their security as determined
by the Board, agree.

In these circumstances,
unless the security was of
small value, it is unlikely
that a Trustee would be satisfied
and it is probable that the
arrangement would be in
favour of the Trustee if
twenty-five per cent of the

(para 3 of
No. 6 on
38259/36).

creditors did in fact vote for
in addition to the measure of
agreement indicated above.
The Board must also be
assured of the consent of a
majority in value and in
numbers of the unsecured creditors
present and voting who have
a claim for not less than
five pounds.

19
18. It is hoped that the
explanations given in this
letter will enable you now
to advise your client on the
proposals which have been
placed before you by the
Public Trustee in connection
with the mortgage on the farm
of Mr Douglas.

20
19. You will appreciate
that certain of the information
given in this letter is of a
confidential character. Mr. Omdy, G.
is however content to rely on your
discretion as to the use which you
will make of it.

COPY TO REGISTRATION

F- 8-OCT1936
O. O. REGY

24
38259/11

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 8th October, 1936. Received 7-10am 8th October, 1936.

No. 242.

231

Your telegram No. 230

No objection.

C. O.

38259/1/36.

Coated 200
S. 570
210 36
104

Mr. Passini. 2/4 at one

Mr.

Mr.

Mr. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

(20.)

No. 230

Your desp. No 416 of 12th Aug.

Is there any objection to
Solicitors mentioned being

furnished with copies of
the two valuations

which formed enclosure
1 & 2.

DRAFT. Tel (Code).

Governor
Nairobi.

EF

FURTHER ACTION.

WOTTON & YOUNG
SOLICITORS

EDWARD WOTTON
ALFRED ROBERT YOUNG
TELEPHONE RANGATE 370

EW/ME

Sir,



2nd September, 1936

re Miss E. Bright-Williams
Your ref : No. 38132/46/36

We have to thank you for your letter of the 31st ultimo, and we note that you wish to point out to us that the matter is one for the Government of Kenya and not for your Department. We are in doubt whether you are referring to the proposal made by the Public Trustee (which has been the subject of our recent correspondence), to the effect that he is able to arrange a payment off of £3,500 from one mortgage, provided the balance of that mortgage is secured on land the value of which we have no knowledge of, and provided also that the balance shall not be called in for a period of five years at least, and which proposal does not deal with the amount of principal or interest outstanding on the other mortgage of the two, or whether you are referring to the whole matter of both mortgages.

We would point out that previous to corresponding with the Prime Minister on the matter, we had endeavoured to deal with the matter with the Public Trustee of Kenya, and subsequently

Copy to Kenya (26) dated

2nd September, 1936

contd :-

2.

with the Government of Kenya, and received no satisfaction. On your taking the matter up, you informed us that you were calling for a report from the Governor of Kenya, and that when you received it you would communicate with us again. We are unaware whether you have yet received any report, and we trust that your letter of the 31st ultimo is not to be regarded as the final communication which you propose to send to us on the matter. We had hoped that on receipt of the report of the Governor you would have been able to arrange for the undoubted wrong which has been done to our client to be rectified.

Being determined to carry this matter through by every possible and proper means, we took the steps which we have indicated above, namely, that of first taking the matter up with the Public Trustee of Kenya, and, on receiving no satisfaction, of taking the matter up with the Government of Kenya, and again on receiving no satisfaction of taking the matter up with the Prime Minister. We do not think in the interests of the public that the matter should rest there, if nothing further can be done, for here is a thing which in our opinion is definitely against public policy.

2nd September, 1936

contd :-

3.

Assuming, however, that in saying that the matter is one for the Government of Kenya and not for your Department, you are referring to the proposal of the Public Trustee above referred to as to £3,500, we still think that as the matter is under consideration by your office, and as you are still, so far as we know, awaiting the report of the Governor, we should not interfere, and further that as the matter is under consideration, presumably, by the Government of Kenya, who are also in communication with your office, the proposals of the Public Trustee should not have been put forward to us but should have been put forward by the Public Trustee of Kenya to the Government of Kenya.

We would add that we also, of course, realise the difficulties of the situation, but we cannot think that the Government of this country, which has some control over the Government of Kenya, is prepared to allow either such a state of affairs as enables such a loss as has been incurred to continue, or to allow the loss incurred to remain unrectified. We feel that the Government of Kenya should accept responsibility for what might be termed the indiscretion of its Public Trustee, and that it is in the

13
2nd September, 1936

contd :-

4.

interests of the Government of Kenya to do so, as it is also in the interests in a broad sense of the Government of this country to suggest to the Government of Kenya, as well as to other colonial Governments, that where their Public Trustee has invested money in what might be termed indiscrete ways, they should accept responsibility. Had this money been invested by the Public Trustee in the loans of his own Colony or in any of the normal range of trustee securities, and had there been some national disaster, whereby these moneys became lost, the beneficiary under age would not have been in any a worse position than the hundreds of thousands of others, but here is an exceptional case which stands entirely by itself, so far as we know, where money was not invested in any of the normal range of securities, but was invested in a security which we venture to submit would not have been selected by any ordinary business man of reasonable experience in England, and the case is altogether on a different footing upon that ground.

We feel, therefore, that not only should the Colonial law be altered in this and other Colonies, but that every possible effort should be made to rectify the injustice done in this

74
2nd September, 1936

contd :-

5.

case. We feel that possibly the proposals which has been recently made for the Land Bank to advance £3,500 on the one mortgage which is partly good is a step forward, but in so far as it may be impliedly an offer of all that our client may expect to receive out of the total invested, it should not in our opinion be accepted, and it is disheartening to think that £3,500 is all that can be recovered out of the total of this young lady's money which was entrusted by the Order of the Court to the Public Trustee of Kenya. We feel that the public of this country, if the facts were known to them, would be indignant, and that the Government of this country would realise that this is a wrong which most certainly should be righted.

We are, Sir,

Your Obedient Servants,

Walter Young

The Under Secretary of State,
Colonial Office,
London, S.W.1

Mr. Hill
KENYA

NO 1111



RECEIVED
31 AUG 1936
O. C.

August, 1936

Sir,

I have the honour to refer to Mr. Thomas's despatch No. 312 of the 11th May, 1936, transmitting a copy of a letter addressed to the Prime Minister by Messrs. Wotton and Young regarding the administration by the Public Trustee in this Colony of the property inherited by a Miss Bright-Williams on the death of her father.

2. I propose in this despatch to confine myself to the administration of the Estate of Miss Bright-Williams and to address you separately on the more general considerations raised in the third paragraph of the despatch under reference.

3. Although Messrs. Wotton and Young do not contest the right of the Public Trustee to invest in mortgages of immovable property, and make no allegation of improper conduct against the Public Trustee, I consider it desirable, in view of their suggestion that Miss Bright-Williams should be given some form of ex-gratia compensation, to set out in this despatch a full statement of the administration of this Estate.

