

1926

KENYA

X. 6842

From SMITH C. A.

1878
14th Sept. 1926.

15 SEP 1926

From REGULATION

PORT OF KILINDINI.

1st U.S. of S.

Submits obson on the report of
the Imperial Shipping Committe.

Per U.S. of S.

Part U.S. of S.

Secretary of State

Previous Paper

M. Gago

Handwritten: Mr. Bantley 15/9
Mr. Edgum

Handwritten: Aganda

Subsequent Paper

Handwritten: M. Gago

Mr. Edgcombe,

In accordance with Mr. Ormsby Gore's instructions on 6647, I send these papers for the S. of S. to see at once.

I have collected at the top the important papers for the S. of S. to read; ^{namely} ~~mainly~~ the report of the local Commission, the report of the Imperial Shipping Committee, ^{in 5864} my own memorandum and the comments by Mr. Denham and Mr. Chas. Smith, ^{in 5864} the ⁶⁸⁴² ~~an official~~ manager of the Railway and Harbour Dept. of the Union of South Africa who assisted as a member of the local Commission, and is largely responsible for the terms of the report.

Both Mr. Denham and Mr. Smith have made hay of what Mr. Smith calls my "heroic attempt" to find a way of adopting, in part, the principles of the Imperial Shipping Committee's report without leaving our deep-water wharves empty for all-time. But neither of them has produced a scheme which does not involve the S. of S. throwing over the advice of the Committee constituted to assist His Majesty's Government in matters of this kind; especially ^{difficult} as to throw it over would also involve us in direct war with the Shipping Companies.

If the S. of S. decides that a compromise between the two sets of recommendations must be found we will make another attempt, with the assistance, if not of Mr. Denham and Mr. Smith personally, at all events of the fuller light thrown on the subject by their comments.

For the moment I only add one point as to the first para. on page 3 of Mr. Smith's memorandum. Of course, it was not intended that the first two deep

berths should stand by themselves and not form part of a larger scheme. But that does not affect the present question which is, whether, ¹ if berths ² one and two are to remain empty, it is worth while building berths 3 and 4.

W. S. Estlin

15.9.26.

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W. S. Estlin

27/1/27

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Louis Howley

15.9.26.

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SOUTH AFRICA HOUSE,
TRAFALGAR SQUARE,
LONDON, W. C. 2

12. 4. 25
X. 6842
15 SEP 1926

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Yours respectfully

[Handwritten signature]

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SOUTH AFRICA HOUSE,
TRAFALGAR SQUARE,
LONDON. W C 2

16. 14. 2
X. 6842

15 SEP 1926

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Yours sincerely,

[Handwritten signature]

Financial considerations permitted of its introduction. I wrote to Mr Lewis before I left the Colony inviting his attention to the absence of reference but in his report and Saberton's views but no reply had been received - nor was there time for a reply when I returned - up to the very departure. However I can find nothing of vital importance in Mr Lewis's recommendations which is in disagreement with the Draft Water Bill although there are many important provisions in that bill to which Mr Lewis has not referred in his report.

16. In paragraph 199 of the Report the recommendation is made that the power to grant water rights should rest with a Water Board and not with an individual officer of Government. The Water Board is provided for in the Draft Water Bill on the same basis as the Power Board is provided for in the Electric Power Ordinance 1909. That is - the Board can be established at any time by the Governor in Council and any of the powers, duties and obligations vested by the Ordinance in an individual officer (or in the Governor in Council) can be transferred to the Board for administration by Rules under the Ordinance. If the Ordinance were enacted as at present drafted the Water Board could be established immediately and be given the power of granting water rights as advocated by Mr Lewis.

