

1923

KENYA

C.O.  
37626

RE  
27 JUL 23

DATE

July, 1923.

Brierley,  
Maj. W. E.

FOR CIRCULATION:—

Mr.

W Stanley

Mr.

Mr.

Asst. U.S. of S.

Perm<sup>t</sup> U.S. of S.

Part<sup>r</sup> U.S. of S.

Secretary of State.

SUBJECT

Transfer of farm  
486 B

As to whether can  
be effected in the  
circumstances described.

Previous Paper

8  
55882  
- 77

MINUTES

Maj Brierley (and Mr Wilton on  
W. 54710/22), L<sup>and</sup> of their farm as  
486 B, but it is recorded here  
under No 480 B. (see Land Settlement  
paper of that number below).

It is clear from SW 63504/22 &  
minutes there on that transfer of the  
Land Settlement Farms is recognised.  
I was puzzled as to how they propose  
to get over the "appearance" requirements  
(86) of Ord<sup>s</sup> on SW. 20164/21, but  
the approval of the Land Office for  
this has presumably been given  
under the arrangements referred to  
in para 4. of the despatch on SW. 63504/22.

forward (orig inclos ret'd) 31 July 23  
copy come to for 1074. 1 Aug 23

W. 486  
right

SAB

Met

Subsequent Paper

8  
51803

MINUTES.

MINUTES NOT TO BE WRITTEN  
ON THIS SIDE.

Major Brienerley, who called on Wednesday (25<sup>th</sup>) told me that Mr. Butterfield has been working on the farm for some time.

It is clear from § 2 of the Ord<sup>o</sup>. on Gov 8029/23 that if the transfer is approved by the Land Office, the assignee will succeed to all the rights and liabilities of the Purchaser.

The whole matter, however, is one for the decision of the Land Officer, and Mr. Carnell is mistaken in thinking that he must obtain any definite discharge from his obligations from the C.O. I suspect that his guarantee for £1000 (see the Land Settlement file) is at the back of all this insistence.

ack. and say that the question of the transfer by the allottee of any farm allotted under the E.A. Prov. (now Kenya Colonies) Land Settlement Scheme

is a matter for the Gov<sup>t</sup> of Kenya acting through its representative, the Land Officer, Nairobi; and that if the transfer of Mr. Wilton's farm is approved by the Colonial Government Land Officer, the S of S will not raise any objection.

And say that if the transfer is approved <sup>and effected</sup> it is provided by ~~the~~ <sup>the</sup> ~~Act~~ <sup>from</sup> Sec. 8 (g) of the Crown Lands (Transferred Soldiers Settlement) Ord<sup>o</sup>.

1921, as amended by the C.L.C.S.S. Amendment Ord<sup>o</sup> 1922, copies of which can be inspected in the C.O. Library, <sup>that</sup> the assignee will succeed to all the rights and liabilities of the original purchaser of the farm - reverse relevant entries from the 1922 Ord<sup>o</sup>.

And return the letters (keeping copies) from Mr. Carnell - read that copy of correspondence and the copy of Major B's

? omit [ ]  
G.S. [ ]

20164/21

8029/23

[It is that if he wishes to satisfy himself as to this, he must ask the local Gov<sup>t</sup>]

? We can visit [ ]  
ack

C.O.  
37626  
REC  
RL 27 JUL 23

From  
Major W.E. BRIERLEY  
INDIAN MEDICAL SERVICE (ON LEAVE)  
to The Under Secretary of State  
for the Colonies.  
(KENYA COLONY)

35

Sir  
Negotiations have been proceeding for some  
time past between  
Mr. J. BUTTERFIELD  
Settler in Kenya Colony  
represented in the matter by myself  
and Mr. J.L. WILSON (at present in Moscow)  
deceased of farm 486 B in the 1914 Soldiers  
Settlers Scheme and represented by his father-in-law  
Mr. M. CARNELL (at present in France)  
Mr. Butterfield has made a proposal through  
me to Mr. Wilson that the latter should  
transfer his rights in the aforementioned  
farm to him (Mr. Butterfield) for a monetary  
consideration and this proposal meets with  
his approval of the Kenya Government.