4. Miss Bright-Williams's father died in Kenya in 1917 leaving his daughter a sum of approximately

THE RIGHT HONOURABLE
W. ORMSBY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1

Wotton & Young v. Bright-Williams (25)

approximately £7,800. This amount was lying on deposit in the Supreme Court for a number of years at between three and four per cent, and the Court, in December, 1928, appointed the Public Trustee as Trustee of the Estate.

In March, 1929, the Public Trustee invested £5,500 in a first mortgage of a farm owned by Mr. A.W. Douglas comprising some 10,750 acres. The property is in the North Nyeri District about 15 miles east of Timau township at an altitude of 6,500 feet, and is held on a lease of 999 years dating from 1919. This area was valued by an experienced farmer, Mr. T.J. Murray, who was acting for the Mortgagor and the Public Trustee. A copy of Mr. Murray's valuation forms the first enclosure to this despatch. According to Mr. Murray's estimate the value of that part of the property subsequently mortgaged to the Public Trustee was £21,508, made up as follows:-

The whole of the area of 7,000 acres at £2 per acre ...	£ 14,000, and
3,654 acres of the area of 6,000 acres at £2 per acre ...	£ 7,508.

Mr. Douglas is actively managing this farm and has already paid £1,710 in interest. He owes arrears of interest amounting to £462 and this sum the Public Trustee hopes to secure from him in the near future.

5. In addition to the investment described above the Public Trustee, in June, 1929, invested £2,000 of the balance of Miss Bright-Williams's Estate

97

in a first mortgage of £4,500 on a farm of a Mr. J.F.H. Harper. This farm is situated on the Mau Escarpment some 20 miles from Elmenteita Station at an altitude of about 8,000 feet and is held on a lease of 99 years dating from 1922. No professional surveyor or valuer was employed by the Public Trustee as no such valuer was available in the district, but in making the loan the Public Trustee relied upon a report on the value of the property made by a Mr. Eric Pardoe who is a practical farmer and has been in Kenya for a long period. This report, a copy of which forms the second enclosure to this despatch, was made a few weeks before the loan, on the instructions of the Standard Bank of South Africa, Limited, to whom Mr. Harper had applied for a loan of £6,000. That this property was generally regarded as a valuable security at this time is further evidenced by the facts that before this loan was made, a loan of £5,000 had been made to Mr. Harper on the security of this farm, and that, subsequently, Mr. W.T. Shapley and Mr. H.E. Schwartz advanced the sum of £1,000 on another mortgage on this property ranking second to the mortgage of the Public Trustee.

In addition to the value of the security Mr. Harper's personal covenant was at this time of considerable value as, in addition to interests in Australia, he was also the owner of a large Coffee Estate at Ruiru in this Colony.

6. Mr. Harper left Kenya about the end of April, 1931, leaving a manager, Mr. H.C.H. Townsend, in charge

charge of the property. Interest continued to be paid up to 1932, but in October of that year Mr. Townsend relinquished the management of the property. When default occurred numerous demands were made upon Mr. Harper, who always admitted the amount owed, and intimated his preparedness to transfer the property whenever called upon to do so. By this time, however, by reason of the failure of the Australian source of his income, the world slump and local conditions due to drought and locusts, the value of Mr. Harper's personal covenant was nil.

For these reasons the Public Trustee, after full enquiries, satisfied himself that no useful purpose would be served by foreclosing or instituting bankruptcy proceedings.

7. When Mr. Harper abandoned his farm every effort was made to lease it and the property was placed on the books of numerous Land Agents throughout the Colony. An offer to lease the farm was received in October, 1932, but as at the same time negotiations were in progress for the sale of the property, the proposal to lease was held in abeyance. Eventually the proposed sale of the farm fell through. In the meantime the offer to lease lapsed and although strenuous efforts were made by the Public Trustee to get the offer renewed, he was unsuccessful.

A subsequent attempt to let the farm to Mr. Townsend also failed as Mr. Townsend was unwilling to rent more than a small portion of the farm.

Since Mr. Townsend left the farm it has not been cultivated and, beyond its occasional

inspection by Mr. Powys Cobb, a neighbouring farmer, and the presence of two native squatters as caretakers, no attempt has been made to preserve it.

8. On the 14th December, 1934, an agreement, a copy of which forms the third enclosure to this despatch, was entered into between Mr. Harper, the Public Trustee, and two other parties by which Mr. Harper undertakes to pay £2,000 to the Public Trustee out of the proceeds of a motor business in London provided that none of the parties take proceedings in bankruptcy or otherwise against him. The preliminary negotiations for the agreement were exhaustive and bankruptcy proceedings were threatened. Mr. Harper offered to file a petition in bankruptcy, but since the parties were of the opinion that he would obtain his release without much difficulty, it was decided not to take proceedings. Mr. Harper has so far kept up his payments under the agreement and it is hoped he will be able to complete it.

Of the sum of £2,000 to be paid to the Public Trustee under this agreement £888 is on account of money due to Miss Bright-Williams. In the event of this sum being recovered in full there will then be owing to the Public Trustee on behalf of Miss Bright-Williams, in respect of Mr. Harper's mortgage, the sum of £1,112 together with arrears of interest at present amounting to some £700.

9. Section 25 of the Public Trustees Ordinance sets out the position in regard to

Government's liability for the acts of the Public Trustee. In investing trust monies in immovable property within the Colony the Public Trustee was acting within the powers conferred upon him by Rule 11 of the Public Trustees Rules (page 1440 of Volume II of the Subsidiary Legislation) as amended by Rules published on page 69 of the Proclamations, Rules and Regulations for 1929 which reads as follows:-

- " It shall be lawful for the Public Trustee to invest trust monies in his hand in any of the following securities, viz:
- (a) Any investment authorised by law for the time being in England as a trust investment.
 - (b) Any investment in the purchase of a first mortgage or mortgages or a first charge or charges secured on immovable property within the Colony up to one half of the value thereof, as estimated after due enquiry, and which mortgage, mortgages, charge or charges shall be registered with the Registrar of Documents or Registrar of Titles.

Provided that when the immovable property is leasehold a period of not less than fifty years of the term of the lease shall be unexpired."

10. The limitations imposed by these Rules have been strictly observed. Both the farms upon which the money was advanced were leasehold with more than fifty years of the lease to run, both charges were first mortgages and both were duly registered.

In the case of the money advanced on Mr. Douglas's farm, the security was, at the time that the loan was made, estimated to be almost four times the value of the sum advanced.

In Mr. Harper's case the value of the farm and buildings apart from the "cash on hand" was 29,250 which also satisfied the one-half rule.

11. It remains, therefore, for consideration whether the liability in connection with this Estate is (a) one to which the Public Trustee or any of his officers has in any way contributed or (b) one which either he or any of his officers could by the exercise of reasonable diligence have averted.

As regards (a) I am of the opinion that the Public Trustee or any of his officers have in no way contributed to the liability; as regards (b) it is, of course, easy to be wise after the event and it must be admitted that the result of the investments in this case has been unfortunate. The question whether the Public Trustee acted with reasonable discretion or not must, however, be judged in the light of the circumstances prevailing when the investments were made. In the year 1929 it was impossible to foresee the world depression or the continuance of the disastrous phase due to the depression accentuated by droughts and locusts through which the Colony has passed during the past five years.