17. In paragraph 200 together with the first part of paragraph 196, we find the crux of the whole question of the enactment of a water law and its administration in Kenya Colony. The proper administration of a water law, such as those of the Dominions, is expensive because it entails so much lengthy investigation, so much knowledge of carrying quantities, and enquiry into so many details - each involving investigation. Yet it is only by means of such technical administrative staff that the data, on which to base the quantitative determination of water rights, can be made those rights to be granted with a high degree of security of tenure. Could be acquired, and a water law of the type contemplated by Mr Lewis satisfactorily administered. I agree entirely with Mr Lewis's advice. In fact it was largely on account of my ~~adherence to that~~ advocacy of that opinion that Mr Lewis's advice on water law was sought because it was thought by Government that he might be able to devise some water law which, while being cheap to administer, would give greater satisfaction than the present administration of existing law. It is clear that he knows of no method which would be satisfactory, as well as inexpensive.

18. Paragraphs 201 to 204 are in general quite sound. Mr Lewis emphasizes the

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MOMBASA HARBOUR.

I will preface my remarks by stating that, notwithstanding the opinions expressed by the Imperial Shipping Committee, my views as to the proper, most suitable and in fact only satisfactory method of dealing with the port problems of Mombasa remain as set out in the Report of the Port Commission of Enquiry, of which I was a Member.

The Imperial Shipping Committee, whilst concurring generally in the proposals of the Port Commission of Enquiry, is unable to agree with the Commission in two most important particulars, viz., lighterage control, and future development. In this connection the Commission reports in favour of proceeding immediately with the construction of deep water wharves Nos. 3 and 4, and of all the lighterage work being performed by private enterprise, under contract to the Port Authority, whereas the Imperial Shipping Committee expresses the opinion that further construction should be deferred until the results of working berths Nos. 1 and 2, in competition with lighterage, have been obtained, and that, in order to allow of free competition between the systems, the lighterage should be performed by private enterprise, entirely free and uncontrolled. Arising out of the latter the Committee also recommends further radical alterations in the scheme put forward by the Port Commission in connection with the port financial arrangements.

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In studying the report of the Imperial Shipping Committee it seems to me that the Committee is neither convinced that wharves Nos. 3 and 4 should be proceeded with immediately, nor that they should not be proceeded with immediately; in fact, they would appear to be unable to make up their minds on the matter, as the following rather contradictory extracts from their report quite clearly show.

Paragraph 23.

" It is our view therefore that the construction of further wharves should be decided by the test of practical experience "

Paragraph 40.

" We make no recommendation in regard to the completion of berths Nos 3 and 4 "

Paragraph 40.

" We would suggest deferring further operations until results have been obtained from berths Nos 1 and 2 in competition with lighterage "

Curiously enough, although the Committee finds itself unable to make any direct recommendation in regard to the completion of berths Nos. 3 and 4, it indirectly recommends the postponement of their construction by its recommendation for privately controlled lighterage, seeing that the principal and practically the only argument advanced by it in favour of privately controlled lighterage is

"the lighterage should be left to private enterprise in order to provide that element of competition which we think necessary for safe decision in regard to future policy "

Should it be decided, in the absence of a direct recommendation from the Imperial Shipping Committee, to adopt the Report of the Port Commission, and proceed immediately with the construction of berths Nos. 3 and 4, it might be argued that

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the recommendation of the former, that the lighterage should not be under the control of the Port Authority, automatically falls to the ground.

I always understood, as stated by Mr. Denham, that the completion of berths Nos. 3 and 4 has been considered in Kenya, as part of the policy approved in sanctioning the construction of the first two berths. The relative merits of the lighterage system, and deep water wharf system, for Mombasa must have been thoroughly considered, and properly weighed before the latter system was embarked upon, but it is equally certain that the decision would never have been in favour of the deep water wharf system had there been any idea that construction was likely to cease with the completion of the second berth. In other words, it was never the intention that deep water wharves constructed at great expense should be supplementary to the lighterage service, but exactly the reverse.

Proceeding to the other outstanding point of difference between the Committee, and the Port Commission, i.e. lighterage control, I would state that when considering the question of control of the harbour the Port Commission was impressed with the necessity for the whole of the port work being placed under one control, as different responsibility for the different sections of the work had proved, in practice, in the past, to be most undesirable, and one of the principal causes of the existing unsatisfactory conditions at the

harbour.

