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CONTINUED FROM PREVIOUS FILM

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ORDER NO. ⇨ 777
CAMERA NO. ⇨ 19
OPERATOR. ⇨ EC
REDUCTION. ⇨ 12
EMULSION NO. ⇨ 301051
DATE. ⇨ 30/9/71

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REPRODUCED IN ENTIRETY

are extraordinary repairs properly attributable to capital expenditure shall be referred to arbitration under the provisions in that behalf hereinafter contained.

Rolling-stock

7 A. (i) The Uganda Railway Administration shall provide and maintain all locomotives and rolling-stock necessary for the efficient working of the Railway.

(ii) The Uganda Railway Administration shall not be bound to provide tank cars or any special wagons or conveniences for the carriage of liquid fuel and the Lessees shall at their own expense provide and maintain such tank cars special wagons and conveniences (if any) as the General Manager shall from time to time deem necessary or proper for the carriage of the Lessees' liquid fuel. Provided nevertheless that the Lessees shall not be entitled to any reduction of freight on liquid fuel by reason of the provision of any cars provided by the Lessees.

We are taking instructions from the Colony whether this amendment can be accepted

Protection of Soda Goods in transit

8 B. The Uganda Railway Administration shall carry all soda goods in trucks properly protected from the weather and from dirt.

Loading and unloading

9 10. The service of loading and unloading the Lessee's goods at the respective places of departure and destination shall in all cases be performed by and at the sole expense of the Lessees but the service (if any) of loading and unloading at any intermediate place shall in all cases be performed by and at the sole cost of the Uganda Railway Administration.

Rates of freight for Soda Goods carried to the Port

10 M. The rates of freight for soda goods consigned by the Lessees direct from Lake Magadi or any other point on the Railway to the Port by the Railway to Magadi Junction and thence over the Uganda Railway shall be as follows:—

- (A) For the purposes of this Clause each year shall end on the 31st day of October.
- (B) In each year during the first period of five years and thereafter until the same shall be increased as hereinafter provided the rate shall according to the total weight of soda goods carried be as follows:—

TOTAL WEIGHT CARRIED.	RATE PER TON FOR EVERY TON CARRIED.
Not exceeding 50,000 tons	18. 0d.
Exceeding 50,000 tons but not exceeding 150,000 tons	17s. 0d.
Exceeding 150,000 tons	16s. 6d.

Provided that whenever in any year the total weight of soda goods carried shall be greater than 50,000 tons or greater than 150,000 tons, respectively the amount payable in respect of freight shall not be less than the amount which would be payable on 50,000 tons or 150,000 tons as the case may be.

- (c) (i) At the expiration of the first and every subsequent period of five years, the General Manager may increase the rate for the time being payable but so that the rate in force in each year during the second or third period of five years shall not exceed the following:—

TOTAL WEIGHT CARRIED.	RATE PER TON FOR EACH TON CARRIED.
Not exceeding 150,000 tons	20s. 0d.
Exceeding 150,000 tons	18s. 0d.

Provided that whenever in any year the total weight of soda goods carried shall be greater than 150,000 tons the amount payable in respect of freight shall not be less than the amount which would be payable on 150,000 tons.

- (ii) Every increase of rate as aforesaid shall be made by the General Manager who shall give to the Lessees not less than six months' notice in writing in that behalf to expire at the end of the then current period of five years.
- (iii) The General Manager shall not give notice of any such increase unless he shall consider the same reasonable having regard to the prevailing and probable cost of working the traffic and the selling price of the soda goods or any of them.
- (iv) The General Manager shall so soon as conveniently may be after service of any such notice deliver to the Lessees a statement of the cost of working the traffic of the soda goods during the period of the first six months of the last year of the then current period of five years.
- (v) The Lessees may within one month after receipt of any such statement of cost serve upon the General Manager notice referring the increase to arbitration in accordance with the provisions in that behalf hereinafter contained and in such case the validity of such increase shall be determined accordingly.
- (vi) In such arbitration regard shall be had to the prevailing and probable cost of working the traffic and to whether the prevailing and probable selling price of the soda goods permits

an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.

- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided, *or decreased as hereinafter provided*.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

Rates for other
goods and fares
for passengers

12. Except as hereinbefore provided the rates for goods and the fares for passengers carried over the Railway shall be fixed from time to time by the General Manager according to the scale for the time being and from time to time in force on the Uganda Railway.

Freight to be
payable in advance

13. (i) All freight charges shall be payable to the Uganda Railway Administration in advance *of the bills drawn if the same shall be on a ledger account which shall be subject to guarantee to the satisfaction of the Crown Agents.*

(ii) Any freight charge not paid in advance shall carry interest until actual payment thereof at the following rates that is to say during the first six months from and ~~on~~ on the day on which the same should have been so paid, ~~at the rate of 14 per cent. per annum and thereafter at the rate of 10 per cent. per annum.~~

(iii) The Lessees shall procure the payment of all freight charges not paid in advance to be secured by guarantees to the satisfaction of the Crown Agents.

Demurrage

13. The Lessees shall pay demurrage on trucks belonging to the Uganda Railway Administration according to the rates of the Uganda Railway Administration for the time being in force.

14. Provided always and these presents are upon the express conditions following:

Lessees to be and
remain British

- (i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises

an increase in the rate of freight and to all other considerations which the arbitrators or their umpire may consider material.

- (vii) The award may allow the increase or any part thereof or may disallow the same and shall be confined and restricted within these limits accordingly.
- (viii) If the award shall not be made before the commencement of the period of five years to which the notice of increase relates the Lessees shall pay the increased rates specified in the notice as from the commencement of the said period and all proper adjustments and allowances consequential upon the award shall be made after award made.
- (ix) An increased rate shall continue in force for the period of five years to which it relates and thereafter until again increased as hereinbefore provided, or decreased as hereinafter provided.
- (x) The General Manager may at any time by notice to the Lessees decrease the rate for the time being in force and such decrease shall take effect from the time mentioned in the notice but any such decrease may be revoked at any time by the General Manager by a further notice in that behalf given to the Lessees.

Fares for other goods and fares for passengers

11/12. Except as hereinbefore provided the rates for goods and the fares for passengers carried over the Railway shall be fixed from time to time by the General Manager according to the scale for the time being and from time to time in force on the Uganda Railway.

Freight to be payable in advance

12/13. (i) All freight charges shall be payable to the Uganda Railway Administration in advance, or if the Lessees desire it the same shall be paid to a ledger account to be opened by guarantee to the satisfaction of the Crown Agents.

(ii) Any freight charge not paid in advance shall carry interest until actual payment thereof at the following rates that is to say during the first six months from and after the date on which the same should have been so paid in advance at the rate of £4 per cent. per annum and thereafter at the rate of £6 per cent. per annum.

(iii) The Lessees shall procure the payment of all freight charges not paid in advance to be secured by guarantees to the satisfaction of the Crown Agents.

Demurrage

13/14. The Lessees shall pay demurrage on trucks belonging to the Uganda Railway Administration according to the rates of the Uganda Railway Administration for the time being in force.

14/15. Provided always and these presents are upon the express conditions following:—

Lessees to be and remain British

- (i) The Lessees and any company or corporation becoming by assignment or otherwise entitled to the term hereby granted or any part thereof or to possession of the demised premises

or any part thereof shall be and remain British in constitution and character registered in Great Britain or in a British Colony and having their principal place of business within His Majesty's dominions and the Chairman and at least four-fifths in number of the Directors of the Lessees or any such company or corporation as aforesaid shall at all times be and remain British subjects.

- (ii) In the event of any alteration being proposed in the Memorandum or Articles of Association or constitution of the Lessees or any such company or corporation as aforesaid notice thereof shall be given in writing to the Crown Agents who if in their opinion the said alteration shall be contrary to the cardinal principle that the Lessees and any such company or corporation as aforesaid shall be and remain a British company under British control may refuse their consent to such alteration.
- (iii) If and whenever any such alteration shall be made without the written consent of the Crown Agents or if the Chairman and at least four-fifths in number of the Directors thereof shall not be British subjects the Crown Agents may thereupon forthwith by notice served on the Lessees or such company or corporation as aforesaid as the case may be determine the demise hereby made without making any compensation, but without prejudice to any right of action or remedy of the Crown Agents or the Government in respect of any antecedent breach of any of the covenants by the Lessees or conditions herein contained.