Mr. Wilson is agreeable to the transaction  
provided his and his father-in-law become  
by the act of transfer freed from all present  
and future liabilities to the crown  
I have endeavored to make it clear to  
Mr. Carnell that Mr. Butterfield is  
prepared to assume all liabilities to the  
crown and that the proposed transfer meets  
with the approval of the Land Office, Trust

See in Colonial Office records as 486 B.

Mr. Caswell however is not satisfied and wishes  
the Colonel office authorities to assent in  
writing to the transfer being executed, and  
to assure him of his freedom from all  
present and future liabilities to the crown  
on completion of the transfer.

I replied Mr. Caswell's letter dealing with  
this aspect of the question at great  
length.

From a perusal of the Ordinances, Kenya  
Colony in connection with Soldier Settler  
Terms, there would appear to be no obstacle  
to the transfer being executed and I am  
advised that this is the case by the  
Office, Nairobi.

Would you be so good as to forward Mr.  
Caswell's letter herewith forwarded and  
render the required written assurance on  
the question of liability and right to  
transfer.

Miss S will then communicate to Mr. Caswell  
my address till leaving the country on  
the 7<sup>th</sup> August will be

C/o Messrs BRINDLEY &  
54, Parliament St.

Your obedient servant.

W. E. Brindley  
Major, I.M.S.

L'Abbaye,

St Jacout de la Mer,  
Cotes du Nord,  
Brittany,  
France.

June 5th 1923.

Dear Major Brierley.

I regret not replying to your letter before but I have been laid up with severe cold and Bronchitis.

I have since receipt of your letter from Herefordshire dated 25.V.23 discussed the whole question with Mrs. Wilton, and she has asked me to advise you of her husbands views, they both having received copies of your correspondence with me with the exception of your last letter, which Mrs. Wilton does not think necessary for Mr. Wilton to see before writing to you.

Mr. J.D.C. Wilton is quite willing to consider the question of disposal of his rights in the property allotted to him in Kenya Colony, provided that:-

(I) Should there be at any period after the sale of the estate by Mr. Wilton be any "Proceeds" from the finding, exploiting and sale of "Minerals" and Products thereof, whatsoever they may be, which may be taken from the estate or produced therefrom, that a share of the same should become the property of Mr. Wilton or the equivalent in cash paid to Mr. Wilton, his heirs or Representatives.

(II) The sale and transfer of the Estate allotted to Mr. Wilton No. 486B in Kenya Colony British East Africa is agreed to and approved by the Minister for the Colonies and the Kenya Colony Government and is ratified

in

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in writing by the Representatives of both.

(III) The Minister for the Colonies and the Kenya Colony Government also agree and ratify in writing their agreement to forego in full by Mr. Wilton and Mr. H.M. Carnell, entire payment of all claims and dues, whatsoever they may be, including the guarantee, arising both prior to or subsequent to the sale of the estate, which would have to be paid or met under the conditions in force on -- allotment or arising after the property had been taken over for development, and arising after sale of the property so that both Mr. Wilton and Mr. Carnell become entirely exempted from and indemnified against any claim by the Colonial Government (Kenya Colony) or Colonial Office, should the purchaser or his Representatives fail to complete or carry thro any or all of the conditions which have at any time or period been prescribed under the Colonial Office or Kenya Colony Rules and Laws etc., etc., thus removing from Mr. Wilton and Mr. Carnell all and every liability whatsoever it may be, either arising before or arising after the sale of the estate to Mr. Butterfield.

The whole difficulty arises thro' Mr. Wilton not being able to proceed to Kenya Colony and reside and fulfil the conditions laid down <sup>and</sup> in regard to which he cannot get complete exemption as asked for by him from the Colonial authorities of Kenya.