(4)

harbour. The expediency of the actual lighterage work at Mombasa being performed by private enterprise was realised by the Commission, provided that, although performed by private enterprise, it was carried out on behalf of, and under contract to, the Port Authority, the latter thus being responsible to importers and exporters for the whole of the work of the port. With lighterage free, and uncontrolled, the position, as far as responsibility is concerned, would be worse than it is today, as, whereas cargo is at present tallied only from ships into lighters and vice versa it would be necessary to have two tallies, one at the ship and another at the wharf.

The position at present is that two landing companies perform stevedoring, lighterage, and the whole of the shore handling, on behalf of the Shipping Companies. Under the proposals of the Imperial Shipping Committee, both companies would continue to perform stevedoring on behalf of the Shipping Companies, both companies would continue to perform lighterage, either on behalf of the Shipping Companies, or on their own behalf, whilst one of them would perform the shore handling on behalf of the Port Authority. It is unthinkable that both companies should be engaged as shore contractors, as such a course would further divide responsibility, and result in a much higher handling charge being necessary than would otherwise be the case, in order to cover overhead, managing, and superintending expenses of two firms instead of one.

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The firm performing the shore handling as contractor to the Port Authority would thus be in the invidious position of receiving cargo at the wharf side on behalf of the Port Authority from its own privately owned lighters. This position would almost certainly necessitate the employment of special staff by the Port Authority to examine every package of cargo landed, and shipped, and to apportion responsibility for damaged and missing packages between the private lighterage section and the shore contract section of the landing firm's activities.

It will probably be argued that under the Port Commission's proposals for contract lighterage the elimination at Mombasa of one of the existing landing companies would result. This is so, but there would have been two courses

of protection open to the companies; one of which would have been amalgamation for the Mombasa work, and the other an alteration of the working arrangement, which exist between the companies at other ports on the coast such as Zanzibar and Dar-es-salaam, whereby the company eliminated at Mombasa would have been given a larger proportion of the work at one of the other ports, as compensation for its loss at the former

Under Paragraph 34 of its Report, the Committee states that in view of the probable reduction in the amount of lighterage during the currency of a lighterage contract the contractor for lighterage would demand higher rates in order to compensate himself therefor. If this is so, it must equally apply whether the lighterage is performed

under...

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under contract or otherwise, but, in any case, seeing that there are approximately fifty per cent more lighters at Mombasa at present than would be necessary if the work were performed by one contractor, additional capital commitments in this connection during the currency of a lighterage contract would be negligible.

Dealing with the "free competition" between lighterage and wharves recommended by the Imperial Shipping Committee, this can only result in practically the whole of the cargo landed and shipped at the port being dealt with by lighters, leaving the deep water wharves a monument of inactivity. The interests of the shipping companies, and the landing companies, are so interwoven that it is certain mutual arrangements would be made for all cargo conveyed to and from the port to be dealt with by lighter. The only possible safeguard in this connection would be for the Port Manager to have power to order a ship to load or discharge at a wharf berth whenever there is one available. If the Port Manager is not invested with that power it is a foregone conclusion that whatever charges are fixed, and however they are arranged, the deep water wharves will be boycotted by the shipping companies. A further result of entering into such competition as that recommended would be that additional shore facilities for dealing with lightered cargo would require to be immediately provided, as the existing facilities are altogether inadequate.

(7)

A certain amount of relief could be obtained by utilising the new wharves as lighterage wharves, and it would be better to face this at once if it is intended to adopt the Imperial Shipping Committee's recommendations.

In dealing with this matter under Paragraph 33 of its report, the Imperial Shipping Committee states, that although freights may be fixed by the shipping companies in conference, there is nevertheless sharp competition between them in the matter of services. I venture to differ from the Committee in this connection, as I have always understood that the East African Conference, in common with other Conferences, not only fixes freights, but actually decides the proportion of the total volume of cargo during a given period which shall be allotted to each shipping company.