The Public Trustee can in no way be held responsible for this cataclysm, but it is to this factor alone that the depreciation of the value of the security in which the funds were invested must be attributed. Having regard to these considerations and to the value of the farms at the time the loans were made, I consider that the investments were such as a

prudent

prudent man could reasonably have made and that the Public Trustee did in fact exercise reasonable diligence in investing the funds in this estate.

12. I have the following comments to make upon the memorandum which accompanied Messrs. Wotton and Young's letter to the Prime Minister.

I have no comments upon paragraphs 1 and 2.

Paragraph 3: I agree, in the light of experience, that the investment of Trust monies in agricultural land in Kenya is undesirable and the Public Trustee has not in fact invested monies in such lands since February, 1930. In view, however, of Messrs. Wotton and Young's representations in the present case I have considered it undesirable to proceed with an amendment of the Rules forthwith since this action might be regarded as tantamount to an admission by Government of responsibility for the result of these investments. I have instructed the Public Trustee that investments should not in future be made on the security of agricultural land in the Colony and a suitable opportunity will be taken later to amend the Rules. I cannot agree that because part of the money advanced on the £5,500 mortgage was spent in paying off existing charges, it follows that the mortgagor was necessarily unsound as such a course is often adopted when the security is regarded as ample as it was in this case.

13. Paragraph 4: It must not be presumed that the advances are wholly irrecoverable. The position

position of the mortgages have already been fully stated. With the return of better times it is probable that the mortgage on Mr. Douglas's farm will be recovered in full and that the proceeds of a favourable sale of Mr. Harper's farm partly as grazing land and partly for cultivation, will be sufficient to cover the greater portion of the mortgage thereon. A rate of 8 per cent, which was the original rate of interest in both cases, is not indicative of the value of the security since that rate was the normal yield of money invested in mortgages in this Colony.

14. Paragraph 5: It is true that difficulty has been experienced in disposing of Mr. Harper's farm. During the past few years agriculture in Kenya has suffered from the fall in world prices, drought and locusts and few people have been ready to invest in agricultural land. But there is every reason to hope that with the continuance of the present favourable seasons it will be found possible to effect sales of farms at reasonable prices.

15. Paragraph 6: There are, of course, no grounds for the suggestion that the Public Trustee was in any way influenced by this Government in making these investments.

The investments made by the Public Trustee have, it is true, in these cases proved unprofitable, but I can not agree that he could reasonably have foreseen that the Colony was about to pass through such a difficult period.

16. Paragraph 7: The Public Trustee, on the advice of Government, declined to give to Mr. Wotton the statistics referred to in paragraph 7 because these statistics did not deal specifically with either of the two mortgages in which his client was interested.

Paragraph 8: This Government's reply to Messrs. Wotton and Young forms the fourth enclosure to this despatch.

Paragraph 9: No comment.

17. It would appear from paragraphs 10 and 11 that Messrs. Wotton and Young base their claim for the payment of compassionate compensation to Miss Bright-Williams on the grounds:-

- (1) that the investments made by the Public Trustee were such as Trustees in England would have hesitated to make;
- (2) that the general public have come to look upon investments made by the Public Trustee as in some way guaranteed, and that it is eminently desirable to maintain this confidence in the Public Trustee.

As regards (1) I have already dealt at some length with the circumstances in which the investments were made and I have recorded my view that they were such as a reasonably prudent man could have made at the time.

As regards (2), while I am in agreement with the view that it is highly desirable to maintain the confidence of the public in the institution of the Public Trustee, I am unable to accept the argument that

11.

that because an investment made with reasonable prudence by the Public Trustee has proved less successful than was contemplated, compensation is due to the person whose funds have been so invested. If this argument were accepted it would logically open the door to requests for compensation from all persons whose money invested at a certain rate of interest subsequently yielded less than was expected.

While I view with the greatest sympathy the loss which this lady has sustained I do not feel that there is any obligation on this Government to afford her compensation, and I am of the opinion that to do so would be to create a precedent which would make it difficult to reject claims of a similar nature in the future, should they arise.

18. The remaining paragraphs of the memorandum will be dealt with in a separate despatch.

19. In conclusion, I transmit for your information a copy of a statement prepared by the Public Trustee showing the payments of interest and principal made to Miss Bright-Williams up to the 28th May, 1936.

I have the honour to be,
Sir,

Your most obedient, humble servant,

A. W. Wade
GOVERNOR'S DEPUTY.

T.J. Murray 30.10.26.

Narania,

P.O. Meru.

Messrs. Hamilton Harrison & Mathews,
Solicitors,
Nairobi.

Dear Sirs,

Mr. A. Douglas of North Kenya has asked me to give you an idea of the value of his properties up here. They lie in two distinct areas (1) 7000 acres below the escarpment at an elevation of from 5000 ft to 6000 ft above sea level and (2) 6000 acres above the escarpment at an elevation of from 7000 ft to 8000 ft above sea level.

1. This area of 7000 acres has two distinct values. Firstly land under irrigation in extent 182 acres, secondly the purely grazing area suitable for stock. The 182 acres under irrigation has been proved excellent coffee land and has actually 90 acres under coffee and the balance under maize. As this irrigated land gives absolute immunity from droughty spells, I consider this area under irrigation to be worth £6000/-, and the balance of roughly 7000 acres and excellent grazing is worth £1-0-0 an acre giving a total value for this land of 13000/- to which can be added £1000/- for fixed permanent improvements - £14000/-.
2. This area of 6000 acres above the escarpment is proved first class wheat land and also excellent sheep and cattle land. A value of 2£ an acre will be a fair present value. With railway facilities nearer this land will be difficult to purchase at 5£ to 6£ an acre. This gives this block of land a value of £12000/- bringing the total value of Mr. Douglas' land to £26000/-.

Yours faithfully,

Sd/. T.J. MURRAY.

MR. T. HUNGER'S FARM, MAU NAROK, ELMENTEITA.

Area. The farm consists of 2,800 acres held on a 99 years lease and subject to a rental of 6 cents per acre. A further 500 acres is leased annually from the Forestry Department at a rental of 40 cents per acre.

Description of Farm. The farm is situated on the Mau Escarpment at an altitude of about 9,000 feet and is 20 miles from the Elmenteita Station on the Uganda Railway. The land is "down" land interspersed with forest. The arable land varies very considerably in appearance some fields being very rich forest soil, full of humus, whilst such of the land is a lightish grey soil which, on first appearance, would seem to be very hungry and sour. This impression is however obviously incorrect, as I saw plenty of evidence that it is capable of producing an excellent growth of wheat. Good drainage is apparently the only condition necessary to make this soil thoroughly fertile and with this in view, mole draining has been carried out on a considerable scale, and with success.