16. The Crown Agents hereby covenant with the Lessees as Lessors' Covenants follows:—

- (i) The Lessees paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on the Lessees' part to be observed and performed shall and may peaceably and quietly possess and enjoy the demised premises during the said term without any lawful interruption from or by the Crown Agents or the Government or any persons rightfully claiming from or under them.

For quiet enjoyment

- (ii) That the Uganda Railway Administration and the General Manager will at all times observe the provisions of this Lease so far as the same relate to acts and things to be performed or done by the Uganda Railway Administration or the General Manager.

For acts to be done by the Uganda Railway Administration

17. Provided always that if and whenever the said rent hereby reserved or any freight charges hereby covenanted to be paid or any part thereof respectively shall be in arrear for the space of sixty days

Proviso for re-entry

next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of re-construction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter, ~~into and upon the demised premises of any part thereof in the name of the whole to re-enter and the same to have again re-possess and enjoy as in their former estate~~ And thereupon this Lease shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisions for re-entry contained in leases of similar property in England.

17. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the asset and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

18. If this Lease shall be determined otherwise than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

19-20. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

At end of the 99 years' term the Railway and all assets to belong to the Government

Option to the Government to purchase on sooner determination.

Option to the Government to purchase at any time

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next after any of the days whereon the same ought to be paid as aforesaid (whether the same shall or shall not have been legally demanded) or if there shall be any breach or non-observance of any of the covenants on the part of the Lessees (whether negative or affirmative) herein contained or if the Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary or compulsory (except with the consent in writing of the Government a voluntary liquidation for the purpose of re-construction only) or suffer a receiver of their undertaking or any part thereof to be appointed by any Court of competent jurisdiction or commit any act which would render the Lessees liable to be wound up on petition or in the case of assigns of the Lessees not being a corporation shall or any of them shall become bankrupt or make any assignment for the benefit of or enter into any arrangement for composition with their or his creditors then and in any of the said cases it shall be lawful for the Crown Agents or the Government although they may not have taken advantage of some previous default of the like nature at any time thereafter ~~and upon the demised premises or any part thereof in the name of the whole to re-enter and the Lessees shall cease to possess and enjoy as in their former estate~~ And thereupon this Lease shall cease and determine but without prejudice to any right of action or remedy which may have accrued to the Crown Agents or the Government in respect of any antecedent breach by the Lessees of any of the covenants or provisions herein contained provided that this proviso for re-entry shall be subject to all such restrictions and conditions and such relief against forfeiture as shall for the time being be applicable under the laws of England to provisos for re-entry contained in leases of similar property in England.

17. At the expiration of the term of 99 years hereby granted (but not on the sooner determination of the said term) the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway shall immediately on the expiration of the said term and free from all payment be and become the property of the Government.

18. If this Lease shall be determined ~~otherwise~~ than by effluxion of the said term of 99 years the Government shall have the right to purchase the Railway and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway at the price hereinafter mentioned upon giving to the Lessees one month's notice in writing in that behalf such notice to be given within one month next after the determination of the Lease.

19. 20. (i) The Government shall have the right at any time during the continuance of the term hereby granted to purchase the Railway

See let. Skt. as drafted

At end of the 99 years' term the Railway and all assets to belong to the Government

Option to the Government to purchase on accrue determination

Option to the Government to purchase at any time

and all the assets and property whatsoever of the Lessees used for the purposes of or in connection with the Railway and all the interest of the Lessees under these presents at the price hereinafter mentioned upon giving to the Lessees one year's notice in writing in that behalf.