Will you or shall I refer the whole question to the Colonial Authorities? I see you propose a direct communication with the Authorities of Kenya Colony, I think however it would be best that the Colonial Office should

should first be referred to in London as it was thro' that Office the allotment of the property was made and under their arrangements and authority and consequently Mr. Wilton is desirous as he cannot fulfil the conditions to obtain the authority of the Colonial Office Authorities to the proposal under consideration, so as to prevent all misunderstanding as to his rights and his power to sell the property before agreeing to formal action being taken.

I return Mr. Butterfield's letter of 18.4.23 and also the list referred to therein also received and dated 18.4.23 thanking Mr. Butterfield and yourself for the same.

Yours etc.,

(Signed) W.H. Cassell



L'Abbaye,

St. Jacut de la Mer,

Cotes du Nord

Britanny,

France.

20th June 1923.

Dear Major Brierley,

In reference to your letter of the 14th instant my son-in-law is quite agreeable to your proposals and acceptance of the clause re "Minerals" and "Products" provided the conditions in my letter of 5th June 1923 are strictly adhered to, carried out, approved and agreed on in writing prior to the transaction being held as accepted, subject to the right of refusal should it at any time be necessary on Mr Wilton's or my part to refuse to complete the arrangements come to.

You say in your letter that:-

"Mr Butterfield's proposal is for your son-in-law to cede his rights for £50 to him. Etc. etc."

The whole issue now is does Mr Wilton now possess any rights to cede for according to what you state in your letter as follows:-

"Unless Mr Wilton appears in Nairobi before 7th October he has lost all rights to the farm as he cannot complete 6 months occupation".

it would appear he has not and consequently no right to agree to your proposals and this appears to me to be the hitch in the arrangements and the crux of the whole position.

Neither Mr Wilton or myself as representing him

for

for obvious reasons do not desire to take any money for what Mr Wilton does not ostensibly appear to have the right to dispose of, but if such a right exists and such is upheld by the Authorities and we are advised that Mr Wilton has a claim on the property and the further right to cede the same, he would be willing to do so, subject to the further proviso that nothing is agreed to by either, Mr Wilton or myself unless this claim and right is clearly shown to be in order and we are advised of the same in writing by the Colonial Office and Kenya Colony Authorities, and further (i) the conditions in my letter of 5th June 1923 are accepted in full and carried out and (ii) nothing on Mr Wilton's part or my own as representing him is held as agreeing to any sale, ceding, or transfer of property No. 486 B in Kenya Colony or any conditions in connection with the same except after signature of us both.

You will no doubt realize that the object of the original conditions and provisos now put forward are alone made to protect Mr Wilton and myself from criticism or charge of unfair dealing, as Mr Wilton's rights and powers in connection with this property and my own also are not clear, our desire alone being that nothing is done by us which could be stigmatised as irregular or in the least doubtful.

If after consideration you still consider Mr Wilton has the power to cede the property, I would ask you to take the matter in hand with a view to final closing under the conditions stated and terms agreed on, which, if all is in order, subsequent payment to be made.

Kindly favour me with a reply at convenience.

Yours sincerely,

(Signed) M.N. Carnell.

Copy.

L'Abbaye,  
St. Jean de la Mer,  
Cotes du Nord,  
Brittany, France.

June 21st, 1923.

Dear Major Brierley,

Your letter of 15th June 1923 from Cheltenham (I think) reached me yesterday after I had posted my reply to yours of 14th June, 1923.

That letter gives fully our position and the offer to cede transfer or sell the farm to Mr. Butterfield and the conditions and terms proposed.

The position is a difficult one and one in which our sole desire is to do the right thing. Mr. Wilton cannot certainly go to Nairobi and take possession by 7th October next, and his position as to his present rights and claim in farm No. 4862 Kenya Colony are not clear, hence our wish to see all is secure against any loss or stricture on Mr. Wilton or myself in the future.

It is for these reasons we require a complete clearance certificate of our entire irresponsibility from the Colonial Office in London, and from the Kenya Colony Authorities.