Mr. Bottomley's memorandum is undiguisedly a heroic attempt to arrive at a solution of the new difficulties created by the recommendations of the Imperial Shipping Committee, but I fear that the line of settlement he suggests is not going to help Kenya or Mombasa very much.

Mr. Denham's memorandum on the matter is an admirable summary of the position, and I can add little to what is contained therein. For the purpose of convenience, however, I will deal seriatim with the suggestions made in Paragraph 19 of Mr. Bottomley's memorandum.

(1)..

(8)

- (1) With the suggestion that the Port Authority should be constituted as recommended by the Port Commission I, of course, agree. I, however, cannot concur in the suggestion that the Port Manager should not control the lighterage for the reasons which I have already explained.
- (11) I cannot concur in the suggestion that the Port Manager's control of berthing should be limited either as proposed or in any other way. Were control of berthing to be limited to the avoidance of congestion it would be necessary for the Port Manager to prove his point on every occasion, as a protest would certainly be made by the shipping companies, aided and abetted by the lighterage companies, whenever a ship was ordered to the deep water wharves. Cargo would be retained in lighters by the landing companies as at present for days at a time, and the Port Manager would be pressed to undertake constant shore working at night at the lighter wharves in order to release loaded lighters. A refusal to do so would probably result in complaints being received that the lighterage companies were being handicapped in their work.

Mr. Denham's reference to the fact of the Government being an investor in deep water wharves

(9)

is very much to the point, and it is very unlikely that the policy of deep water wharf construction for Mombasa would ever have been embarked upon had it been anticipated that berthing arrangements would not have been within the control of the Port Authority. The only possible way of dealing with the matter in my opinion is for the Port Manager to be invested with power to order a ship to the deep water wharves whenever there is a berth vacant. If he is not invested with that power it will follow, for the reasons I have already stated, that the wharves will be mostly unoccupied, and the expensive tugs, and staff, which it will be necessary to maintain for the berthing of ships in case the service is required, will be idle. I mention this as a factor altogether apart from the inactivity of the wharves, and their equipment, which, if necessary, can always be utilised to some extent in connection with the lighterage service.

- (111) It is presumed that "all shore handling" includes the shore handling at Mbaraki.
- (114) I do not see how the Railway can charge a differential terminal. Against whom would the charge be levied? It cannot be levied against the importer or exporter, as if that were done he would never be able to calculate in advance what his costs would be likely to be, with the result that he would allow for the higher terminal in every case.

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importance of flexibility in certain definite principles, which should not be insisted, but left to the discretion of the Water Board. He also advocates certain definite principles, the chief one being: - Absolute quantitative definition of water rights and of the restrictions to protect future national needs and people occupying ~~land~~ other lands adjacent to the stream. Definition also to be by period - or in other words the time of the day or year at which the right may be exercised, not exercised, or exercised only in part, must be fixed absolutely. I quite agree with Mr Lewis' statement that "to fix these restrictions in such a way as will ensure the maximum beneficial use of the water of the river is an exceedingly difficult matter."

2019 In paragraph 202 Mr Lewis reiterates the importance of absolute definition of rights and the restriction. He also suggests something analogous to the South African River Boards to do the police work. This has been the subject of consideration several times in the past. The situation on some of the much used streams will render either the establishment of a Board or the employment of a water warden essential in the near future.

20 In paragraph 205, Mr Lewis advocates division of purpose into the two parts

of Common Law, namely: - Ordinary and Extraordinary, and does not recommend the South African method. I prefer the division in the Draft Water Ordinance, which is a modification of British Columbian law to suit the conditions in Kany.

21 I agree with Mr Lewis that South African law will regard to "normal flow" should not be followed.

22 In paragraph 207 Mr Lewis again emphasizes the difficulty of dealing with storage dams but concludes nothing need to solve the difficulty. I find the last sentence of the paragraph somewhat in accordance with earlier paragraphs, for he ~~proposes~~ appears to advocate powers being granted to the Water Board to modify rights which the Board had previously granted, the security of which Mr Lewis regards as so vital. I do not deny the necessity for powers to modify. It is in fact covered by the Draft Water Bill.