There are today 1100 acres under cultivation, and it would probably be impossible to increase this by more than about 200 acres. Roughly 500 acres are forest, containing some excellent timber, especially cedar and misharagi. The forest also contains *antunayo* (olive), *a'keo* and *moeri*, and a sprinkling of *podocarpus*. Timber of every description required for all farm purposes can therefore be obtained on the farm.

The farm is well watered, a permanent stream, the Magalla River, flows on the southern boundary, and there is a permanent stream on the north side of the farm leased from the Forestry Department. There are also several good springs, and many ideal sites for dams.

The land, apart from the forest and arable land, is good grazing for stock. Cattle do well, and the native sheep and goats that I saw appeared very healthy indeed.

I would value the land as under:-

Prairie value of 2800 acres at £2 p.a.	£ 5,600
1100 acres under cultivation of which many fields are drained. Value of development at £2 per acre	£ 2,200
	<hr/> £ 7,800

Communications.

At present the only road of access is from Elmenteita station 20 miles distant. This road is practically level for 8 miles from the Station, and then rises nearly 4,000 feet in 12 miles. The road is therefore obviously very difficult, especially in wet weather, though the grades from the farm to the Station are, of course, down hill. There is an alternative route to the Station, which it is proposed to open up. This, according to the Manager, would be very cheap to construct, and the gradients would be very easy. Further, the distance to the Station would be 17 miles as against the present 20 miles.

The farm roads have been very well laid out and have received much care; they must be a very great assistance in the economic management of the farm. I have not put a value to these, though they must have entailed a very considerable expenditure.

Buildings.

The homestead with its garden is extraordinarily

attractive. The house is built of cedar logs, and is lined. At present it is roofed with corrugated iron, but this is being replaced by a heavy type of shingle. It consists of four rooms and a bath room. Close to the house, but not yet completed, is a house and store with a covered carriage way between. I would put the value of the house with the outbuildings at at least £550.

Another house is practically completed some 150 yards from the homestead. This is also built of cedar logs, and could be valued at £300.

There is also a large building built of cedar, and roofed with iron, used as a tool store and workshop. In the latter are 2 circular saws, posho mill, drill, etc. This building I value at £150.

Other buildings near the homestead, all built of cedar, comprise an oil store, stables, and a small assistant's house, the value of which I would put at £130.

In the cultivated area is a large shed with a capacity of 3,000 bags. This is built of cedar poles with a c.i. roof. Poles raised off the ground have been laid close together to form a suitable floor for storing grain. I would value this at £300. (This building is equipped with a hand conveyor)

The total value of the buildings as enumerated above works out at £1430.

Cultivation Equipment.

This consists of the following:-

3 Waggon (steel wheeled and one with cross reach)	£.
1 Scotch Cart	25.
1 Water cart	25.
1 Share in Martin Ditcher and Grader	15.
1 Disc Hillside Plough (old)	5.
1 4-furrow Cockshutt Disc Plough	30.
2 3- " " " " (old)	20.
1 Oliver D.12 Plough	20.
3 Sections Medium weight Harrow	12.
5 " " " " Light " "	15.
3 Geddes Harrows	30.
2 John Deer Disc Harrows	40.
1 Martin Spring Tyne Cultivator	35.
1 Ipswich Cultivator	35.
1 Elder 18 ft. Seeder	15.
1 Roller	2.
3 Wheel barrows	2.
1 Dam Scoop	2.
1 Martin Mole Drain Plough	8.
1 Case Prairie Harvester	550.
1 McCormick Deering Tractor (3 years)	250.
1 Fordson (old but working well) fitted with farm wheels and grid wheels	180.
	<hr/>
Total Valuation	£.1,444.

Workshop Equipment.

Maize Sheller	2.
3 ft. Circular Saw and Bench	33.
Small Circular Saw	10.
Drill (hand or power)	30.
Posho Mill	4.
Forge and anvil	30.
Tools and Spares	280.
Power Jap. engine taken from motor bicycle	15.
	<hr/>
	£. 407.

Stock.

1 Pony	20.
106 Oxen not branded insane and mostly grade @	
£5. 10. 0	583.
56 A.M. & T. @ 26	336.
	<hr/> 719.

Motor Car. Box Body Lodge £ 70.

Total Valuation.

The following figures are a summary of the foregoing detailed valuations.

Land	7,800
Buildings	1,430
Cultivation Equipment	1,444
Workshop	407
Stock	939
Motor car	70
	<hr/> 12,090

In valuing the equipment, both field and workshop, I think my valuations are conservative. Very big allowances for depreciation have been made off the cost price and the cost of replacing or purchasing the same equipment would, of course, be very much higher. The machinery appears to be well looked after, and the stock of tools and spares in the workshop is very exceptionally good. All these are very carefully and methodically stored and maintained, the natural result from which should be low depreciation.

General Remarks.

I would again emphasize that I believe the valuations given for the buildings and equipment are on the low side, especially as all construction work appears to have been done well. In valuing the land, it has been very difficult to ascertain its productive value, as in the past, rust has played such havoc with the wheat crop. The land has proved its capacity to grow wheat, but the correct wheat to grow has not yet been found. The Plant Breeder to the Agricultural Department is confident from his experimental wheats that this is a matter which will be remedied in a very short time, as he believes he will have rust-resistant wheats available within a few years and, in this case, the arable land should be very valuable. On Mr. Harper's farm as here it is a question of hill side farming, with all its consequent difficulties in preventing soil erosion, but this is evidently being faced by Mr. Harper, and considerable attention is being given to prevent wash. Under these circumstances this type of land should retain its fertility, and not deteriorate.

Though wheat has to date been the sole crop, maize has been grown experimentally successfully, and this year barley is being planted on a considerable scale, as this crop stands up well against rust. Buckwheat is also being planted, and I believe it is the intention to try linseed for seed. This has been proved a paying crop at these altitudes.

At the time of my visit, many of the fields sown had germinated and, with the exception of one field, the germination was promising.

(Sgd.) W. J. J.

THIS AGREEMENT is made the 14th day of December One thousand nine hundred and thirty four BETWEEN JULIAN FRANCIS HOWARD MAHARPER of Locketts Between Street Cobham Surrey England Manager (hereinafter called "the First Party") of the first part HELMUTH ERIC SCHWARTZE of Nairobi in the Colony and Protectorate of Kenya Barrister at law MAISE SCHWARTZE of 29 Mulberry Close Beaufort Street Chelsea London England Spinster and WALTER THOMAS SHAWLEY of Nairobi aforesaid Solicitor (hereinafter called "the Second Parties") of the second part WILLIAM MAYBURY KEATINGE of Nairobi aforesaid in his capacity as Public Trustee of the Colony and Protectorate of Kenya (hereinafter called "the Third Party") of the third part and MESSRS ARBUTHNOT LATHAM AND COMPANY LIMITED a Limited Liability Company having its registered offices at 9 Great Saint Helen's Place London E.C.3. England Merchants (hereinafter called "The Fourth Party") of the fourth part