(ii) If the Government shall exercise this present right then from and after the completion of the purchase until the expiration or sooner determination of the Magadi Lease the Lessees shall be entitled to the following rights and privileges:—

(A) The right to use and work for the purpose of the Lessees' own business in connection with the working of the Magadi Soda Deposit such telegraph and telephone lines as the Lessees before the date of the notice exercising the said option may have constructed under the liberty in that behalf hereinbefore granted.

(B) The right to have their goods conveyed in the manner and at the rates hereinbefore prescribed.

(C) The right to have the Railway with all necessary rolling stock and other equipment and the traffic thereon maintained, worked and managed at the exercise of either of the aforesaid rights shall be ascertained by deducting the sums hereinafter mentioned from the aggregate of the two following sums namely:—

(A) The sum of £ being the agreed amount of the capital outlay made by the Lessees in the construction of the Railway prior to the date hereof.

(B) All sums expended by the Lessees after the date hereof and prior to the date of the notice exercising the option upon extraordinary repairs and renewals properly attributable to capital expenditure.

The sums (if any) to be deducted from the aggregate of the two above-mentioned sums shall be ascertained as follows:—If and whenever in any year ending on the 31st day of October during the continuance of the term hereby granted the aggregate amount payable by the Lessees by way of freight charges hereunder and by way of royalties under the Magadi Lease shall fall short of a sum equal to the aggregate amount of a Railway rate of seventeen shillings and eightpence and five eighths of a penny per ton on the freight despatched by Railway ~~or~~ despatched by Railway during that year and the amount payable by way of royalties under the Magadi Lease (provided that for the purpose of this Clause such royalties shall be deemed to be payable from the date of these presents) then and in any such case the amount of the deficiency together with compound interest thereon at the rate of 4 per cent. per annum calculated with half-yearly rests from the expiration of the year in which such deficiency occurs down to the date of completion of the purchase shall be deducted in ascertaining the price to be paid by the Government as aforesaid.

21. The options of purchase conferred by clauses 17 and 20 (i) of these presents shall not extend to any land which may have been acquired by the Lessees under clause 15 (iii) of these presents.

If option exercised, the Lessees to have certain rights

Telegraph and telephone lines

Carriage of goods

Price according with the provisions of clauses 6 and 8 of these presents

See also following schedule and the entry on this subject in the schedule

As in old lease

As in para 7 (f) of Memorandum Skt

19

Rights of purchase
not to prejudice
other rights

22. The rights of purchase hereinbefore conferred on the Government are without prejudice to all or any other the rights of the Crown Agents or the Government under or by virtue of these presents.

Notice of these
provisions to be
endorsed on
debentures

23. Every debenture or other instrument creating or purporting to create any charge upon the Railway or any other asset or property of the Lessees subject to the rights of purchase aforesaid shall contain or have endorsed thereon notice of the said rights of purchase.

Property to be
conveyed free from
incumbrances

24. All and every the assets and property purchased by the Government as aforesaid shall be conveyed or delivered to the Government on completion of the purchase free from incumbrances.

General Manager
may delegate

25. The General Manager may from time to time and at any time delegate to assistants all or any of his powers rights authorities or discretions whether vested in him hereunder or otherwise as he may think fit and the Lessees shall on written notice of such delegation recognise such assistants as lawfully exercising the powers rights authorities or discretions so delegated to them.

Members or officers
of Government not
to be personally
liable

26. No member or officer of the Government or the Crown Agents shall be in anywise bound personally for the acts and obligations of the Government under these presents or answerable for any default or omission in the observance or performance of any of the acts matters or things which are hereby made obligatory on the Government or the Crown Agents.

Certificates of the
Governor

27. A certificate signed by the Governor shall be conclusive evidence of any order requirement determination or appointment of the Government mentioned in such certificate.

Notices how to be
given to Lessees

28. Every approval consent or notice to be given or served by or on behalf of the Government or the Crown Agents for the purposes of these presents shall be in writing under the hand of the Governor or of the Crown Agents or one of them or any person authorised on their behalf or of the General Manager and shall either be delivered to or left for the Lessees at the office hereinbefore covenanted to be provided and maintained by them or at their registered office for the time being in England or at their principal or last known place of business in the Colony.