23 I agree in general with paragraph 208, with certain reservations which I need not refer to here.

24 In paragraph 209 there are details with which I agree and others with which I do not concur. To deal with all the details which Mr Lewis touches on

(V)

The term "passing over" charge introduced by the Imperial Shipping Committee has, I think, given rise to a certain amount of misconception, and I would suggest that the term be discarded in favour of "wharfage". In Paragraph 12 of Mr. Bottomley's memorandum he states that the "passing over" or wharfage charge is clearly intended to be levied by the Port Authority for moving the goods from ship or lighter on to the wharf. As a matter of fact it is nothing of the kind, and covers no handling service of any description. The ~~wharf~~ charge which the Port Commission recommended should be introduced is intended primarily as a tax on goods to cover the cost of providing quays, wharves, and other port facilities, and the maintenance of them in good order. Some ports levy a charge on every package of cargo entering or leaving and term it a "harbour improvement due". It should be noted that this charge is payable whether the goods pass over a wharf or not. A number of different charges tend to make a port tariff unnecessarily intricate, elaborate and cumbersome, and the Port Commission had this in mind when recommending the levying of one inclusive charge to be known as wharfage, to cover the provision, maintenance, and improvement of the main port facilities at Mombasa.

Mr. Bottomley.

(v)

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Mr. Bottomley.

(11).

Mr. Bottomley states that the flat basic rate he suggests would admittedly include a certain amount as a contribution towards capital charges, but, as a matter of fact, it would include very little else if it is intended to represent the wharfage charge recommended by the Port Commission.

(VI)

If a differential is levied at the deep water wharves so as to equalise the charges on goods of the same description served by the two systems, the point aimed at by the Port Commission in this connection is achieved, but by a very much more complicated method. If it is admitted that the cost to importers and exporters should be the same, whether their goods are dealt with by lighters or over the deep water wharves, why not permit the aggregate charge to be made by the Port Authority in the form of an inclusive wharfage charge as recommended by the Port Commission, leaving the Port Authority to disburse to the lighterage company out of the amount collected the amount due for lighterage. The result would be the same, without the necessity for dealing with basic rates and differentials. This can be done whether the lighterage is controlled by the Port Authority or not.

(VII)

I concur in this suggestion.

(VIII)

There should be no efficiency on the Port Authority accounts if the basic rate and differential referred to in (V) and (VI) amount to the aggregate

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to the wharfage charge recommended by the Port Commission.

(X) If control of berthage by the Port Manager is not to be permitted, and berths Nos. 1 and 2 are consequently used as lighterage wharves, or, alternatively are not used at all, it would appear to be useless to proceed with the further construction of deep water berths now, or at any time in the future. If, on the other hand, berthage control under the Port Manager is to be permitted, I am of opinion that as recommended by the Port Commission berths Nos. 3 and 4 should be proceeded with without any delay. The postponement of further construction for a year would mean that the cost of berths Nos. 3 and 4 would be very much higher than would otherwise be the case, owing to the fact that the construction contractors would naturally require to either dispose of, or find other use for; the plant and staff presently employed by them at Mombasa.


(X) I know nothing of the dispute between the Government and the lessees of Mbaraki regarding reconstruction, but it is difficult to understand that, in addition to equipping the port with deep water wharves and Government lighterage wharves, the Government is contemplating further expenditure on the reconstruction of Mbaraki wharves for leasing to a private company in competition with itself.

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I am still of opinion that every effort should be made to terminate the lease of Mbaraki held by the African Wharfage Company, and, further, that until the lease is terminated reconstruction of the wharf should neither be undertaken nor permitted.

In conclusion I would refer to one other point, and that is the convenience to passengers which would result from the use by ships of the deep water wharves.


Manager,
Shipping & Harbour Department,
South African Railways and Harbours.

14.9.20
CS/MEC