WHEREAS:-

- A. The First Party is indebted to the Second Parties in the sum of Shillings 478,000/- = 478,000/- in respect of a Mortgage and Further Charge upon a coffee plantation in Kenya Colony aforesaid known as "Kesima Estate"
- B. The First Party is indebted to the Third Party in the sum of Shillings One hundred and two thousand six hundred in respect of a Mortgage upon a farm known as "Mau Likia" near Elmenteita in the said Colony of Kenya.
- C. The First Party is indebted to the Fourth Party in the sum of Shillings 85050 in respect of advances made for coffee in and prior to the year One thousand nine hundred and thirty and in respect of which he agreed to give a Mortgage to the Fourth Party making subsequently to the said Mortgage and Further Charge to the Second Parties but such Mortgage was never in fact completed (and was not thought by the parties concerned to be worth completing and registering as the value of the security of the said Kesima Estate was not and is not considered sufficient to cover the indebtedness to the Second Parties).
- D. The First Party is employed by Railton Cars of Cobham aforesaid (hereinafter called "Railton's") at a salary of Five hundred and fifty

pounds per annum free of Income Tax and it is probable that Railton's will enter into an Agreement of Partnership with the First Party.

The Second Third and Fourth Parties have requested the First Party to pay to them respectively the amount of his said indebtedness to them respectively and to redeem the said Mortgages and Further Charge but the First Party is unable to do so.

F. The Second Third and Fourth Parties respectively have agreed not to take any proceedings or other steps to enforce their said debts so long as the First Party shall comply with the provisions of this Agreement and further to release the said debts in the event hereinafter mentioned.

G. NOW IT IS HEREBY AGREED as follows:-

1. The First Party shall at the request of the Second Parties assure the said Kesia Estate to the Second Parties subject to the said Mortgage and Further Charge thereon and at the request of the Third Party assure the said farm known as "Mau Likia" to the Third Party subject to the Mortgage thereon to the intent that the said premises shall vest in the Second Parties and the Third Party respectively freed and discharge from any right or equity of redemption now vested in the First Party in respect thereof respectively.

2. The First Party hereby appoints the Second and Third Parties and each of them his attorneys and attorney in his name and on his behalf at any time or times after any such request as aforesaid shall have been made to execute and do all deeds instruments and things which may be necessary or requisite for vesting the said mortgaged premises in respect whereof the request shall have been made in the Second Parties or the Third Party (as the case may be) freed and discharged as aforesaid.

3. During the continuance of this Agreement the First Party shall pay to the credit of Messrs. Shapley Schwartz and Barret Advocates and Solicitors of Nairobi aforesaid at a Bank in London to be nominated by them on behalf of and for distribution among the Second Third and Fourth Parties as hereinafter provided fifty per

cent of the first One thousand pounds and Sixty per cent of the residue of all net moneys which after deduction of income tax at source by Railton's he may receive from Railton's under any instrument of partnership or otherwise in respect of his share of profits dividends or capital moneys distributed by Railton's or otherwise howsoever except in respect of Salary.

4. The First Party shall not consent to any increase of salary receivable by him from Railton's in consideration of a reduction of his share or interest in the profits dividends or capital moneys distributable by them.

5. If during the continuance of this Agreement the First party shall cease to be employed by Railton's then he shall pay to the said Shapley Schwartz and Barret as aforesaid fifty per cent of the first one thousand pounds and sixty per cent of the residue of the excess (if any) of his annual income over the sum of five hundred and fifty pounds free of Income Tax Provided always that any income derived by the First Party from the investments of his savings of moneys received by him during his employment by Railton's shall not be treated as his income for the purpose of this Clause.

6. If at any time during the continuance of this Agreement the First Party shall become entitled to any moneys or property (other than such savings as aforesaid or the investments thereof) he shall forthwith make over and assign the same to the said Shapley Schwartz and Barret as aforesaid who shall realise the same or so much thereof as shall not consist of moneys and all moneys so made over and the net proceeds of every such realisation shall for the purposes of this Agreement be treated as moneys paid by the First Party hereunder Provided that the total amount to be paid by the First Party under this Agreement from all sources shall not exceed Eight thousand pounds and any surplus which may at any time be held by the said Shapley Schwartz and Barret shall forthwith be paid to the First Party

7. All moneys payable by the First Party pursuant to Clause three hereof shall be paid quarterly on the first day of April

July, October and January in each year and all moneys payable by him under Clause five hereof shall be paid within thirty days after the expiration of the year during which the income in respect whereof the same are payable shall have been received by him.

8. All moneys paid or to be treated as having been paid by the First Party hereunder shall subject to the provisions of Clause 14 hereof be distributed by the said Shapley Schwartz and Barret amongst the Second Third and Fourth parties in the proportions following that is to say (a) to the Second Parties five equal eighth parts thereof (b) to the Third Party two equal eighth parts thereof and (c) to the Fourth Party one equal eighth part thereof.
9. So soon as practicable after the expiration of each year during the continuance of this agreement the First party shall cause to be made out a statement of his income for such year other than income which is not subject to the provisions of this agreement and shall at the request of any of the other parties but at his own cost procure every or any such statement to be audited by the auditors of Hamilton's for the time being and if the First party shall cease to be employed or cease to be a partner in Hamilton's the said audit shall be made by a chartered accountant to be agreed upon by the parties hereto.
10. The First Party shall at his own cost furnish a copy of every such statement and of the auditors certificate (if any) relating thereto to the said Shapley Schwartz and Barret.
11. So long as the First Party shall duly and punctually perform the agreements on his part hereinbefore contained none of the other parties hereto shall take any steps or prosecute any proceedings in Bankruptcy or otherwise against the First Party for recovering payment of the said indebtedness of the First Party to them respectively or any part of such indebtedness.
12. The Second and Third parties hereby respectively indemnify the First Party from and against all liabilities now existing or which may hereafter become due and payable in connection with the said Kesima Estate and the farm known as Mau Likia and they respectively

agree to pay and discharge all such liabilities forthwith or as and when the same become due.

13. So soon as the moneys paid or to be treated as having been paid by the First Party hereunder shall amount in the aggregate to the sum of Eight thousand pounds the other parties hereto respectively shall release and discharge the First Party from all further liability for the payment of and from all claims and demands in respect of his indebtedness to them respectively.

14. IT IS HEREBY AGREED between the Second Third and Fourth Parties that their respective costs and expenses of and incidental to the negotiation preparation execution and carrying into effect of this Agreement and all stamp duties payable in respect of this Agreement or any deed to be executed for giving effect to the same shall be a first charge upon all moneys from time to time in the hands of the said Shapley Schwartze and Barret under the provisions hereof and the said Shapley Schwartze and Barret are hereby authorized to pay such costs and expenses out of the said moneys before distributing the same as hereinbefore provided.

IN WITNESS whereof the parties hereto of the First Second and Third parts have hereunto set their hands and seals and the party hereto of the Fourth part have caused their Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED AND DELIVERED by the above named JULIAN FRANCIS HOWARD HARPER at London, England, this 14th day of December, 1934
Before me:

J.F.H. HARPER.