The "guarantee" given by myself on Mr. Wilton's behalf, as well as that all "development charges costs etc." the responsibility for meeting which on assuming charge or taking over the farm was given by Mr. Wilton must be annulled before either of us are agreeable to cede transfer or sell the farm and as this guarantee was given by me to <sup>the</sup> Colonial Office London and also that development charges costs etc.

etc. would be met, also to the Colonial Office London by Mr. Wilton, by the Colonial Office London alone can the annulment for both be approved and granted, supported, if necessary, by the Kenya Colony Authorities.

You will now realize our position, especially as any failure on Mr. Butterfield's part to meet responsibility taken over in the first instance by Mr. Wilton and myself, could in the absence of this annulment and authority to cede, transfer or sell being granted to us, fall on the original parties, namely, Mr. Wilton and myself and consequently the Colonial Office must grant us these before we can agree to cede sale or transfer.

If the right to cede, sell or transfer remains with Mr. Wilton the interest in the "Minerals" and "Produce thereof" does also, hence the wish to participate in the same. Although they may be vested in the Crown, certain rights and privileges in connection therewith are vested in the owner.

We certainly do not wish to incur any expense whatsoever in the sale, ceding or transfer of the farm, and consequently any expense should not be held as falling on Mr. Wilton in connection with the same.

I trust I have made myself clear on all points, my only wish is that at the moment I could be in London to call and settle matters finally at the Colonial Office or we could jointly do so.

I take it from the correspondence that Mr. Butterfield is anxious to get the farm and Mr. Wilton and myself are agreeable provided that what has been put forward as conditions and terms are carried through, that no expense on our part results, and the right on Mr. Wilton's part to cede, sell or transfer is in order.

Yours sincerely,

(Signed) N. M. Carnell.

C. D.  
R 30 JUL  
D 36  
B. 37626/23 Kenya

Copy of 52626/23 with  
encl's & etc.  
to be passed to Mr. [unclear]

~~ST~~

31. July 1923

DRAFT.

Major W. G. Brierley

Sir,

I have to ack. the rec<sup>d</sup> of the  
27<sup>th</sup> of July of your undated

MINUTE.

- Mr. Burt July 30
- Mr. Parkinson
- Mr. [unclear]
- Mr. Davis.
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Mr. Ormsby-Gore.
- Duke of Devonshire.

Copy to Parkinson

letter regarding a proposal  
for  
to transfer to Mr. Butterfield

The farm in Kenya originally  
allotted to Mr. C. Wilton  
under the Ed. [unclear] (now

Kenya Colony) and the  
ment scheme, and inform

to Major B 5/6/23  
do 20/6/23  
do 21/6/23  
In 37626. (In [unclear] - Kenya Colony)  
37626. Ord. of 29 of 1922  
in [unclear] [unclear] 29/23 K)  
C. D. [unclear]

(2)  
The transfer by the  
allottee of any farm allotted

4

Kenya

37626/23

C. D.  
R 30 JUL  
D 36

Copy of 37626/23 with

encl's with  
H to P to say it is inf

SH

31 July 1923

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Copy of 37626/23

to Major B 5/6/23  
do 20/6/23  
do 21/6/23  
In 37626. (In mil. book copy)  
booked from Ord. 29 of 1922  
in [ ] for 20/29/23 K)  
C. D. Kennell  
marked

SH

which can be inspected in  
the Col Office Library,  
lessee or chargee  
that the assignee will succeed  
to all the rights & liabilities  
of the original purchaser  
of the farm. I am to

DRAFT.

MINUTE.

- Mr.
- Mr.
- Mr.
- Mr. Davis.
- Sir G. Grindle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Mr. Ormaby-Gore.
- Duke of Devonshire.

inclose for your information  
the relevant extract from the

1922 indentance ~~to copy~~  
~~of the lease will be sent to~~  
~~the Off. of Works~~

(C) I am the one - these  
from Mr. Carnell, which were  
enclosed in your letter, are  
returned herewith.

PTO (5)

(15) I am to add  
that a copy of  
this correspondence  
is being sent to  
the Prof. of  
Kenya for  
his info.

—