Force majeure

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees

16

Rights of purchase
not to prejudice
other rights

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Force majeure

29. Except in cases (if any) in which these presents expressly provide to the contrary no failure or omission by the Lessees in the observance or performance of any of the stipulations agreements or conditions herein contained and on the part of the Lessees to be observed or performed shall give rise to any claim or demand against the Lessees or in any manner operate to the prejudice of the Lessees

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or be deemed a breach of any covenant or obligation on the part of the Lessees hereunder whether express or implied if it be shewn to the reasonable satisfaction of the Governor that the default has arisen from any of the following causes namely: the act of God insurrection riots war strikes or combinations or lockouts of workmen not properly attributable to the improper acts or defaults of the Lessees or any other circumstances whether *ejusdem generis* with the foregoing circumstances or not which in the opinion of the Governor may be beyond the reasonable control of the Lessees. And if and so often as anything which the Lessees hereby agree to do within any specified time shall be delayed by any such cause such specified time shall be proportionately extended.

30. In case and so often as any dispute difference or question shall arise between the parties hereto or any Government Corporation Company or person claiming through or under them respectively or between any of such parties Governments Corporations Companies or persons concerning or relating to the subject matter of these presents or any part thereof or the construction meaning or effect of these presents or of any award made in pursuance hereof or any clause or thing contained herein or in any such award as aforesaid or the rights or liabilities of any party hereto or of any such Government Corporation Company or person as aforesaid hereunder or under any such award as aforesaid then (except in any case and as to any matter for which other provision is herein made) the subject of every such dispute difference or question shall in every case on the demand in writing of either party be referred to the arbitration and award of an umpire if the parties can agree to an umpire and in case they cannot so agree then of two arbitrators one to be appointed by each party to the reference, and an umpire to be appointed by the two arbitrators or if such two arbitrators fail for one month after their appointment to appoint an umpire by His Majesty's Secretary of State for the Colonies for the time being. The decision of such umpire or arbitrators as the case may be shall be final and without appeal and binding upon all parties. If either party to any dispute difference or question make default in appointing an arbitrator within three months after the other party has given him or them notice to appoint the same the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be final and binding upon all parties and all the provisions herein contained with reference to the proceedings of two arbitrators and an umpire shall *mutatis mutandis* be applicable to such sole arbitrator.

Provision for
arbitration

31. The arbitrators and umpire shall have full power to make if they or he think fit several awards instead of one award and every

Arbitrator may
make partial awards

such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

May proceed
ex parte

32. The arbitrators and umpire shall have full power to proceed in the absence of both or either of the parties after giving to both parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

May inspect books
and accounts and
examine on oath

33. The arbitrators and umpire shall have full power to inspect the books documents and accounts of both parties to the reference or either of them and to examine on oath or affirmation or on statutory declaration in lieu of oath the officers agents servants and witnesses of the parties respectively.

And provide for
costs

34. The costs of the reference and award shall be in the discretion of the arbitrators and umpire and such costs may be awarded as between solicitor and client.

Marginal notes

35. The marginal notes hereto are for the sake of convenience only and shall not affect the interpretation or construction of these presents.

In Witness whereof one of the Crown Agents has hereunto set his hand and seal and the Decees have caused their common seal to be hereunto affixed the day and year above written.

Signed Sealed and Delivered by
one of
the Crown Agents for the Colonies
in the presence of

The Common Seal of the Magnolia
Soda Company Limited was here-
unto affixed in the presence of

} Directors.

Secretary.

such award though not on the whole matter shall be final so far as it extends and as if the matter awarded on were the whole matter referred.

May proceed
ex parte

32. The arbitrators and umpire shall have full power to proceed in the absence of both or either of the parties after giving to both parties such notice as the arbitrators or umpire may think sufficient of their or his intention to proceed.

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Signed Sealed and Delivered by
one of
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in the presence of

The Common Seal of the Magadi
Soda Company Limited was here-
unto affixed in the presence of

Directors.

Secretary.