(SEAL) F.W. Grain,
Notary Public
London.

SIGNED SEALED AND DELIVERED by the above named HELMUTH ERIC SCHWARTZE in the presence of me this undersigned Notary at London, England this 17th day of December, 1934.

H. E. SCHWARTZE.

G.I. Bridges,
Notary Public,
London, England.

(Seal)

SIGNED SEALED AND DELIVERED by the
above named MAISEN SCHWARTZ in
the presence of me the undersigned
Notary at London, England, this
17th day of December, 1934

MAISIE SCHWARTZ

G.I. Bridges,
Notary Public
London, England.

SIGNED SEALED AND DELIVERED by the)
above named WALTER THOMAS SHAPLEY)
in the presence of.....)

W.T. SHAPLEY.

H.R. Huts
Clerk,
Nairobi
Kenya Colony.

SIGNED SEALED AND DELIVERED by the)
above named WILLIAM MAYBURY KEATINGE)
in the presence of me the undersigned)
Notary at London England this 17th)
day of December, 1934)

W.M. KEATINGE.

G.I. Bridges,
Notary Public
London England.

THE COMMON SEAL OF MESSRS. ARBUTHNOT
LATHAM AND COMPANY LIMITED was here-
into affixed in the presence of

R.E. ARBUTHNOT) Directors
A. ABEL SMITH)

R.I. Freeman
Notary Public London.

William Sinclair
Secretary.

COPY

111

THE SECRETARIAT,

NAIROBI, KE NYA.

AIR MAIL.

No. S/A. RG. 14/1/3/III/118.

31st December, 1935.

Sir,

I am directed by His Excellency the Governor to refer to your letter of the 18th November on the subject of Trust Cause No. 2 of 1929, Miss E. Bright Williams, and to inform you that His Excellency is advised that the investments in question were made by the Public Trustee strictly in accordance with the laws of this Colony, and that, after enquiries, His Excellency is satisfied the Public Trustee acted with reasonable prudence in the matter.

In the circumstances, while regretting the hardship caused to your client by the, it is noted, temporary depreciation of the investments, His Excellency regrets that this Government cannot see its way to accepting any responsibility in the matter.

I have the honour to be,

Sir,

Your obedient servant,

(Sd.) A. de V. Wade.

COLONIAL SECRETARY.

Edward Wotton, Esq.,
Solicitor,
28, Cavendish Street,
RAMSGATE,
England.

STATEMENT OF INCOME AND EXPENDITURE 1929 - 1936.

Year	INCOME	AMOUNT	DATE	EXPENDITURE				TOTAL
				Transfers to Capital A/c.	Public Trustee's Fees	Maintenance	paid to Minor	
1929	Interest on Mortgage J.F.H. Harper	800 -						
	" " " A. Douglas	3,850 -	1929					
	" " " G.A. Patel	98 40						
	" " Fixed Deposit	83 08	4,851 48	3,925 00	241 72	5,000 --	9,164 72	
1930	Interest on Mortgage J.F.H. Harper	3,200 -	1930					
	" " " A. Douglas	8,850 -						
	" " " G.A. Patel	258 80	11,708 80	1,900 00	590 91	5,000 --	7,090 91	
1931	Interest on Mortgage J.F.H. Harper	3,900 -	1931					
	" " " A. Douglas	6,850 -						
	" " " G.A. Patel	400 -						
	" " Fixed Deposit	607 80	11,757 80	5,500 00	597 89	5,000 --	11,097 89	
1932	Interest on Mortgage J.F.H. Harper	1,400 -	1932					
	" " " A. Douglas	7,250 -						
	" " " G.A. Patel	80 -	8,730 --		441 50	9,102 46	9,543 96	
1933	Interest on Mortgage A. Douglas	4,950 -	4,950 --	1933				
1934	Interest on Mortgage A. Douglas	1,000 -	1,000 --	1934				
1935	Interest on Mortgage A. Douglas	4,250 -		1935				
	Repayment of Capital J.F.H. Harper	827 52	5,077 52			48 71	3,986 39	4,035 10
1936	Interest on Mortgage A. Douglas for half year ended 27th March, 1936	2,750 -		1936				
	Repayment of Capital, J.F.H. Harper	328 24	3,078 24			350 90	2,560 80	2,909 70
			31,133 24		16,925 00	2,622 24	36,438 24	49,985 48
					Balance of Cash in hand as per Ledger:			1,149 76
			Shs. 31,133 24					51,133 24

Mumbai, 20th May, 1936.

W. K. ...
PUBLIC TRUSTEE.

N.O.T.E:
The Capital value of the estate as received by the Public Trustee in 1929 was Shs. 156,077/-. During 1929, 1930 and 1931, Shs. 10,923/- surplus income was transferred to capital bringing the capital value of the estate up to Shs. 167,000/-. In addition to the sum of Shs. 33,868/35 paid to the minor for maintenance, Shs. 17,000/- on account of capital was refunded in 1932. There is an amount of Shs. 9,850/- arrears of interest due from A. Douglas which it is anticipated will be paid in the near future.

THIS AGREEMENT is made the 14th day of December One thousand nine hundred and thirty four BETWEEN JULIAN FRANCIS HOWARD Manager of Locketts Between Street Cobham Surrey England Manager (hereinafter called "the First Party") of the first part HELMUTH ERIC SCHWARTZ of Nairobi in the Colony and Protectorate of Kenya Barrister at law MAISE SCHWARTZ of 29 Mulberry Close Beaufort Street Chelsea London England Spinster and WALTER THOMAS SHAPLEY of Nairobi aforesaid Solicitor (hereinafter called "the Second Parties") of the second part WILLIAM WAYBURY KEATINGE of Nairobi aforesaid in his capacity as Public Trustee of the Colony and Protectorate of Kenya (hereinafter called "the Third Party") of the third part and MESSRS ARBUTHNOT LATHAM AND COMPANY LIMITED a Limited Liability Company having its registered offices at 7 Great Saint Helen's Place London E.C.3. England Merchants (hereinafter called "The Fourth Party") of the fourth part

WHEREAS :-

- A. The First Party is indebted to the Second Parties in the sum of Shillings 478,000/- = £25900/- in respect of a Mortgage and Further Charge upon a coffee plantation in Kenya Colony aforesaid known as "Kesima Estate"
- B. The First Party is indebted to the Third Party in the sum of Shillings One hundred and two thousand six hundred in respect of a Mortgage upon a farm known as "Mau Likia" near Elmenteta in the said Colony of Kenya.
- C. The First Party is indebted to the Fourth Party in the sum of Shillings 85050 in respect of advances made for coffee in and prior to the year One thousand nine hundred and thirty and in respect of which he agreed to give a Mortgage to the Fourth Party making subsequently to the said Mortgage and Further Charge to the Second Parties but such Mortgage was never in fact completed (and was not thought by the parties concerned to be worth completing and registering as the value of the security of the said Kesima Estate was not and is not considered sufficient to cover the indebtedness to the Second Parties).
- D. The First Party is employed by Railton Cars of Cobham aforesaid (hereinafter called "Railton's") at a salary of Five hundred and fifty

pounds per annum free of Income Tax and it is probable that Railton's will enter into an Agreement of Partnership with the First Party.

E. The Second Third and Fourth Parties have requested the First Party to pay to them respectively the amount of his said indebtedness to them respectively and to redeem the said Mortgages and Further Charge but the First Party is unable to do so.

F. The Second Third and Fourth Parties respectively have agreed not to take any proceedings or other steps to enforce their said debts so long as the First Party shall comply with the provisions of this Agreement and further to release the said debts in the event hereinafter mentioned.

G. NOW IT IS HEREBY AGREED as follows:-

1. The First Party shall at the request of the Second Parties assure the said Kesima Estate to the Second Parties subject to the said Mortgage and Further Charge thereon and at the request of the Third Party assure the said farm known as "Mau Likia" to the Third Party subject to the mortgage thereon to the intent that the said premises shall vest in the Second Parties and the Third Party respectively freed and discharge from any right or equity of redemption now vested in the First Party in respect thereof respectively.

2. The First Party hereby appoints the Second and Third Parties and each of them his attorneys and attorney in his name and on his behalf at any time or times after any such request as aforesaid shall have been made to execute and do all deeds instruments and things which may be necessary or requisite for vesting the said mortgaged premises in respect whereof the request shall have been made in the Second Parties or the Third Party (as the case may be) freed and discharged as aforesaid.

3. During the continuance of this Agreement the First Party shall pay to the credit of Messrs. Shapley Schwartz and Barret Advocates and Solicitors of Nairobi aforesaid at a Bank in London to be nominated by them on behalf of and for distribution among the Second Third and Fourth Parties as hereinafter provided fifty per

cent of the first One thousand pounds and sixty per cent of the residue of all net moneys which after deduction of income tax at source by Railton's he may receive from Railton's under any instrument of partnership or otherwise in respect of his share of profits dividends or capital moneys distributed by Railton's or otherwise howsoever except in respect of Salary.

4. The First Party shall not consent to any increase of salary receivable by him from Railton's in consideration of a reduction of his share or interest in the profits dividends or capital moneys distributable by them.

5. If during the continuance of this Agreement the First Party shall cease to be employed by Railton's then he shall pay to the said Shapley Schwartze and Barret as aforesaid fifty per cent of the first One thousand pounds and sixty per cent of the residue of the excess (if any) of his annual income over the sum of Five hundred and fifty pounds free of Income Tax Provided always that any income derived by the First Party from the investments of his savings of moneys received by him during his employment by Railton's shall not be treated as his income for the purpose of this Clause.

6. If at any time during the continuance of this Agreement the First Party shall become entitled to any moneys or property (other than such savings as aforesaid or the investments thereof) he shall forthwith make over and assign the same to the said Shapley Schwartze and Barret as aforesaid who shall realise the same or so much thereof as shall not consist of moneys and all moneys so made over and the net proceeds of every such realisation shall for the purposes of this Agreement be treated as moneys paid by the First Party hereunder Provided that the total amount to be paid by the First Party under this Agreement from all sources shall not exceed Eight thousand pounds and any surplus which may at any time be held by the said Shapley Schwartze and Barret shall forthwith be paid to the First Party

7. All moneys payable by the First Party pursuant to Clause three hereof shall be paid quarterly on the first day of April

July, October and January in each year and all moneys payable by him under Clause five hereof shall be paid within thirty days after the expiration of the year during which the income in respect whereof the same are payable shall have been received by him.

8. All moneys paid or to be treated as having been paid by the First Party hereunder shall subject to the provisions of Clause 14 hereof be distributed by the said Chapley Schwartze and Barret amongst the Second Third and Fourth Parties in the proportions following that is to say (a) to the Second Parties five equal eighth parts thereof (b) to the Third Party two equal eighth parts thereof and (c) to the Fourth Party one equal eighth part thereof.
9. So soon as practicable after the expiration of each year during the continuance of this agreement the First party shall cause to be made out a statement of his income for such year other than income which is not subject to the provisions of this agreement and shall at the request of any of the other parties but at his own cost procure every or any such statement to be audited by the auditors of Neilton's for the time being and if the First party shall cease to be employed or cease to be a partner in Neilton's the said audit shall be made by a Chartered Accountant to be agreed upon by the parties hereto.
10. The First Party shall at his own cost furnish a copy of every such statement and of the auditors certificate (if any) relating thereto to the said Chapley Schwartze and Barret.
11. So long as the First Party shall duly and punctually perform the agreements on his part hereinbefore contained none of the other parties hereto shall take any steps or prosecute any proceedings in Bankruptcy or otherwise against the First Party for recovering payment of the said indebtedness of the First party to them respectively or any part of such indebtedness.
12. The Second and Third parties hereby respectively indemnify the First Party from and against all liabilities now existing or which may hereafter become due and payable in connection with the said Kesima Estate and the farm known as Mau Likia and they respectively

agree to pay and discharge all such liabilities forthwith or as and when the same become due.

13. So soon as the moneys paid or to be treated as having been paid by the First Party hereunder shall amount in the aggregate to the sum of Eight thousand pounds the other parties hereto respectively shall release and discharge the First Party from all further liability for the payment of and from all claims and demands in respect of his indebtedness to them respectively.

14. IT IS HEREBY AGREED between the Second Third and Fourth Parties that their respective costs and expenses of and incidental to the negotiation preparation execution and carrying into effect of this Agreement and all stamp duties payable in respect of this Agreement or any deed to be executed for giving effect to the same shall be a first charge upon all moneys from time to time in the hands of the said Shapley Schwartz and Barret under the provisions hereof and the said Shapley Schwartz and Barret are hereby authorized to pay such costs and expenses out of the said moneys before distributing the same as hereinbefore provided.

IN WITNESS whereof the parties hereto of the First Second and Third parts have hereunto set their hands and seals and the party hereto of the Fourth part have caused their Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED AND DELIVERED by the above named JULIAN FRANCIS HOWARD HARPER at London, England, this 14th day of December, 1934.
Before us:

J.F.H. HARPER.

(SEAL) F.W. Grain,
Notary Public
London.

SIGNED SEALED AND DELIVERED by the above named HELMUTH ERIC SCHWARTZ in the presence of us this undersigned Notary at London, England this 17th day of December, 1934.

H. E. SCHWARTZ.

G.I. Bridges,
Notary Public,
London, England.

(Seal)

SIGNED SEALED AND DELIVERED by the)
above named MAISE SCHWARTZ in)
the presence of me the undersigned)
Notary at London, England, this)
17th day of December, 1954)

MAISE SCHWARTZ

G.I. Bridges,
Notary Public
London, England.

SIGNED SEALED AND DELIVERED by the)
above named WALTER THOMAS SHARLEY)
in the presence of.....)

W.T. SHARLEY.

H.K. Ebats
Clerk,
Nairobi
Kenya Colony.

SIGNED SEALED AND DELIVERED by the)
above named WILLIAM WAYBURY KEATINGE)
in the presence of me the undersigned)
Notary at London England this 17th)
day of December, 1954)

W.M. KEATINGE.

G.I. Bridges,
Notary Public
London England.

THE COMMON SEAL OF MESSRS. ARBUTHNOT)
LATHAM AND COMPANY LIMITED was here-)
unto affixed in the presence of . .)

N.R. ARBUTHNOT) Directors
R. ABEL SMITH)

R.I. Freegan
Notary Public London.

William Sinclair
Secretary.

COPY

124

THE SECRETARIAT,
NAIROBI, KENYA.

31st December, 1935.

AIR MAIL.

No. S/A.RG.14/1/3/III/118.

Sir,

I am directed by His Excellency the Governor to refer to your letter of the 18th November on the subject of Trust Cause No.2 of 1929, Miss E. Bright Williams, and to inform you that His Excellency is advised that the investments in question were made by the Public Trustee strictly in accordance with the laws of this Colony, and that, after enquiries, His Excellency is satisfied the Public Trustee acted with reasonable prudence in the matter.

In the circumstances, while regretting the hardship caused to your client by the, it is hoped, temporary depreciation of the investments, His Excellency regrets that this Government cannot see its way to accepting any responsibility in the matter.

I have the honour to be,

Sir,

Your obedient servant,

(Sd.) A. de V. Wade.

COLONIAL SECRETARY.

Edward Wotton, Esq.,
Solicitor,
28, Cavendish Street,
RAMSGATE,
England.

WOTTON & YOUNG.
SOLICITORS.

EDWARD WOTTON
ALFRED ROBERT YOUNG
TELEPHONE RAMSGATE 370.

EW/R

24th August, 1936.

Sir,

Your ref:- 38132/46/36

We are in receipt of your letter of the 22nd instant on the subject of Miss Bright-Williams's matter and the Public Trustee of Kenya. We note that you are not in a position to pronounce any opinion on the value of the farm which the Public Trustee of Kenya seems to suggest as security for the balance of the mortgage money.

We feel, and no doubt you will agree, that as this matter is in the hands of your office pending a report from the Governor which you called for, it would be impolitic of us to interfere, and we have not the least wish to do so.

Our client naturally enough takes up the stand that the Public Trustee of Kenya had some seven or eight thousand pounds of her capital and that she now looks to him, being well over 21, for the return of her capital. The proposal of the Public Trustee that has reached us and which involves the repayment of £5500 by the Land Bank, which will take as security apparently the greater portion of the existing security is one which we cannot advise our client

24th August, 1936.

-2-

on, even if we wished to, without knowing the present day value of the remaining land which it is proposed should be security for the balance of the money owing on that particular mortgage.

In order therefore to be able to advise our client we should have to communicate with some source which might provide an independent valuation, or, alternatively - and this is the course which seems to us at the moment preferable - to inform the Public Trustee that our client cannot either consent to or dissent from the proposal and that the Public Trustee must accept responsibility for anything he does.

It appears to us that if the proposal were accepted by our client and subsequently there was difficulty in obtaining in five years' time the balance of that particular portion of her capital, the Public Trustee would be able to say that the responsibility was none of his, and thus escape responsibility for the original choice of investments so far as regards this particular mortgage.

It seems to us that the present situation must be considered in the light of the original investments by the Public

contd :

24th August, 1936

128

-3-

Trustee, the circumstances attending which form the basis of our client's complaint. Having advised our client to appeal directly to His Majesty's Government to examine these circumstances, and for help to lessen the great hardship she has suffered as a result, we feel that she should not in the meantime accept or deal with any proposal which does not come direct from His Majesty's Government.

We are, Sir,

Your Obedient Servants,

Wotton & Co

The Under Secretary of State,
Colonial Office,
London, S.W.1.

WOTTON & YOUNG
SOLICITORS

EDWARD WOTTON
& ROBERT YOUNG

TELEPHONE RAMSGATE 370

EW/MS

Sir,

RECEIVED
F. 1038
REGY
R

102
28, Cavendish Street
Ramsgate, Kent

14th August, 1938

17/8

re Miss Bright-Williams' case concerning the Public
Trustee of Longe
Your reference : 36132/46/36

We have received a letter from the Public Trustee in reply to our recent acknowledgment of his proposals, a copy of which acknowledgment and proposals you have. We enclose a copy of this letter, and we would add that no indication whatever is given of the value of Farm 2814, nor is it stated whether any of the land comprised in it is being worked, and in what way, nor whether there are any buildings on it.

We still adhere to our original views expressed in our first letter to the Prime Minister, and in our client's interests we look to you for guidance as to the present proposals. We thank you for the trouble you are taking in the matter on her behalf, and we cannot help feeling that there is a matter of wide principle involved, which it is right should be dealt with by your office.

We are, Sir,

Your Obedient Servants,

Enc.
The Secretary of State,
Colonial Office,
London, S.W.1.

Wotton & Young

MS 13

copy of Longe (17)

Law Courts,

P.O. Box No. 231

NAIROBI, Kenya

BY AIR MAIL

6th August, 1936

Messrs. Wotton & Young
Solicitors,
28, Cavendish Street,
Ramsgate, Kent,
ENGLAND

Gentlemen,

RE. MISS E. BRIGHT WILLIAMS.
Trust Cause No. 2 of 1929

With reference to your letter dated 28th ultimo, there was never any question of Farm No. 2814 not being sufficient security for the Land Bank. The maximum amount which the Land Bank is permitted to advance for repayment of a mortgage, is £3,500. Mr. Douglas originally suggested applying for a loan of £3,500 and offering the three farms as security, but I stated that I considered it ridiculous to offer the whole area mortgaged to me, and suggested the arrangement which Mr. Douglas agreed to and which was communicated to you in my letter of the 18th ultimo.

I am, Gentlemen,

Your obedient Servant,

W. M. KEATINGE

WOTTON & YOUNG.
SOLICITORS.

EDWARD WOTTON
ALFRED ROBERT YOUNG.

TELEPHONE: RAMSGATE 370.

EW/R

Sir,

re Miss Bright-William's case concerning the
Public Trustee of Kenya
Your reference:- 38132/48/36

With reference to your letter of the 12th May last,
in which you observed that a further communication would be sent to
us when a reply was received from the Governor of Kenya, we think it
right to report to you that by yesterday's post we received a letter
from the Public Trustee of Kenya, a copy of which we enclose for your
information. We also enclose a copy of our reply.

We feel that the acceptance of any such proposal involving
a partial settlement of the matter as a whole would be definitely
inadvisable on the matter of principle, but of course we have to study
the interests of our client, and we think that we must look to you for
some guidance.

The following are a few comments we are able to make off-
hand on the proposal, to which we would draw attention.

1. Mr. Douglas's mortgage for £5500 is secured as far as we

13

copy to Mr. & Mrs. (14)

Encl R

2
10
B.D.
28. Cavendish Street.
Ramsgate, Kent

P/C
3/7